

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Monday, July 14, 2014 6:51 PM
To: Willis D. Hawley
Cc: Thompson, Lois D.; William Brammer; Tolleson, Julie; Brown, Samuel; Bhargava, Anurima (CRT); Savitsky, Zoe (CRT); Rubin Salter, Jr.
Subject: Request for R&R re Board-Approved GSRR
Attachments: Mendoza Plaintiffs' Request for R&R re Bd Approved GSRR 7-14-14.pdf
Categories: ACTION

Dear Special Master Hawley,

Mendoza Plaintiffs seek a report and recommendation regarding the revised GSRR approved by the Governing Board. Please see attached.

Juan Rodriguez | Staff Attorney

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634 South Spring Street, 11th Floor, Los Angeles, CA 90014
213.629.2512, ext. 136 t / 213.629.0266 f
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Mendoza Plaintiffs' Request for Report and Recommendation on the Revised Board-
Approved Guidelines for Student Rights and Responsibilities
Submitted on June 18, 2014

July 14, 2014

On June 18, 2014, Mendoza Plaintiffs received the revised GSRR that the Governing Board approved ("Revised GSRR"). Under the agreement of the parties as referenced in emails exchanged on June 30, 2014 re: Understandings on Time Out, requests for R&Rs regarding the Revised GSRR were subject to the time out. Pursuant to the Stipulated Process for Parties' Review of District Plans Covered by Section I, D, 1 of the USP, Mendoza Plaintiffs submit this request for an R&R within 15 days (excluding time out days) on the bases described below. Mendoza Plaintiffs are open to working with TUSD to resolve these issues and would stipulate to a delayed R&R process.

(1) The USP requires that the GSRR "limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating, and the District has first attempted and documented the types of intervention(s) used in PBIS and/or Restorative Practices." USP VI, B, 2., a.

In the fourth bullet point on page 21 of the Revised GSRR allowing for elevation of action by one level, the language "and will not permit a single type of behavior to be elevated more than one level, regardless of the frequency of occurrence" was removed. Mendoza Plaintiffs read the language of the fourth bullet, as approved by the Board, to contemplate the elevation of consequences by only a single level. However, in its June 18 response to DOJ comments on proposed GSRR revisions ("Response to DOJ"), TUSD states that it removed the language because administrators "must have additional flexibility." The elevation of a consequence two levels can change a mandatory or potential consequence of a relatively minor offense from a non-exclusionary to an exclusionary response. Mendoza Plaintiffs object to the removal of the language to the extent the District intends to allow for elevations of more than one level.

In addition, TUSD dropped from the fourth bullet point the previously agreed-upon language "For repeated and/or multiple offenses," that immediately preceded "administrators may apply for an action that is one level higher..." Mendoza Plaintiffs object to the removal because it allows for minor first-time offenses to be elevated to a level requiring a mandatory or permissive exclusionary consequence and thus fails to comply with USP Sec. VI, B, 2., a. requirements to limit such action to "ongoing and escalating" misbehavior.

(2) The USP mandates that the GSRR "require the administration of consequences that are non-discriminatory [and] fair." USP Sec. VI, B, 2., a. On page 17 and 21, language that authorized the Department of Student Equity and Intervention ("DSEI") to revise suspensions was removed. Mendoza Plaintiffs understand that the DSEI is vested

with this power as a check to ensure that consequences are applied in a consistent and non-discriminatory manner across TUSD schools. In response to DOJ's concerns that such authority was not transferred to someone else, TUSD asserts that revisions are handled through the appeals process outlined in TUSD regulations. However, the regulations TUSD cites only cover the due process appeals procedures, which require that students/parents actively seek appeal, as distinct from the automatic review and potential revision of suspensions to ensure non-discrimination that was contemplated in the GSRR.¹ Therefore, two issues must be addressed: a process and person to review and revise individual suspensions to ensure non-discrimination and fairness in individual cases and a process and person to look at data on a school wide basis to be sure that overall disciplinary consequences are non-discriminatory and fair across schools.

(3) On page 28 of the revised GSRR, TUSD increased the action level for the non-instructional use of telecommunication devices such as cell phones from a 1 to a 2. Potential level 2 consequences include in-school suspension, and if elevated, will result in mandatory exclusionary consequences. Mendoza Plaintiffs appreciate the explanation provided in the Response to DOJ that teachers are experiencing a very difficult time controlling the use of these devices. However, given the significant increase in students with cell phones at increasingly younger ages over the past years, Mendoza Plaintiffs doubt that teachers and administrators will seek disciplinary action for all non-instructional uses of cell phones and are also concerned that there is significant potential for inequity in the administration of in-school suspension resulting from cell phone use. This opens the door for this poorly defined infraction to result in disproportionate exclusionary consequences for students based on their race or ethnicity and implicates USP Sec. VI, B, 2., a. (ii), which calls for the GSRR to "require the administration of consequences that are non-discriminatory[.]" Mendoza Plaintiffs therefore request that the District be required to better articulate the infraction and its consequences and also ask that the District be required to maintain data on the imposition of discipline for cell phone infractions in a manner that will permit all parties and the Special Master to determine whether it has been imposed in a nondiscriminatory manner.

¹ Mendoza Plaintiffs note that regulations regarding short-term suspension (JK-R1), long-term suspension (JK-R2), and expulsion (JK-R3) on TUSD's website were last revised in 2009, 2010, and 2009, respectively, and are inconsistent with the Revised GSRR and assertions made in the Response to DOJ. In an email re: Discipline Stuff on June 21, 2013 from Sam Brown, forwarded to plaintiffs by then-TUSD counsel Heather Gaines on June 22, 2013, TUSD states that it would continue to "refine regulations." If these regulations have been updated, Mendoza Plaintiffs request that they be provided to all counsel and the Special Master. If they have not been updated, Mendoza Plaintiffs suggest that such updating should occur.

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Wednesday, August 13, 2014 1:12 PM
To: Brown, Samuel; Tolleson, Julie; tusd@rllaz.com
Subject: GSRR R&R

I am working on the GSRR report and recommendation. I would appreciate answers to the following:

1. On page 3 of TUSDs response to Mendoza, a person described as the compliance liaison is identified. Please describe who that person is and to whom he or she reports.
2. This memo dated July 14 indicates that changes were needed in some cases because principals felt they needed more flexibility. Please describe the actions they felt were necessary that they were unable to implement because of the previous provisions of the USP.
3. Who is the district's restorative and positive practices coordinator and to whom does this person report?

I'm sure you would agree that is important for us to get these matters behind us so as soon as you can provide the answers to these questions I can complete the draft and send it to the district for its consideration. Thank you.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

Brown, Samuel

From: William Brammer <WBrammer@rllaz.com>
Sent: Friday, August 15, 2014 1:22 PM
To: Willis D. Hawley (wdh@umd.edu)
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Thompson, Lois D.; Juan Rodriguez; Anne Segal (Afs1818@yahoo.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Tolleson, Julie; Desegregation; TUSD
Subject: GSRR R&R
Attachments: 20140815 GSRR RFI.PDF

Dr. Hawley – following up my message to you yesterday, please find attached the district’s responses to your inquiries. Thanks,

Bill

J. William Brammer, Jr.
Rusing Lopez & Lizardi, P.L.L.C.
6363 North Swan Road, Suite 151
Tucson, Arizona 85718
Tel: 520.792.4800
Fax: 520.529.4262
Brammer@rllaz.com
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Request Form

Meeting Request

Information Request

Please Expedite

Submitted by: Bill Hawley

Date: August 13, 2014

Related to: 2014-15 Guidelines for Student Rights and Responsibilities (GSRR)
I am working on the GSRR report and recommendation. I would appreciate answers to the following:

Info Request 1: On page 3 of TUSDs response to Mendoza, a person described as the compliance liaison is identified. Please describe who that person is and to whom he or she reports.

Reference TUSD’S response to Mendoza

Comments

Response *Charlotte Brown (Compliance Liaison) who currently reports to Eugene Butler (Assistant Superintendent for Student Services), but will likely report to the Sr. Director for Desegregation Compliance and Equity once that position is filled.*

Info Request 2: This memo dated July 14 indicates that changes were needed in some cases because principals felt they needed more flexibility. Please describe the actions they felt were necessary that they were unable to implement because of the previous provisions of the USP.

Reference July 14 Memo

Comments

Response *There were several concerns about the inability to continue to use progressive discipline when all other measures were unsuccessful in correcting the inappropriate behaviors. One example given was “sexual harassment.” There was a situation in which a student repeatedly sexually harassed female students. Despite many interventions, and progressive discipline this student continued to sexually harass others. The District has a responsibility to ensure that such conduct stops. The administration was unable to pursue longer term suspension or expulsion. This is, of course, an extremely rare situation but one in which the administration’s hands were tied.*

On the other hand, other examples that were presented were very low level offenses (1-2) in which there were repeated and multiple offenses in

which the students did not seem to care about the consequence. One specific example is “verbal provocation” a Level 1 offense. Even if raised to a Level 2 after multiple offenses, some students did not respond to the restorative circle/conference and continued their efforts to instigate fights, while not actively participating, thereby avoiding a higher level charge. The administration was unable to impose even a short term suspension.

The district is committed to restorative practices and to minimizing exclusionary consequences. However, there are rare occasions in which progressive discipline is necessary in order to maintain a safe and supportive educational environment for all students. The District believes that the oversight provided at the district level both through review in Student Services and with the required approval at the Assistant Superintendent will prevent misuse of this option and ensure that all non-exclusionary options have been exhausted.

Info Request 3:

Who is the district’s restorative and positive practices coordinator and to whom does this person report?

Reference

Comments

Eugene Butler (Assistant Superintendent for Student Services) who reports to Deputy Adrian Vega.

Reference

Comments

Response

-----Information below this line is to be completed by District Staff -----

Response Submitted by:

Samuel Brown

Submission Date:

August 15, 2014

Brown, Samuel

From: Brown, Samuel
Sent: Friday, August 15, 2014 12:51 PM
To: 'Willis D. Hawley'
Cc: TUSD; Desegregation
Subject: RE: GSRR R&R Request
Attachments: 20140815 GSRR RFI.pdf

Bill: please see attached. Thanks, Sam

From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Thursday, August 14, 2014 4:54 PM
To: William Brammer; Juan Rodriguez
Cc: Lois Thompson; Tolleson, Julie; Brown, Samuel; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov; Desegregation; TUSD
Subject: RE: GSRR R&R Request

Understand. Thanks

From: William Brammer [mailto:WBrammer@rllaz.com]
Sent: Thursday, August 14, 2014 7:56 PM
To: Willis D. Hawley; Juan Rodriguez
Cc: Lois Thompson; Julie.Tolleson@tUSD1.org; Samuel.Brown@tUSD1.org; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov; Desegregation (deseg@tUSD1.org); TUSD
Subject: RE: GSRR R&R Request

Dr. Hawley – Sam advises that the district will respond to your inquiry by the close of business tomorrow. His time, and that of many others, have been devoted to the budget, which he will be sending out tonight as soon as it is in final shape. Thanks,

Bill

J. William Brammer, Jr.
Rusing Lopez & Lizardi, P.L.L.C.
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Tel: 520.792.4800
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IMMEDIATELY DELETE THIS COMMUNICATION AND ANY ATTACHMENTS FROM YOUR SYSTEM AND DESTROY ANY COPIES. PLEASE ALSO NOTIFY THE SENDER THAT YOU HAVE DONE SO BY REPLYING TO THIS MESSAGE. THANK YOU.

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Thursday, August 14, 2014 2:17 PM
To: Juan Rodriguez
Cc: Lois Thompson; William Brammer; Julie.Tolleson@tusd1.org; Samuel.Brown@tusd1.org; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov
Subject: RE: GSRR R&R Request

Status Update

I have drafted an R&R on the GSRR and am awaiting a response to questions of fact sent to the District yesterday. I will revise the draft in light of the comments in this memo from the Mendoza plaintiffs unless one of the other plaintiffs wishes to retain one or more of the objections withdrawn by the Mendoza plaintiffs.

BH

From: Juan Rodriguez [<mailto:jrodriguez@MALDEF.org>]
Sent: Thursday, August 14, 2014 3:00 PM
To: Willis D. Hawley
Cc: Lois Thompson; WBrammer@rllaz.com; Julie.Tolleson@tusd1.org; Samuel.Brown@tusd1.org; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov
Subject: GSRR R&R Request

Dear Dr. Hawley,

Please find attached Mendoza Plaintiffs' letter regarding their GSRR R&R request of July 14, 2014.

Thank you,

Juan Rodriguez | Staff Attorney

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jrodriguez@maldef.org

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Submitted by: Bill Hawley

Date: August 13, 2014

Related to: 2014-15 Guidelines for Student Rights and Responsibilities (GSRR)
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On the other hand, other examples that were presented were very low level offenses (1-2) in which there were repeated and multiple offenses in

which the students did not seem to care about the consequence. One specific example is “verbal provocation” a Level 1 offense. Even if raised to a Level 2 after multiple offenses, some students did not respond to the restorative circle/conference and continued their efforts to instigate fights, while not actively participating, thereby avoiding a higher level charge. The administration was unable to impose even a short term suspension.

The district is committed to restorative practices and to minimizing exclusionary consequences. However, there are rare occasions in which progressive discipline is necessary in order to maintain a safe and supportive educational environment for all students. The District believes that the oversight provided at the district level both through review in Student Services and with the required approval at the Assistant Superintendent will prevent misuse of this option and ensure that all non-exclusionary options have been exhausted.

Info Request 3:

Who is the district’s restorative and positive practices coordinator and to whom does this person report?

Reference

Comments

Eugene Butler (Assistant Superintendent for Student Services) who reports to Deputy Adrian Vega.

Reference

Comments

Response

-----Information below this line is to be completed by District Staff -----

Response Submitted by:

Samuel Brown

Submission Date:

August 15, 2014

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Tuesday, August 19, 2014 3:57 PM
To: Willis D. Hawley
Cc: Lois Thompson; WBrammer@rllaz.com; Tolleson, Julie; Brown, Samuel; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov; TUSD; Desegregation
Subject: RE: GSRR R&R Request

Dear Dr. Hawley,

Mendoza Plaintiffs have reviewed the District's August 15 responses to your August 13 requests for information regarding the Guidelines for Student Rights and Responsibilities ("GSRR"). As described fully below, Mendoza Plaintiffs reinstate their previously withdrawn basis for their R&R request to have the Court require that the GSRR include a provision that prohibits elevation of disciplinary consequences by more than one level.

In the District's June 18 responses to the DOJ's comments on the revised GSRR, the District stated that it removed language limiting the elevation of disciplinary consequences to a single level because administrators "must have additional flexibility." On July 14, 2014, Mendoza Plaintiffs requested an R&R on this basis because it did not comply with USP Section VI,B,2.,a. requirements. In the District's July 24 responses to Mendoza Plaintiffs' R&R request, the District clarified that it "does not intend to allow for elevations of more than one level." Based on this response, Mendoza Plaintiffs withdrew this basis for their R&R request in their letter to you on August 14, 2014. However, in the District's August 15 responses, the District justified the need to elevate consequences by more than one level, in contradiction to their July 24 responses. Accordingly, Mendoza Plaintiffs reinstate this basis for their R&R request.

Additionally, Mendoza Plaintiffs note inadequacies in the examples the District used in its August 15 response to justify elevation of disciplinary consequences by more than one level. In the example of a case of continued sexual harassment, the District stated that the "administration was unable to pursue longer term suspension or expulsion." Sexual harassment corresponds to level 3 consequences which may include in-school or out-of-school suspensions of up to 10 days. In this example, the District could "pursue [a] longer term suspension" of up to 30 days by elevating the consequence by a single level to a level 4. Thus, elevation of consequences more than one level is unnecessary. Moreover, while Mendoza Plaintiffs consider sexual harassment to be a serious offense, expulsion, limited to level 5 offenses, is inappropriate. Sexual harassment is not of the same dangerous nature as other level 5 offenses, which include aggravated assault, rape, sale of illicit drugs, arson, homicide, kidnapping, bomb or chemical/biological threats and burglary.

In the District's second example of "verbal provocation," the District asserted that even when this level 1 offense was elevated to a level 2, "[t]he administration was unable to impose even a short term suspension." However, the GSRR lists "[i]n [s]chool [s]uspension (1-3 days)" as a potential level 2 consequence. Thus, again, elevation of consequences by more than one level is unnecessary.

Juan Rodriguez | Staff Attorney

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From: Juan Rodriguez
Sent: Thursday, August 14, 2014 12:00 PM
To: 'Willis D. Hawley'
Cc: Lois Thompson; WBrammer@rllaz.com; Julie.Tolleson@tUSD1.org; Samuel.Brown@tUSD1.org; Rubin Salter, Jr.; anurima.bhargava@usdoj.gov; zoe.savitsky@usdoj.gov
Subject: GSRR R&R Request

Dear Dr. Hawley,

Please find attached Mendoza Plaintiffs' letter regarding their GSRR R&R request of July 14, 2014.

Thank you,

Juan Rodriguez | Staff Attorney

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Brown, Samuel

From: Sarah J. Stanton <Sstanton@rllaz.com>
Sent: Friday, August 29, 2014 5:07 PM
To: Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu); lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: TUSD Response to Mendoza Reinstated GSRR R&R Request
Attachments: 23E9209-Response to Reinstated Mendoza Request for R&R on GSRR.PDF

Special Master Hawley and Counsel,

Attached is TUSD's response to the Mendoza Plaintiffs' reinstated request for an R&R on the GSRR. Thank you.

Sarah Stanton
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TUSD's August 29, 2014 Response to Mendoza Plaintiffs' Reinstated Request for a Report and Recommendation (R&R) on the Guidelines for Student Rights and Responsibilities (GSRR) received on August 19, 2014

TUSD responds to the Mendoza Plaintiffs' reinstated Request for an R&R on the GSRR revision allowing for elevations of more than one level in certain limited circumstances.

As summarized by the Mendoza Plaintiffs in their e-mail to the Special Master on August 19, 2014:

In the District's June 18 responses to the DOJ's comments on the revised GSRR, the District stated that it removed language limiting the elevation of disciplinary consequences to a single level because administrators "must have additional flexibility." On July 14, 2014, Mendoza Plaintiffs requested an R&R on this basis because it did not comply with USP Section VI.B.2.,a. requirements. In the District's July 24 responses to Mendoza Plaintiffs' R&R request, the District clarified that it "does not intend to allow for elevations of more than one level." Based on this response, Mendoza Plaintiffs withdrew this basis for their R&R request in their letter to you on August 14, 2014. However, in the District's August 15 responses, the District justified the need to elevate consequences by more than one level, in contradiction to their July 24 responses. Accordingly, Mendoza Plaintiffs reinstate this basis for their R&R request.

TUSD's Response:

The USP requires TUSD to "limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating, and the District has first attempted and documented the types of intervention(s) used in PBIS and/or Restorative Practices, as appropriate[.]" See VI.B.2.a. The GSRR states in the section "Short Term Suspension" (see GSRR at p. 17): "Principals must limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating, and the District has first attempted and documented the types of interventions used in PBIS and/or Restorative Practices, as appropriate." The GSRR also provides that "[a]dministrators may apply an action that is one level higher than that listed, but only after approval from the Assistant Superintendent or Director. The Department of Student Equity and Intervention will review whether the teachers and/or administrators have attempted to effectively implement interventions to address any underlying or unresolved issues." See GSRR at p. 21. Taken together, these sections clearly do not allow for an exclusionary consequence for a "relatively minor offense," as Mendoza Plaintiffs allege.

Mendoza Plaintiffs appear to object to the provision allowing for elevations because, given the deletion of language included in a previous iteration of the GSRR, they read it as allowing for elevations of more than one level. *See* Mendoza R&R Request at 1. Although the GSRR no longer explicitly prohibits elevations of more than one level, the circumstances under which a two-level elevation would be imposed are *extremely* rare. As stated in TUSD’s August 15, 2014 RFI response, in situations such as *repeated* sexual harassment, that has continued *despite many interventions*, TUSD has a responsibility to the safety of its students and must have the ability to impose exclusionary consequences. Obviously, this is not a “relatively minor offense.”

Mendoza Plaintiffs suggest that expulsion for sexual harassment would be “inappropriate” because it is not “of the same dangerous nature” as other level 5 offenses. Sexual harassment is defined in the GSRR as “unwelcome sexual advances, requests for sexual favors, and other verbal, graphic, written, or physical conduct of a sexual nature where such conduct has the purpose or effect of creating an intimidating, hostile, or offensive educational environment.” GSRR at p. 27. TUSD did not suggest in its response that expulsion would be an appropriate consequence for sexual harassment in any but the most egregious of cases. If Mendoza Plaintiffs disagree, TUSD encourages them to review some of the literature on the repercussions of serious sexual harassment, which has found that “[s]exual harassment at the beginning of high school is a strong predictor of future victimization by peers and dating partners for both girls and boys, and warrants greater prevention and intervention efforts.” Debbie Chiodo, M.A., et al., *Impact of Sexual Harassment Victimization by Peers on Subsequent Adolescent Victimization and Adjustment: A Longitudinal Study*, *Journal of Adolescent Health* 45, 246 – 252 (2009). TUSD emphasizes that elevations of more than one level will be extremely rare and limited to situations in which the misbehavior is ongoing and has continued despite interventions.

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Wednesday, September 3, 2014 6:04 PM
To: Brown, Samuel; TUSD; Tolleson, Julie
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov)
Subject: Monitoring the District's Implmentation of the GSRR
Attachments: USP GSRR Implmentation Questions re Court Order (2).docx

Attached is a request for information need to respond to a Court Order. I am aware that some of these topics are addressed in the District's 2013 annual report. But that was prepared many months ago. Moreover, we have anecdotal information on some of these topics but the District's response is important and will no doubt be more comprehensive. Note that this request for information does not ask for the actual data on student discipline. The issues related to those data are being studied by the implementation committee and me.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

September 3, 2014

To: Sam Brown

From: Bill Hawley

Re: Information Related to Implementing the GSRR

Explanation

The Court has directed me to monitor the implementation of the GSRR with respect to (1) the training of educators and administrators related to the GSRR, (2) the extent to which the District is monitoring its administrators and teachers in the performance of their duties in implementing the GSRR at each school, and (3) whether students and parents are informed regarding the GSRR in the most effective manner. I am, therefore, requesting the information identified below. Please provide this information no later than September 19, 2014.

Training

For each of the topics listed below, identify who (the role or position of these people) conducted the training, the number of people in each category being trained (such as teachers, principals etc.), and the number of hours of training provided to each type of participant. You will note that I have collapsed some of the topics identified in the USP on the assumption they would most likely be addressed simultaneously. It may also be that some of the separate topics would be addressed during the same set of training sessions. If this is the case, please estimate the time devoted to each topic rather than double count the hours of training. The topics are:

a. The consistent application of positive behavior approaches inside the classroom and throughout the school. This would include acknowledging and reinforcing appropriate and positive student behavior, providing constructive feedback to students when behavior concerns arise, and using such positive feedback and skill building to address all low-level misbehaviors.

b. Working with relevant school and district personnel to ensure that appropriate intervention techniques have been attempted before referring the student to school site discipline administrators.

c. Building and sustaining a positive school climate to reduce and address racial and ethnic disparities in the administration school discipline.

d. Entering, uploading, reading, responding to, and utilizing data in collaboration with school site and District administrators to monitor student behavior.

e. Responding appropriately to data about outcomes, particularly data that show disparities in the administration of consequences on any on any prohibited basis. Explain, among other things, the conditions under which corrective action plans are used.

Monitoring the Implementation of the GSRR

Please describe how the District ensures that the following activities are undertaken and describe the reporting activities that facilitate this monitoring:

a. The effective recording, collecting, and utilization of student behavior and discipline data.

b. Determining whether individual teachers or principals are failing to adhere to the District student discipline policies or practices or are engaged in discrimination in such practices and/or are administering student discipline in a racially or ethnically disparate manner.

c. How instances of corrective action recorded and analyzed. Please describe the framework and timelines for creating corrective action plans. How many corrective action plans have been developed? Are these reviewed and, if so, by whom? Attach examples of corrective action plans (with identifying information redacted).

d. The evaluation of classroom and school level behavior and discipline data to assist in decision-making at all levels. The USP at one point seems to be discussing school-level monthly analyses and at another point is talking about the quarterly analysis of data at the District level. Please address both of these

situations. For example, how does the District know whether principals meet as required on a monthly basis with the school site discipline team?

e. The identification of exemplary practices in particular schools. What are these practices and how have they been shared?

f. Assembling of teams with appropriate certified staff and parents to address next steps for student engage in an ongoing and escalating behavior in spite of appropriate interventions.

g. Ensuring that parents are included in all major decisions relating to student behavior and discipline.

h. Ensuring that RSPPCs and school administrators develop corrective action plans that ensure that exclusionary discipline consequences are not meted out unfairly. Have any decisions been made identifying examples of unfair implementation of the GSRR? If so, how many of these cases are there and do they involve teachers or administrators? If there have been such cases, what actions have been taken to remedy this problem?

Providing Parents and Students with Information about Student Discipline policies and Practices

How does the District make parents and students aware of their responsibilities and rights with respect to the GSRR. Please identify specific actions taken and how the District assesses whether parents have received and understand the information they need to both advocate on behalf of their children and become partners with the District and eliminating student misbehavior?

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Wednesday, September 3, 2014 3:55 PM
To: Willis D. Hawley (wdh@umd.edu)
Cc: Thompson, Lois D.; William Brammer; Tolleson, Julie; Brown, Samuel; Rubin Salter Jr. (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov); TUSD; Desegregation
Subject: Mendoza Plaintiffs' GSRR R&R Request

Dear Dr. Hawley,

Mendoza Plaintiffs have had the opportunity to review the District's August 29, 2014 response to Mendoza Plaintiffs' reinstated basis for their R&R request. Mendoza Plaintiffs continue to seek an R&R that recommends that the District be required to expressly prohibit elevations of two or more levels in the GSRR for the reason first articulated by the DOJ in its June 9, 2014 comments. In those comments, the DOJ stated that the language that prohibited such elevations, which was removed in a version of the GSRR circulated by the District, "was previously the subject of extensive discussions, as elevating an infraction even one level may change the mandatory or potential consequence from a non-exclusionary to an exclusionary response. Thus, this change potentially implicates USP (VI)(B)(2)(a), which requires, among other things, that the GSRR 'limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating, and the District has first attempted and documented the types of intervention(s) used in PBIS and/or Restorative practices, as appropriate.'" The District's August 29 response did not alleviate Mendoza Plaintiffs' concern in this regard.

In addition, the District's inconsistent statements regarding its intent to allow for elevations of more than one level highlight the need for an express prohibition of such elevations in the GSRR. On July 24 and August 29, 2014, the District stated that it "does not intend to allow for elevations of more than one level" and that "two-level elevations would be imposed [in circumstances that] are *extremely rare*[,] respectively. An express provision that prohibits elevations above one level would make the unavailability of such elevations unambiguous and thus ensure a uniform understanding of their unavailability among administrators. As noted in our earlier correspondence on this issue, the District would still have the ability to impose exclusionary responses in those circumstances in which such responses were needed to protect student safety. Compounding Mendoza Plaintiffs' concern with the revised policy is the fact that the GSRR, as approved by the Governing Board, fails to inform students and parents that in certain (unspecified) circumstances, the District intends that disciplinary consequences may be elevated more than one level and that it fails to articulate a standard to guide TUSD administrators as to when such elevations can be applied. Accordingly, Mendoza Plaintiffs maintain this basis for their R&R request.

Thank you,

Juan Rodriguez | Staff Attorney

MALDEF | www.maldef.org
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MALDEF: The Latino Legal Voice for Civil Rights in America.

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received this transmission in error, please immediately notify us by reply e-mail or by telephone at 213.629.2512, and destroy the original transmission and its attachments without reading or saving it in any manner.

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Thursday, September 4, 2014 11:36 PM
To: Willis D. Hawley
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Desegregation; WBrammer@rllaz.com; Brown, Samuel; Tolleson, Julie; TUSD@rllaz.com
Subject: RE: Monitoring the District's Implementation of the GSRR - CRC inquiry

Dear Dr. Hawley,

Mendoza Plaintiffs write to inform you that the District's proposal does not address the basis of their R&R request regarding elevations of more than one level. The version of the GSRR that was approved by the Governing Board, as written, does not include express language that allows for such elevations. Thus, there is no "elevate two levels" language to remove from the GSRR as the District proposes. Rather, as described in Mendoza Plaintiffs' email to you yesterday, language that prohibited such elevations was removed from the GSRR. Mendoza Plaintiffs seek an express prohibition of such elevations in the GSRR because of the District's inconsistent statements regarding their intent to allow for elevations of two levels, and their current position to allow for such elevations in "extremely rare" circumstances in the absence of express prohibitory language. As discussed further in their reinstated R&R request of August 19 and message to you yesterday, the elevation of disciplinary consequences the District now intends to allow implicates USP Section VI,B,2,a.

Thank you,

Juan Rodriguez | Staff Attorney

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634 South Spring Street, 11th Floor, Los Angeles, CA 90014 213.629.2512, ext. 136 t / 213.629.0266 f
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MALDEF: The Latino Legal Voice for Civil Rights in America.

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From: Willis D. Hawley [wdh@umd.edu]
Sent: Thursday, September 04, 2014 2:38 PM
To: William Brammer; Brown, Samuel; TUSD; Julie Tolleson (Julie.Tolleson@tusd1.org)
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Desegregation (deseg@tusd1.org)
Subject: RE: Monitoring the District's Implementation of the GSRR - CRC inquiry

No, but it would eliminate one of the issues dealt with in the R&R. Please let me know. I will be submitting the draft to you tomorrow. Bill

From: William Brammer [mailto:WBrammer@rllaz.com]
Sent: Thursday, September 04, 2014 5:11 PM
To: Willis D. Hawley; Brown, Samuel; TUSD; Julie Tolleson (Julie.Tolleson@tusd1.org)
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Desegregation (deseg@tusd1.org)
Subject: RE: Monitoring the District's Implementation of the GSRR - CRC inquiry

Thank you. One item the district would like to have you and the parties consider regarding the GSRR request is: Were the district to remove the "elevate two levels" language, would that obviate the need for an R&R?

Perhaps that accommodation can resolve an immediate concern, and permit us all to work on other matters. Please advise. Thanks for your consideration.

Bill

J. William Brammer, Jr.
Rusing Lopez & Lizardi, P.L.L.C.
6363 North Swan Road, Suite 151
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From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Thursday, September 04, 2014 2:04 PM
To: William Brammer; Brown, Samuel; TUSD; Julie Tolleson (Julie.Tolleson@tusd1.org<mailto:Julie.Tolleson@tusd1.org>)
Cc: Rubin Salter Jr. (Rsjr3@aol.com<mailto:Rsjr3@aol.com>); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov<mailto:Anurima.Bhargava@usdoj.gov>); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov<mailto:Zoe.Savitsky@usdoj.gov>); Desegregation (deseg@tusd1.org<mailto:deseg@tusd1.org>)
Subject: RE: Monitoring the District's Implementation of the GSRR - CRC inquiry

Bill,

The several steps involved are understandable and it would not be surprising if the October 1 date is missed given that concerns about any specific section will hold up the entire report. If the report is about facts, sharing those facts seems reasonable to me but that is up to you. We have collected important information with the help of District staff, who have been most responsive to the extent that the information is available. We believe that I can respond to the

Mendoza request with the information I have. I can share a draft with the District so that any errors of fact can be corrected.

Bill Hawley

From: William Brammer [mailto:WBrammer@rllaz.com]

Sent: Thursday, September 04, 2014 1:17 PM

To: Willis D. Hawley; Brown, Samuel; TUSD; Julie Tolleson (Julie.Tolleson@tUSD1.org<mailto:Julie.Tolleson@tUSD1.org>)

Cc: Rubin Salter Jr. (Rsjr3@aol.com<mailto:Rsjr3@aol.com>); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava

(Anurima.Bhargava@usdoj.gov<mailto:Anurima.Bhargava@usdoj.gov>); Savitsky, Zoe (CRT)

(Zoe.Savitsky@usdoj.gov<mailto:Zoe.Savitsky@usdoj.gov>); Desegregation

(deseg@tUSD1.org<mailto:deseg@tUSD1.org>)

Subject: RE: Monitoring the District's Implementation of the GSRR - CRC inquiry

Dr. Hawley – this responds as well to your inquiry yesterday afternoon following up Dr. Montano’s visit with the district re: CRC. Both these requests relate to the timing of the annual report, and when “drafts” of various sections of that report might be available for your review.

My understanding of the report’s preparation process is that drafts of the various sections of the report currently are being prepared by the “boots on the ground” folks most responsible for that aspect of the district’s operations. Those drafts then are assembled for review by someone or a group of folks that try to ensure the content is presented in a way that is understandable and both grammatically and content accurate. There is another level of review internally, and then the report is turned over to counsel to ensure consistency with the USP and other applicable laws. Once that review is concluded, the report then is reviewed by district administration to address any legal issues counsel may have identified and to ensure consistency across the categories of district responsibilities. After all those steps are concluded, the report will be filed as required. As you can see, there is a lot to do to get this significantly important document ready on time.

The report is due to be filed on October 1, and will be filed then or before, but neither it nor any of its sections will be available publicly, or for your review, until it is filed.

The district is committing significant resources to ensure this report is filed on time, and contains the information about which you have inquired among the other district achievements within the USP categories from the past fiscal year. It should be considerably more “meaty” than the previous report, as it has much more about which to report. That is the reason it is being assembled and reviewed so carefully – there simply is much diverse information to include, and it all needs to be complete, accurate, informative and understandable. We are sure you expect nothing less. Unfortunately, this will require you to wait a couple of additional weeks before having your inquiries answered.

Hopefully this explanation is acceptable, although the timing may not be precisely what you would prefer. Please let me know if you have any additional questions. Thanks!

Bill

J. William Brammer, Jr.

Rusing Lopez & Lizardi, P.L.L.C.

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From: Willis D. Hawley [mailto:wdh@umd.edu]

Sent: Wednesday, September 03, 2014 6:04 PM

To: Brown, Samuel; TUSD; Julie Tolleson (Julie.Tolleson@tusd1.org<mailto:Julie.Tolleson@tusd1.org>)

Cc: Rubin Salter Jr. (Rsjr3@aol.com<mailto:Rsjr3@aol.com>); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov<mailto:Anurima.Bhargava@usdoj.gov>); Savitsky, Zoe (CRT)

(Zoe.Savitsky@usdoj.gov<mailto:Zoe.Savitsky@usdoj.gov>)

Subject: Monitoring the District's Implementation of the GSRR

Attached is a request for information need to respond to a Court Order. I am aware that some of these topics are addressed in the District's 2013 annual report. But that was prepared many months ago. Moreover, we have anecdotal information on some of these topics but the District's response is important and will no doubt be more comprehensive. Note that this request for information does not ask for the actual data on student discipline. The issues related to those data are being studied by the implementation committee and me.

Willis D. Hawley

Professor of Education and Public Policy University of Maryland Director, Teaching Diverse Student Initiative Southern Poverty Law Center

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Friday, September 5, 2014 5:38 PM
To: TUSD; Brown, Samuel; Tolleson, Julie
Cc: Rubin Salter, Jr.; Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov)
Subject: GSRR R&R Draft
Attachments: USP GSRR R&R (4).docx

Please see the attached draft of an R&R on the GSRR. I am hopeful we can resolve these matters without going to the Court.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

DRAFT FOR ALIGNMENT CONSIDERATION BY TUSD

September 5, 2014

To: Honorable David C. Bury

From: Willis Hawley, Special Master

Re: Report and Recommendation Related to Guidelines for Student Rights and Responsibilities (GSRR)

Introduction

The USP requires that the GSRR be revised and that these revisions be submitted to the plaintiffs and special master for comment and review pursuant to section I.D.1 of the USP. This report and recommendation, which is requested by the Mendoza plaintiffs and joined by the Fisher plaintiffs, addresses objections and concerns raised by these plaintiffs and the special master.

The GSRR was initially revised for the 2013-14 school year. This report and recommendation deals with the revision of that initial action that was first submitted to the plaintiffs and the special master on June 4, 2014 (see Exhibit A). While the District acknowledges its responsibility to submit the GSRR revisions and review and comment pursuant to Section I.D.1 of the USP, it did not follow the procedures specified in section I.D.1 of the USP. However, prior to responding to those comments, the District submitted a revised GSRR to the Board of Governors which passed the revision on June 10, 2014 (see Exhibit B), well before the 60 day period for review and comment specified in the USP and elaborated on in the stipulation regarding process agreed to by the parties. Following the submission of the revisions, the plaintiffs and the special master provided comments implying the need for changes (see Exhibit C) which were later elaborated upon. Among those comments were concerns expressed by the Department of Justice, to which the District responded on June 19, 2014 (see Exhibit D)

On July 14, 2014, the Mendoza plaintiffs requested an R&R and this request would be joined by the Fisher's Fisher plaintiffs (see Exhibit E). The District responded to

the Mendoza comments and objections on July 24, 2014 (see Exhibit F). The Mendoza plaintiffs responded on August 14, 2014 and again on September 2, 2014 withdrawing some of its objections but sustaining others. In these responses Mendoza plaintiffs added to their initial objections as a result of the District's clarification of its intent with respect to the revisions (see Exhibit G and H). On August 19, 2014, the Mendoza plaintiffs reaffirmed their objections in an email special master which is cited in the District's response August 29, 2014 see exhibit I).

On September 2, 2014, the Fisher plaintiffs joined in the Mendoza plaintiffs' September 2, 2014 renewal of the request for an R&R and repeats their objection to significant changes in the role of the Department of Student Equity and Intervention (see Exhibit H).

This substantial exchange of comments and responses has narrowed the objections to the revised GSRR to three categories of concerns which I address in this R&R. One of these involves requiring the District to make explicit that the administration of consequences are nondiscriminatory and fair. A second deals with the issues affecting exclusionary suspensions --that is, out-of-school suspensions, and a third deals with the role of the Department of Student Equity and Intervention in out-of-school suspension actions.

The 2014 revision increases the level of some offenses which then increases the sanctions that may be applied when the misbehavior is ongoing and escalating. This means that an offense categorized as Level I could be elevated or upgraded to Level II thereby opening up the possibility of out-of-school suspension. Similarly, the elevation of a Level II offense to Level III opens the possibility of long term suspension for that offense. The District argues that this is necessary because less punitive disciplinary action is not effective in curbing the misbehavior of some students.

Objection One: Non-discrimination and Fairness

Plaintiffs Objection

The USP requires that the GSRR require that “the administration of consequences be nondiscriminatory and fair”. Plaintiffs ask that this specific provision be included in the GSRR as appropriate.

District Position

In response to this objection, the District explained the processes and persons involved in its compliance with this requirement rather than agreeing to include the specific wording.

Analysis

This seems rather straightforward in that the USP requires such language.

Recommendation

The District should be required to make explicit in the GSRR that actions taken in response to misbehavior be non-discriminatory and fair.

Objection 2: The Elevation of Levels of Offense on Out-of-school Suspensions

Plaintiffs Objection

USP Section VI.B.2.a requires that out-of-school suspensions must be limited to instances in which student misbehavior is ongoing and escalating. The same requirement should be applied to both short-term and long-term suspensions. And, clarifications of the provisions of the GSRR affecting out-of-school suspension is needed.

District’s Position

The District’s response to this objection is that District personnel may need to act to increase penalties to effectively enforce requirements and to protect student safety. The District confirms that an offense cannot be elevated to a higher Level unless there is continuing and escalating behavior and, moreover, that out-of-school suspension must be approved in these cases by Assistant Superintendents or Directors.

Analysis

The plaintiffs agree that the protection of student safety is essential and this analysis takes this as a given. This analysis does not question whether the elevation of the level of misbehavior should be allowed but rather focuses on the possible constraints on when it can be applied.

There are three issues here: (1) the ambiguity of “continuous and accelerating” as a condition for elevating the Level of an offense, (2) whether the elevation of an offense can be more than one Level, and (3) certain offenses that were upgraded to Level II and III in the 2014 revision could result in short and long out-of-school suspension respectively.

Context

The analysis below is shaped by an understanding—derived from participation on a national task force on the “school to prison pipeline” and familiarity with relevant research--of the effects of out-of-school suspension on students and the possibility that disciplinary action may be influenced by the race of the student and the professional expertise of the educator involved.

In order to evaluate the District’s proposal in so far as it increases the likelihood that out-of-school suspension will be used as a response to student misbehavior-- which is one putative intent of the revised GSRR-- one has to take into account the following realities:

1. Out-of-school suspension is not a productive remedy for misbehavior. Misbehavior significant enough to warrant suspension is usually done by students who do not find school a place they want to be in the first place. Sending them home may result in sending them into the streets and does nothing to change their behavior. Moreover, and very important, being suspended from school is a predictor of further suspensions from school and reduces the likelihood of graduation.

2. Race matters. The literature on disciplinary actions in schools is replete with evidence of disproportional administration of district discipline policies. The effects of race on the decisions--frequently over-response-- made by those enforcing rules and regulations and laws is painfully apparent in recurrent examples not limited to schools. Racial influences on the administration of

discipline are not limited to situations in which the person enforcing the rule and the offender are of the same race.

3. The likelihood of over-response, both when race is an issue and when it is not, in the administration of discipline increases significantly when (a) the definition of an offense is ambiguous or subjective and (b) the individuals involved in administering discipline are not well trained, do not know the students well, or have inadequate experience in dealing with the challenges a misbehaving student may pose. The literature is full of examples of teachers who have little trouble with students that other teachers find “impossible”.

Throughout the country, initiatives are being taken by school districts to reduce the incidence of out-of-school suspension as awareness grows of its negative consequences for students and the commonality of racial bias in its use as a disciplinary practice.

The Ambiguity of Terms that Trigger the Elevation of an Offense

The District says that it must have greater discretion in the administration of discipline because some students simply do not respond to the punishments allowed by the previous version of the GSRR. As noted, the GSRR provides principals with the freedom to increase the Level of an offense which would allow the suspension of students in some cases where the misbehavior is “ongoing and escalating”. The elevation of disciplinary consequences with exclusionary effect offenses when misbehavior is “on-going and escalating” requires clarification of what these terms mean.

“Ongoing and escalating” obviously could mean very different things to different people. The examples given by the District of the behaviors that teachers find unmanageable do not speak to escalation; they are examples of persistent behavior of the same type. Indeed, equating ongoing with getting worse seems a perfectly understandable response to frustration with a student who continually misbehaves but would not warrant elevation. How is the difference between ongoing and escalating determined? Does escalating mean increased amounts of the same behavior or does it mean a different Level of significance? Presumably, both conditions must exist to warrant elevation.

Limiting the Elevation of Exclusionary Consequences to One Level

In the development of the USP, the parties were concerned to minimize out of school suspension. See DOJ comments in Exhibit C. While the district has said that it will not elevate any offense more than one level, I agree with the Mendoza plaintiffs' observation that the District's statements regarding its intent to allow for elevations of more than one Level are inconsistent. On July 24 and August 29, 2014, the District stated that it "does not intend to allow for elevations of more than one Level" and that "two-Level elevations would be imposed [in circumstances that] are *extremely rare*[,]” respectively. An express provision that prohibits elevations above one level will make the unavailability of such elevations unambiguous and thus ensure a uniform understanding of their unavailability among administrators.

Increasing the Level of Offenses and Allowing Elevation of the Level of These Offenses with the Consequence of Out-of-school Suspension

The revision of the GSRR included the changes in the level of some offenses from Level I to Level II so that the elevation of that offense could now lead to short-term out-of-school suspension. An offense change from Level II to Level III makes that offense subject to discipline involving long term suspension.

And what are these offences that warrant students being sent home with the unlikely consequence of a positive outcome either for the student or for the school? The District says it does not have a list of such behaviors but is working on one. So what it has is anecdotal testimony from teachers and principals. Two examples of misbehavior that could warrant out-of-school suspension under the revised GSRR are provided by the District. The first of these is the misuse of electronic devices which, we are told, means that teacher cannot get the student's attention. Note that this misbehavior is not likely to disrupt other students. Indeed it may capture the attention of students who would otherwise disrupt their peers. In any event, it hardly warrants out-of-school suspension and may be a symptom of ineffective teaching. In any event misusing one smart phone, for example, hardly seems so

serious an offense as to warrant student being sent home from school. A second example provided by the District is verbal provocation by a student who appears to be urging others to fight but is not him or herself involved. This appears to be a rather subjective judgment. For example if one were to say, “I wouldn’t take that from Juan if it were me”, is this a provocation? Does a fight have to erupt for there to be a provocation?

Mysteriously, at least to me, the use of school computers for non-instructional purposes is upgraded in the revision from a Level II offense to Level III offense making its subject to long term suspension.

In its responses to questions posed by the plaintiffs and special master, the District takes the position that it would not take action without substantial justification to elevate an offense that could lead to out-of-school suspension. But when disciplinary actions could have a profound effect on a student’s life opening the door to the possibility of out-of-school suspension, this assurance—no doubt sincerely expressed--should be subject to caution for reasons suggested above.

Recommendation

First, the District should clarify the distinction between continuing and accelerating and provide examples of accelerating misbehavior. This could be done in the GSRR or in written guidance to teachers and administrators responsible for implementing the GSRR. In either case, this distinction will be used in monitoring the fairness and nondiscriminatory characteristics of specific disciplinary actions.

Second, the GSRR should specify that under no condition is a two-Level elevation of an offense allowed.

Third, it’s very clear from the text of the USP that the intent with respect to exclusionary discipline was to minimize such actions. It is highly unlikely that those who authored the initial version of the GSRR, which was carefully reviewed in 2013 not long after the USP was approved, would have been agreement that Level I offenses could lead to short-term suspension or that a Level II offense could lead to long-term suspension. Therefore, the District should be required to take one of two actions (a) reverse the changes in the 2014 revision of the GSRR that changed Level I offenses to Level II and Level II offenses to Level III or (b)

include a provision in the GSRR disallowing and out-of-school suspension when the offense involved had been elevated to Level II offense or when the offense involved had been elevated from Level II to Level III.

Objection Three: The Role of the Department of Student Equity and Intervention

The Fisher plaintiffs object to the revisions of the GSRR that involve the elimination of the role of the Department of Student Equity and Intervention in the disciplinary process except with respect to the collection and organization of data and the overall review of implementation strategies.

District's Position

The District did not comment on this objection.

Analysis

The critical review of decisions by subordinates by the people to whom they report, especially when issues of justice are involved, is problematic. This is because among other reasons superior officers need support of those they supervise and often--as is the case here—the superior officers play a role in selecting those individuals and are responsible for their professional development. That said, the USP gives the Superintendent the authority to organize the procedure and practices needed to implement the USP except in those instances otherwise prescribed by the USP. The USP does not specify a role for the Department of Student Equity and Intervention in disciplinary matters.

Recommendation

The Court should not respond to the Fisher plaintiffs concerns about the role of the Department of Student Equity and Intervention but should direct the special master to pay particular attention to the consequences of review of actions taken at school level by Assistant Superintendent and Directors.

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Friday, September 12, 2014 7:19 AM
To: Brown, Samuel; TUSD; Tolleson, Julie
Cc: Rubin Salter Jr. (Rsjr3@aol.com); Juan Rodriguez; Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); edward thompson
Subject: Discipline Data Request
Attachments: USP Discipline data memo 9-10 (2).docx
Categories: BoardSuptSMPartiesIC

Sam Brown,

The District has provided me with data on student discipline that it includes in its quarterly reports. These data, however, do not include some aspects of the disciplinary process that are needed. I do not use the RFI. This seems to need more detail and comment. Please see attached. I would appreciate receiving samples of the school level reporting forms at your earliest convenience and an indication of when the other information might be available. We are happy to talk with you about this request and to hear suggestions from you or appropriate staff.

Thanks,

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

September 12, 2014

To: TUSD

From: Bill Hawley

Re: Data on School Discipline

We appreciate the data provided to Ed Thompson and me regarding disciplinary actions. However, the data provided in the quarterly reports prepared by the District do not allow us to monitor the implementation of the GSRR as required by the USP. We need to know the following summary information disaggregated by student race and gender for each type of misbehavior:

- The level of offense
- The punishment
- Whether the offense was elevated
- The number of students involved
- The number of days involved
- The percentage of students in each ethnic and gender group who were disciplined.

In order to make this manageable, we request that these data be provided for (a) Levels III, IV, and V and Level II offenses that have been elevated (these can be entered as level III offenses but marked as elevated in some way) and (b) the punishments reported are in-school-suspension, short term out-of-school suspension, and long term out-of-school suspension. It seems that a form can be developed to present this information in a way that facilitates analysis.

Presumably, the District will also need this information in order to respond to the requirements of the USP. Indeed, the district will require additional information.

This request does not mean that we are uninterested in Level I Level II offenses and how they are treated and we assume that periodic inquiries about these disciplinary actions could be addressed with available data. To that end, I request that the District provide examples of the forms used by schools to report disciplinary actions to the Department of Student Equity and Intervention.

Moreover, the data requested above could lead, of course, to more in-depth inquiry. For example, if there is significant disproportionality with respect to disciplinary action, we would work with the District to understand if this is the result of unfair discipline resulting from communication problems and other possibilities that could be addressed.

Given the goals implicit in this request, we welcome the District's suggestions.

Brown, Samuel

From: Sarah J. Stanton <Sstanton@rllaz.com>
Sent: Monday, September 15, 2014 4:07 PM
To: Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu); lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: TUSD's GSRR Alignment Response
Attachments: 23G1527-GSRR Alignment Response 9.15.14.pdf

Special Master Hawley and Counsel,

Attached please find TUSD's GSRR R&R alignment response. Thank you.

Sarah Stanton
Rusing Lopez & Lizardi, P.L.L.C.
6363 North Swan Road, Suite 151
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TUSD’s September 15, 2014 Alignment Response to the Draft Report and Recommendation Regarding TUSD’s Guide to Student Rights and Responsibilities (“GSRR”), submitted by the Special Master on September 5, 2014

Below are TUSD’s responses to the Special Master’s draft Report and Recommendation on the GSRR.

Recommendation One: The District should be required to make explicit in the GSRR that actions taken in response to misbehavior be non-discriminatory and fair.

Response:

The GSRR already contains an explicit statement that disciplinary action must be imposed in a non-discriminatory manner. It says, on page 2, that “[d]isciplinary consequences must be non-discriminatory, fair, age-appropriate, and correspond to the severity of the student’s misbehavior.”

TUSD is committed to a District-wide policy of non-discrimination. Governing Board Policy AC, titled Non-Discrimination, explicitly prohibits race-based discrimination. *See Exhibit A hereto.* The policy states that it “will prevail in all matters concerning the Governing Board, District employees, students, the public, educational programs and services, and individuals with whom the Board does business.” The GSRR specifically refers to Policy AC at page 8, under the list of “Student Rights.”

The GSRR also cites to Governing Board Policy JB, titled Equal Educational Opportunities and Anti-Harassment. *See Exhibit B hereto; see p. 8 of GSRR.* That policy states, “The right of a student to participate fully in classroom instruction shall not be abridged or impaired because of race, color, religion, sex, sexual orientation, age, national origin, and disability, or any other reason not related to the student’s individual capabilities.”

In sum, the GSRR already contains an explicit non-discrimination statement and also cites to and incorporates District policies that prohibit discrimination. There is no need for further redundant anti-discrimination language in the GSRR.

Recommendation Two: First, the District should clarify the distinction between continuing and accelerating and provide examples of accelerating misbehavior. This could be done in the GSRR or in written guidance to teachers and administrators responsible for implementing the GSRR. In either case, this distinction will be used in monitoring the fairness and nondiscriminatory characteristics of specific disciplinary actions.

Second, the GSRR should specify that under no condition is a two-Level elevation of an offense allowed.

Third, it's very clear from the text of the USP that the intent with respect to exclusionary discipline was to minimize such actions. It is highly unlikely that those who authored the initial version of the GSRR, which was carefully reviewed in 2013 not long after the USP was approved, would have been agreement that Level I offenses could lead to short-term suspension or that a Level II offense could lead to long-term suspension. Therefore, the District should be required to take one of two actions (a) reverse the changes in the 2014 revision of the GSRR that changed Level I offenses to Level II and Level II offenses to Level III or (b) include a provision in the GSRR disallowing and out-of-school suspension when the offense involved had been elevated to Level II offense or when the offense involved had been elevated from Level II to Level III.


Response:

Again, there is no need to amend the language in the GSRR to address the Plaintiffs' concerns. The GSRR states, on page 21:

Administrators may apply an action that is one level higher than that listed, but only after approval from the Assistant Superintendent or Director. The Department of Student Equity and Intervention will review whether the teachers and/or administrators have attempted to effectively implement interventions to address any underlying or unresolved issues.

The plain language of the GSRR does not allow for two-level elevations. However, to avoid an R&R on this issue, TUSD will use the form attached hereto as Exhibit C whenever a school administrator is contemplating elevating a disciplinary action consequence. The form explicitly states, in bold letters, that "UNDER NO CIRCUMSTANCES SHALL DISCIPLINE BE ELEVATED MORE THAN ONE LEVEL ABOVE THE APPLICABLE VIOLATION." The form also requires that the administrator requesting the elevation describe how the student's conduct was ongoing and escalating, the previous interventions that occurred, and the reason for the request. The administrator will submit the form to the appropriate Assistant Superintendent, who will either approve or deny the request. After the discipline is imposed, the requesting school administrator must submit the completed form to the Office of Student Equity for review within 3 days of imposing the discipline. The form must be used any time a school administrator contemplates elevating a disciplinary action.

EXHIBIT A

 Tucson, Arizona GOVERNING BOARD POLICY	POLICY TITLE: Non-Discrimination
	POLICY CODE: AC

Tucson Unified School District is committed to a policy of nondiscrimination based on disability, race, color, religion/religious beliefs, sex, sexual orientation, gender identity or expression, age, or national origin. This policy will prevail in all matters concerning Governing Board, District employees, students, the public, educational programs and services, and individuals with whom the Board does business.

Discrimination based on disability, race, color, religion/religious beliefs, sex, sexual orientation, gender identity or expression, age, or national origin, as well as retaliation for opposition to such discrimination, is prohibited by one or more of the following federal and state laws: Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments Act of 1972, Americans with Disabilities Act of 1990, Rehabilitation Act of 1973, Age Discrimination in Employment Act, and the Arizona Civil Rights Act, and by this policy.

In addition to the protections against discrimination and retaliation, the Americans with Disabilities Act (ADA) prohibits coercion, intimidation, threats, harassment, or interference in the exercise of an individual’s ADA rights or the encouragement of others’ exercise of rights granted by the ADA.

It shall be a violation of this policy for any Tucson Unified School District employee, student, or member of the public while on District property or on official District business to discriminate or retaliate or engage in conduct or communication which would constitute discrimination or retaliation, as defined below.

A single incident may result in a violation of this policy.

DEFINITIONS:

“Discrimination” includes disparate treatment based on legally identified factors unrelated to their ability or potential, such as race, color, gender, religion, ancestry, national origin, marital status, age, disability, sexual orientation, or gender identity. *Discrimination as prohibited by this policy includes* expression or conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin or disability, or that of his or her peers, family members, co-workers or associates,

and which expression or conduct results in differential treatment because of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin or disability, or has the purpose or effect of creating a hostile, intimidating or offensive employment or educational environment.

Discrimination also includes epithets, slurs, jokes, negative stereotyping, or threatening, derogatory, intimidating or hostile acts that relate to race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin or disability, and, written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin or disability.

"Retaliation" includes adverse action against a covered individual because the individual (or closely-associated individual) engaged in protected activity.

"Adverse action" includes any action that is likely to keep a reasonable person from engaging in protected activity, including but not limited to termination, denial of promotion, threats, unjustified negative references or evaluations, undesirable transfer, or severe harassment.

"Protected activity" includes (1) reasonable opposition to a practice believed to violate anti-discrimination laws on behalf of oneself or others; (2) participation in a discrimination complaint proceeding, such as cooperating with an internal investigation of alleged discriminatory practices or acting as a witness in an investigation by an outside agency or in litigation; and (3) the asserting of one's rights, such as requests for reasonable accommodation based on religion or disability. Additionally, the Americans with Disabilities Act prohibits retaliation because of opposition to any acts made unlawful by the ADA, including discrimination by state and local government employers, or failure to provide accommodations.

REPORTING PROCEDURES:

Individuals who believe they have been discriminated and/or retaliated against in violation of this policy shall immediately report the conduct according to the following procedures so that the complaint can be addressed fairly and quickly. The individual may make a complaint to any of the following individuals:

- The individual's immediate supervisor
- The individual's site/department administrator, or
- The EEO Compliance Officer.

The District will use the following complaint procedures for conducting a fair and impartial investigation of the retaliation complaint as outlined in regulation AC-R. The investigation will be conducted in as confidential manner as possible.

If the investigation concludes that a violation of this policy has occurred, the District is committed to taking effective remedial action designed to end the violation(s) and prevent future ones. A substantiated charge of discrimination, retaliation, coercion, intimidation, threat, harassment or interference with ADA rights against an individual shall subject the individual to discipline or sanctions as follows:

- If the person alleged to have violated this policy is a staff member, possible discipline includes, but is not limited to, letters of reprimand, reassignment, and other disciplinary actions including suspension or job termination.
- If the person alleged to have violated this policy is a student, possible discipline includes detention, suspension or expulsion, consistent with the *Guidelines for Student Rights and Responsibilities*.
- If the person alleged to have violated this policy is a member of the general public, sanctions consistent with Policy Code KFA – *Public Conduct on School Property* shall be imposed.


The Superintendent shall establish procedures to ensure monitoring and compliance with this policy.

Adopted: May 25, 1995
 Revised: October 10, 2000
 Revised: February 10, 2004
 Revised: October 5, 2004 [in new policy format]
 Revised: April 10, 2007
 Revised: May 17, 2011 [Typographical error corrected 6-23-11]
 Revised: September 27, 2011
 Revised: January 17, 2013 [Cross Reference Correction Only]
 Revised: March 25, 2014

Legal Ref: A.R.S. 23-341 Equal wage rates; variations; penalties; enforcement
 41-1463 Discrimination; unlawful practices; definition
 20 U.S.C. 1400 Individuals with Disabilities Education Act
 20 U.S.C. 1681 Education Amendments of 1972, Title IX
 20 U.S.C. 1703 Equal Employment Opportunity Act of 1972
 29 U.S.C. 794 Rehabilitation Act of 1973, Section 504
 42 U.S.C. 2000 Civil Rights Act of 1964, Titles VI and VII
 42 U.S.C. 12101 *et seq.* Americans with Disabilities Act
 Arizona Constitution, Ordinance Art. XX,
 Par. Seventh

Cross Ref: ACA - Sexual Harassment
GBA – Equal Employment Opportunity
IHBA – Education of Section 504 Disabled Students
JB - Equal Educational Opportunities

EXHIBIT B

 GOVERNING BOARD POLICY	POLICY TITLE: Equal Educational Opportunities and Anti-Harassment
	DISTRICT CODE: JB

The right of a student to participate fully in classroom instruction shall not be abridged or impaired because of race, color, religion, sex, sexual orientation, age, national origin, and disability, or any other reason not related to the student’s individual capabilities.

The right of students to participate in extracurricular activities shall be dependent only upon their maintaining the minimum academic and behavioral standards established by the Board, and their individual ability in the extracurricular activity.

Adopted: October 5, 2004
 Revision: July 28, 2009
 Revision: August 23, 2011

Legal Ref:

20 U.S.C. 1400, Individuals with Disabilities Education Act
 20 U.S.C. 1681, Education Amendments of 1972, Title IX, (P.L. 92-318)
 20 U.S.C. 1703, Equal Educational Opportunities Act
 29 U.S.C. 794, Rehabilitation Act of 1973, Section 504
 42 U.S.C. 2000, Civil Rights Act of 1964, as amended in 1972, Title VI, Title VII
 42 U.S.C. 11301, McKinney-Vento Homeless Assistance Act of 2001
 Arizona Constitution, Art. XI, Sec. 6

Cross Ref:

AC – Nondiscrimination
 ACA – Sexual Harassment
 GBA – Equal Employment Opportunity
 GCQF – Discipline, Suspension, and Dismissal of Professional Staff Members
 GDQD – Discipline, Suspension, and Dismissal of Support Staff Members
 IHBA – Special Educational Programs and Accommodations for Disabled Students
 JII – Student Concerns, Complaints and Grievances
 JK – Student Discipline
 JKD – Student Suspension
 KED – Public Concern/Complaints about Facilities or Services

Replaces TUSD Policy # JFCL – Anti-Harassment - Student

EXHIBIT C



REQUEST TO ELEVATE DISCIPLINE LEVEL

SCHOOL: _____ DATE: _____

ADMINISTRATOR: _____

STUDENT NAME: _____ GRADE: _____ ETHNIC CODE: _____

VIOLATION AND CURRENT LEVEL _____

UNDER NO CIRCUMSTANCES SHALL DISCIPLINE BE ELEVATED MORE THAN ONE LEVEL ABOVE THE APPLICABLE VIOLATION.

CONSEQUENCE REQUESTED: _____

WAS THE CONDUCT ONGOING AND ESCALATING? IF SO, PLEASE DESCRIBE: _____

PREVIOUS INTERVENTIONS: _____

REASON FOR REQUEST: _____

Approved: _____

Denied: _____

IF DENIED, REASON: _____

Assistant Sup't of Elementary or Secondary Leadership

TO BE COMPLETED BY REQUESTING SCHOOL ADMINISTRATOR WITHIN 3 DAYS OF DISCIPLINE

CONSEQUENCE/DATE IMPOSED: _____

COMPLETED FORM SENT TO OFFICE OF STUDENT EQUITY ON: _____

THIS FORM MUST BE SENT ELECTRONICALLY TO THE OFFICE OF STUDENT EQUITY FOR REVIEW.

Brown, Samuel

From: Brown, Samuel
Sent: Tuesday, September 16, 2014 1:57 PM
To: Willis D. Hawley
Cc: TUSD; Tolleson, Julie; Butler Jr, Eugene
Subject: FW: TUSD's GSRR Alignment Response

Dr Hawley: please identify the two provisions you are referring to. The District is interested in resolving this matter, please let us know ASAP. Thanks in advance, Sam

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, September 16, 2014 7:16 AM
To: Sarah J. Stanton; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: RE: TUSD's GSRR Alignment Response

Ms. Stanton,

This response will result in omitting two provisions of the GSRR draft on which the District commented. I hope to submit the revised R&R later this week. Bill Hawley

y, September 15, 2014 7:07 PM
To: Willis D. Hawley; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie (Julie.Tolleson@tUSD1.org); samuel.brown@tUSD1.org; TUSD
Subject: TUSD's GSRR Alignment Response

Special Master Hawley and Counsel,

Attached please find TUSD's GSRR R&R alignment response. Thank you.

Sarah Stanton
Rusing Lopez & Lizardi, P.L.L.C.
6363 North Swan Road, Suite 151
Tucson, Arizona 85718
Tel: 520.792.4800
Fax: 520.529.4262
sstanton@rllaz.com
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IMMEDIATELY DELETE THIS COMMUNICATION AND ANY ATTACHMENTS FROM YOUR SYSTEM AND DESTROY ANY COPIES. PLEASE ALSO NOTIFY THE SENDER THAT YOU HAVE DONE SO BY REPLYING TO THIS MESSAGE. THANK YOU.

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Tuesday, September 16, 2014 2:50 PM
To: Brown, Samuel
Cc: TUSD; Tolleson, Julie; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

In its comments on the draft GSRR, the district addressed two issues. First, it rightly pointed out that my proposal to include wording about fairness was not appropriate given that the wording was already in the GSRR. Obviously I will delete that portion of the GSRR. The second issue that the district addressed was assurances that two levels of elevation was not possible. So I will also delete that portion of the GSRR. However, the district did not comment on two other issues about which I made recommendations to the court for action: (a) the need to define on-going and escalating and clarify the distinction between them by providing meaningful examples and (b) changes in the GSRR which would eliminate the possibility of out of school suspension for level II offenses. I provided two options for accomplishing this.

I hope that these matters could be resolved. I go to some lengths in my R&R to draw the court's attention to the dangers to students of out of school suspension. The revisions of the GSRR make it possible for relatively minor offenses to result in out of school suspension. That may not have been the intent of the revision but the combination of changing the level of some offenses and the possibility of elevating those offenses could result in consequences that are out of proportion to the problems posed by the misbehavior involved. I think that the clarification that I ask for should be fairly easy to achieve and, as I suggest, would not necessarily require a change in the GSRR itself but could be accomplished by clear instructions to those administering the GSRR.

Let me know as soon as you can about what you propose to do because I have prepared the revised R&R for submission to the court and I'm ready to go. If talking on the phone would help, let's do that.

Bill

From: Brown, Samuel [mailto:Samuel.Brown@tusd1.org]
Sent: Tuesday, September 16, 2014 4:57 PM
To: Willis D. Hawley
Cc: TUSD; Tolleson, Julie; Butler Jr, Eugene
Subject: FW: TUSD's GSRR Alignment Response

Dr Hawley: please identify the two provisions you are referring to. The District is interested in resolving this matter, please let us know ASAP. Thanks in advance, Sam

From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Tuesday, September 16, 2014 7:16 AM
To: Sarah J. Stanton; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: RE: TUSD's GSRR Alignment Response

Ms. Stanton,

This response will result in omitting two provisions of the GSRR draft on which the District commented. I hope to submit the revised R&R later this week. Bill Hawley

y, September 15, 2014 7:07 PM

To: Willis D. Hawley; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr.

(Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)

Cc: Tolleson, Julie (Julie.Tolleson@tusd1.org); samuel.brown@tusd1.org; TUSD

Subject: TUSD's GSRR Alignment Response

Special Master Hawley and Counsel,

Attached please find TUSD's GSRR R&R alignment response. Thank you.

Sarah Stanton

Rusing Lopez & Lizardi, P.L.L.C.

6363 North Swan Road, Suite 151

Tucson, Arizona 85718

Tel: 520.792.4800

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Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Tuesday, September 16, 2014 5:57 PM
To: Tolleson, Julie
Cc: TUSD; Brown, Samuel; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

I am not the only one. I have proposed a solution with Sam. Of course, the plaintiffs may still want to persist.

From: Tolleson, Julie [mailto:Julie.Tolleson@tusd1.org]
Sent: Tuesday, September 16, 2014 8:36 PM
To: Willis D. Hawley
Cc: TUSD; Brown, Samuel; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

Hmmmm. It seems unambiguous to me but certainly we can clarify it somehow if that would help.

Julie C. Tolleson, General Counsel
Tucson Unified School District

From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Tuesday, September 16, 2014 4:50 PM
To: Tolleson, Julie
Cc: TUSD; Brown, Samuel; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

That wording does not clearly exclude level two offenses elevated to level 3. But, if that is the intent—not to have elevated offenses carry exclusionary consequences, we should be able to resolve this pretty easily. Bill

From: Tolleson, Julie [mailto:Julie.Tolleson@tusd1.org]
Sent: Tuesday, September 16, 2014 6:31 PM
To: Willis D. Hawley
Cc: TUSD; Brown, Samuel; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

It is quoted below.

Julie C. Tolleson, General Counsel
Tucson Unified School District

From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Tuesday, September 16, 2014 3:30 PM
To: Tolleson, Julie
Subject: RE: TUSD's GSRR Alignment Response

I don't think so. Please refer me to the language. Bill

From: Tolleson, Julie [mailto:Julie.Tolleson@tusd1.org]
Sent: Tuesday, September 16, 2014 6:28 PM

To: Willis D. Hawley
Subject: RE: TUSD's GSRR Alignment Response

The language would not permit that. It has to be an actual level 3 violation.

Julie C. Tolleson, General Counsel
Tucson Unified School District

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, September 16, 2014 3:28 PM
To: Tolleson, Julie
Subject: RE: TUSD's GSRR Alignment Response

I know. I am concerned on the Level 2 offenses that are elevated to level 3.

From: Tolleson, Julie [<mailto:Julie.Tolleson@tusd1.org>]
Sent: Tuesday, September 16, 2014 5:59 PM
To: Willis D. Hawley; Brown, Samuel
Cc: TUSD; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

If it helps narrow the issues further, the GSRR already prohibits exclusionary consequences for a level 1 or 2 violation:

For all but the most severe offenses (Levels 4 and 5 in the "Action Levels" section of this document below), exclusionary consequences ("any disciplinary consequence that removes a student from classroom instruction, including, but not limited to, in-school and out-of-school suspension, placement in an alternative setting or program, and expulsion.") must be **limited to instances in which** (a) the violation is a **level 3**, (b) student misbehavior is ongoing or escalating, and (c) only after the District has first implemented and documented that non-exclusionary interventions have been attempted. If exclusionary consequences are imposed, students will have fair due process that includes an opportunity to appeal (see Policy JK and accompanying regulations).

That language is at p. 5.

Julie C. Tolleson, General Counsel
Tucson Unified School District

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, September 16, 2014 2:50 PM
To: Brown, Samuel
Cc: TUSD; Tolleson, Julie; Butler Jr, Eugene
Subject: RE: TUSD's GSRR Alignment Response

In its comments on the draft GSRR, the district addressed two issues. First, it rightly pointed out that my proposal to include wording about fairness was not appropriate given that the wording was already in the GSRR. Obviously I will delete that portion of the GSRR. The second issue that the district addressed was assurances that two levels of elevation was not possible. So I will also delete that portion of the GSRR. However, the district did not comment on two other issues about which I made recommendations to the court for action: (a) the need to define on-going and escalating and clarify the distinction between them by providing meaningful examples and (b) changes in the GSRR which would eliminate the possibility of out of school suspension for level II offenses. I provided two options for accomplishing this.

I hope that these matters could be resolved. I go to some lengths in my R&R to draw the court's attention to the dangers to students of out of school suspension. The revisions of the GSRR make it possible for relatively minor offenses to result in out of school suspension. That may not have been the intent of the revision but the combination of changing the level

of some offenses and the possibility of elevating those offenses could result in consequences that are out of proportion to the problems posed by the misbehavior involved. I think that the clarification that I ask for should be fairly easy to achieve and, as I suggest, would not necessarily require a change in the GSRR itself but could be accomplished by clear instructions to those administering the GSRR.

Let me know as soon as you can about what you propose to do because I have prepared the revised R&R for submission to the court and I'm ready to go. If talking on the phone would help, let's do that.

Bill

From: Brown, Samuel [<mailto:Samuel.Brown@tUSD1.org>]
Sent: Tuesday, September 16, 2014 4:57 PM
To: Willis D. Hawley
Cc: TUSD; Tolleson, Julie; Butler Jr, Eugene
Subject: FW: TUSD's GSRR Alignment Response

Dr Hawley: please identify the two provisions you are referring to. The District is interested in resolving this matter, please let us know ASAP. Thanks in advance, Sam

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, September 16, 2014 7:16 AM
To: Sarah J. Stanton; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: RE: TUSD's GSRR Alignment Response

Ms. Stanton,

This response will result in omitting two provisions of the GSRR draft on which the District commented. I hope to submit the revised R&R later this week. Bill Hawley

y, September 15, 2014 7:07 PM

To: Willis D. Hawley; lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie (Julie.Tolleson@tUSD1.org); samuel.brown@tUSD1.org; TUSD
Subject: TUSD's GSRR Alignment Response

Special Master Hawley and Counsel,

Attached please find TUSD's GSRR R&R alignment response. Thank you.

Sarah Stanton
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Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Wednesday, September 17, 2014 2:28 PM
To: Brown, Samuel; Tolleson, Julie; TUSD
Subject: GSRR

I think we are close to resolving these issues, at least from my perspective. Would it be possible to discuss with whomever you think is appropriate what agreements we might come to so that we can put this to rest. I could talk Friday or Monday mid afternoons Eastern time.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Wednesday, September 17, 2014 11:11 AM
To: Willis D. Hawley; Sarah J. Stanton; lthompson@proskauer.com; Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Brown, Samuel; TUSD
Subject: RE: TUSD's GSRR Alignment Response

Dear Dr. Hawley and Counsel,

Mendoza Plaintiffs have reviewed the District's September 15, 2014 alignment response to the Special Master's draft R&R regarding the GSRR. While Mendoza Plaintiffs acknowledge that under the Stipulated Process for Parties Review of District Plans Covered by Section I, D, 1 of the USP, they do not have a right to respond to the District's alignment response, they are making this submission in an attempt to avoid litigation on the issues described below if they can be resolved informally.

Mendoza Plaintiffs want to bring attention to misunderstandings about their concerns regarding the revised GSRR that persist. Mendoza Plaintiffs do not seek to have a statement of non-discrimination in the GSRR. Rather, Mendoza Plaintiffs seek to have the processes for ensuring non-discrimination, described on page 3 of the District's July 24 response under "TUSD's Response to #2," expressly included in the GSRR. Additionally, Mendoza Plaintiffs seek to have long-term suspensions expressly limited to "ongoing and escalating" misbehavior under the "Long-Term Suspension" section on page 17 of the revised GSRR, as it appears for the "Short-Term Suspensions" section on the same page. Mendoza Plaintiffs appreciate the language in the form that TUSD administrators will use for elevation requests, provided as exhibit C to the District's alignment response, that when coupled with the language in the GSRR, address Mendoza Plaintiffs' concerns regarding elevation of disciplinary consequences by more than one level. Mendoza Plaintiffs invite efforts to resolve the open issues described above to avoid litigation on those matters.

Thank you,

Juan Rodriguez | Staff Attorney

MALDEF | www.maldef.org
634 South Spring Street, 11th Floor, Los Angeles, CA 90014
213.629.2512, ext. 136 t / 213.629.0266 f
jrodriguez@maldef.org

MALDEF: The Latino Legal Voice for Civil Rights in America.

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From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Tuesday, September 16, 2014 7:16 AM
To: Sarah J. Stanton; lthompson@proskauer.com; Juan Rodriguez; Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)

Cc: Tolleson, Julie (Julie.Tolleson@tusd1.org); samuel.brown@tusd1.org; TUSD

Subject: RE: TUSD's GSRR Alignment Response

Ms. Stanton,

This response will result in omitting two provisions of the GSRR draft on which the District commented. I hope to submit the revised R&R later this week. Bill Hawley

y, September 15, 2014 7:07 PM

To: Willis D. Hawley; ltompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)

Cc: Tolleson, Julie (Julie.Tolleson@tusd1.org); samuel.brown@tusd1.org; TUSD

Subject: TUSD's GSRR Alignment Response

Special Master Hawley and Counsel,

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Sarah Stanton

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Brown, Samuel

From: Brown, Samuel
Sent: Thursday, September 18, 2014 1:01 PM
To: Willis D. Hawley
Cc: TUSD; Desegregation; Butler Jr, Eugene; Tolleson, Julie
Subject: GSRR

Bill: thank you for the clarification, based on our conversation, please review the following and advise as to whether this resolves these issues. We would include the following in our communications and/or trainings to staff:

- (a) "Ongoing" means that the student continues to do the same offense even after the District has tried and documented interventions. For example, student verbally provokes a fight between two other students by taunting the students. Receives a level I, receives an intervention, then provokes two or three more fights in the next two months.
- (b) "Escalating" means the administrator can articulate that the behavior has taken on a different tone (when Student X verbally provokes a second or third fight, his/her language goes from taunting to cursing and personal attacks), or has become more frequent (the time between the first and second fight was two weeks; the time between the second and third fight was two days)
- (c) We have revised the "Elevated Discipline Form" so that a Level II that is escalated to a Level III cannot result in exclusionary discipline
- (d) We had discussed prohibiting elevations from Level III to Level IV that resulted in out of school suspensions. The only additional consequence at Level IV is out of school suspension; such a prohibition would eviscerate the GSRR provision allowing elevation of one level.

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Thursday, September 18, 2014 1:46 PM
To: Brown, Samuel
Cc: TUSD; Desegregation; Butler Jr, Eugene; Tolleson, Julie
Subject: RE: GSRR

I think we are getting close. My understanding is that a level IV offense can result in long-term school suspension. Would you be willing to stipulate on the form that an offense that is elevated from 3 to 4 cannot result in long-term school suspension?

There are two other issues that we would need to resolve in order to avoid an R&R. The first of these is to formalize the districts agreement with the Mendoza plaintiffs articulated on page 3 of the July 24 memo response to Mendoza's request for an R&R. This involves the clarification of the process and the plaintiffs ask that it be included next year's revision.

The other issue is the Fisher concerns about the role of the Department of Student Equity and Intervention. In my R&R I recommend that the court not act on that but they may wish for me to bring it forward in any event.

Bottom line, if we can agree on the above I will not be asking the court to mandate the District undertake any specific action even if I do have to file an R&R. Are we good on this?

Bill

From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]
Sent: Thursday, September 18, 2014 4:01 PM
To: Willis D. Hawley
Cc: TUSD; Desegregation; Butler Jr, Eugene; Tolleson, Julie
Subject: GSRR

Bill: thank you for the clarification, based on our conversation, please review the following and advise as to whether this resolves these issues. We would include the following in our communications and/or trainings to staff:

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- (d) We had discussed prohibiting elevations from Level III to Level IV that resulted in out of school suspensions. The only additional consequence at Level IV is out of school suspension; such a prohibition would eviscerate the GSRR provision allowing elevation of one level.

Brown, Samuel

From: Brown, Samuel
Sent: Monday, September 22, 2014 3:53 PM
To: Butler Jr, Eugene
Cc: Tolleson, Julie; TUSD; Desegregation; Vega, Adrian
Subject: GSRR Phone Call
Attachments: 20140922 GSRR Phone Call Minutes.docx

Mr. Butler/All: please see attached notes from our brief phone call with Dr Hawley today. Seems we have found a middle ground to avoid litigation and avoid changing the GSRR. Sam

September 22, 2014

130-2pm

Eugene Butler, Bill Hawley, Samuel Brown

Re: Potential resolution of the remaining GSRR issues

We discussed remaining issues and the following potential resolutions. Dr. Hawlet requests that we expedited a response:

1. Discipline review process

Resolution: Agree to revise the 2015-16 GSRR to describe in detail the process for reviewing disciplinary actions (especially suspensions). Include specific details about who is involved in the process (Equity Directors, Compliance Liaison, Ed Leadership Directors, Etc.), and what happens when.

2. Revise training on the phrase “ongoing and escalating and ongoing”

Resolution: Revise the discipline training (and the expectations) for principals/staff to clarify and define the phrase “escalating and ongoing” and include better examples for when it applies (better than the examples we used in our response)

3. Two-level escalation

Resolution: confirm that even with the new form and process, we do not intend to do “double escalations.” Student X commits level 2, gets consequence and interventions. Commits the same level 2 two more times but each time is progressively worse “ongoing and escalating,” and receives a level 3 through the new form/process, and interventions. Student X commits the same level 2 two more times, at that point we cannot “re-elevate” it to a level 4.

Do we agree that Student X cannot receive a level 4 no matter how many times she commits the initial level 2?

4. Elevations from 2 to 3 resulting in out of school suspension, or from 3 to 4 resulting in long term suspension

Resolution 1(a): prohibit out of school suspension for all level 2s escalated to level 3. *We are amenable to this, and have stated it in the new form.*

Resolution 1(b): prohibit long term suspensions (11+ days) for all level 3s escalated to level 4. *We are not (I think) amenable to this, and have not included it in the new form.*

*we shared that the District is not likely open to agreeing to 1(b), and we discussed an alternative...

Resolution 2: prohibit escalations for the following, identified level 3s: Vandalism and Computer Violations. These two items will be excluded from the escalation rule and have to remain at level 3. We would not need to change the GSRR, but would need to include this in training and, maybe, on the form.

September 22, 2014

130-2pm

Eugene Butler, Bill Hawley, Samuel Brown

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Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Monday, September 29, 2014 11:43 AM
To: Brown, Samuel
Subject: RE: GSRR discussion

Good. There is the clarification THING TOO. BILL

From: Brown, Samuel [mailto:Samuel.Brown@tusd1.org]
Sent: Monday, September 29, 2014 2:23 PM
To: Willis D. Hawley
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

Just that in your conversation with Mr. Butler and I we discussed Vandalism as a key concern...so, in total, the proposal you are making involves five violations (three that were changed between the two years, and the two vandalism violations that you shared a concern about).

If this is accurate, Mr. Butler will analyze and/or bring this to the leadership team for a decision on your proposal.
Thanks, Sam

From: Willis D. Hawley [mailto:wdh@umd.edu]
Sent: Monday, September 29, 2014 11:13 AM
To: Brown, Samuel
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

The 1-3 part is fine but it is not the same as the first paragraph.What am I missing? Bill

From: Brown, Samuel [mailto:Samuel.Brown@tusd1.org]
Sent: Monday, September 29, 2014 1:39 PM
To: Willis D. Hawley
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

Ok, I think we have it (maybe). Charlotte has verified (and we compared both GSRRs to confirm) that there were only three items that moved up a level between 2013-14 and 2014-15:

- “Improper Use of Technology, Computer” from 2 to 3
- “Improper Use of Technology, Telecommunication Device” from 1 to 2
- “Other Technology” from 1 to 2

Based on the above, please confirm if what is written below is accurate:

The SM is proposing that, in lieu of prohibiting long-term suspensions for all Level IIIs elevated to Level IV, the District should agree that:

1. No violation will be elevated two levels.

2. Two specific Level II violations (that were Level 1 violations in 2013-14) can be elevated to a Level III, but cannot result in out of school suspension. "Improper Use of Technology, Telecommunication Device" and "Other Technology"
3. Three specific Level III violations can be elevated to a Level IV but cannot result in a long-term suspension: "Improper Use of Technology, Computer" "Vandalism of School Property" and "Vandalism of Personal Property"

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Sunday, September 28, 2014 7:28 AM
To: Brown, Samuel
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

SEE BELOW IN CAPS

From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]
Sent: Friday, September 26, 2014 7:55 PM
To: Willis D. Hawley
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

Mr. Butler and I just met, I am responding on his behalf so that he can have clarity in this instance. If we include the violations that were changed from a 1 to a 2, it would read like this, please confirm:

The SM is proposing that, in lieu of prohibiting long-term suspensions for all Level IIIs elevated to Level IV, the District should agree that:

1. No violation will be elevated two levels.
2. Two specific Level II violations (that were Level 1 violations in 2013-14) can be elevated to a Level III, but cannot result in out of school suspension. "Improper Use of Technology, Telecommunication Device" and "Other Technology" IWOULD NEED TO LOOK AT THE REDLINED VERSION AS TO THE OFFENCES BUT THE PRINCIPLE IS RIGHT
3. Three specific Level III violations cannot be elevated to a Level IV: "Improper Use of Technology, Computer" "Vandalism of School Property" and "Vandalism of Personal Property" WHAT I SAID WAS THAT AN ELEVATION TO LEVEL FOUR COULD NOT RESULT IN LONG TERM SUSPENSION FOR ISSUES THAT WEE LEVEL TWO BUT I AM FINE WITH THIS PROPOSAL—IS THIS WHAT YOU WANT TO DO?

Bill

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Friday, September 26, 2014 3:56 PM
To: Brown, Samuel
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

I don't have access to the GSRR because I am travelling. But this not what I prop[osed]. No 2 level elevations. An item that was changed to level 2 this year, if elevated to level 3 cannot lead to OSS. It doesn't matter how many times this elevation occurred this year. An offence changed to level 3, if elevated to 4 cannot result in long term suspension.

BH

From: Brown, Samuel [Samuel.Brown@tusd1.org]
Sent: Friday, September 26, 2014 5:40 PM
To: Willis D. Hawley
Cc: Butler Jr, Eugene
Subject: RE: GSRR discussion

Yes sir, was planning on sending something today. Based on our conversation with you, we have identified that there is only one violation that went from a Level II last year to a Level III this year: "Improper Use of Technology, Computer" In addition, the items you raised a concern about, "Vandalism of School Property" and "Vandalism of Personal Property" were both Level III violations last year and remain so this year (Graffiti was, and has remained, a Level II).

So, leadership will discuss the proposal, but I want to be crystal clear that we are on the same page about what the proposal is, please confirm:

The SM is proposing that, in lieu of prohibiting long-term suspensions for all Level IIIs elevated to Level IV, the District should agree that three specific violations cannot be elevated to a Level IV: "Improper Use of Technology, Computer" "Vandalism of School Property" and "Vandalism of Personal Property"

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Friday, September 26, 2014 1:24 PM
To: Brown, Samuel
Subject: GSRR discussion

Can you let me know where we are on the issues we discussed earlier this week?

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

Brown, Samuel

From: Willis D. Hawley <wdh@umd.edu>
Sent: Tuesday, October 7, 2014 2:41 PM
To: rsjr3@aol.com; Juan Rodriguez (jrodriguez@MALDEF.org); Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Brown, Samuel; TUSD; Tolleson, Julie
Subject: GSRR Agreement?
Attachments: USP GSRR Agreement 10-7-14.docx

Please see attached.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

October 7, 2014

To: Parties

From: Bill Hawley

Re: Agreements (?) Regarding the GSRR

Here are my understandings of the agreements reached with the District with respect to the 2014-15 GSRR. Please advise on the District side whether these understandings align with our discussions. If the plaintiffs believe that an R&R is still required they should advise me as soon as possible.

1. In response to the draft R&R, the District clarified its commitment to limit the elevation of offenses to one level thereby addressing one of the concerns of the plaintiffs. This will be clarified in the forms used to deal with the elevation of offenses.
2. The District agrees to clarify the distinction between “continuing and accelerating” as criteria for elevating an offense and provide examples of accelerating misbehavior. This will be done in written guidance to teachers and administrators responsible for implementing the GSRR and in training. This distinction will be used in monitoring the fairness and nondiscriminatory characteristics of specific disciplinary actions.
3. It is unlikely that those who authored the initial version of the GSRR, which was carefully reviewed in 2013 not long after the USP was approved, would have been agreement that Level I offenses could lead to short-term suspension or that a Level II offense could lead to long-term suspension. The District agrees to include provisions in the GSRR (a) disallowing out-of-school suspension when the offense involved had been elevated to Level II from Level I in the 2014-15 GSRR (e.g., “Improper Use of Technology, Telecommunication Device” and “Other Technology”) and (b) disallowing long-term suspension when an offense has been elevated from Level III to Level IV when that offense had previously been a Level II offense (for example, “Improper Use of Technology, Computer”). This

agreement does not disallow elevation but constrains the use of out of school suspension.

Changes in the GSRR will be made when the GSRR is published again for the 2015-16 school year but staff, parents and students will be advised of these clarifications.

One other matter was addressed in the draft R&R. The Fisher plaintiffs object to the revisions of the GSRR that involve the elimination of the role of the Department of Student Equity and Intervention in the disciplinary process except with respect to the collection and organization of data and the overall review of implementation strategies. However, the USP gives the Superintendent the authority to organize the procedures and practices needed to implement the USP except in those instances otherwise prescribed by the USP. The USP does not specify a role for the Department of Student Equity and Intervention in disciplinary matters. Thus, I would not ask the Court to amend the R&R with respect to the role of the Department of Student Equity and Intervention but I will, with the help of the IC, pay particular attention to the consequences of review of actions taken at school level by Assistant Superintendent and Directors as we monitor implementation.

October 7, 2014

To: Parties

From: Bill Hawley

Re: Agreements (?) Regarding the GSRR

Here are my understandings of the agreements reached with the District with respect to the 2014-15 GSRR. Please advise on the District side whether these understandings align with our discussions. If the plaintiffs believe that an R&R is still required they should advise me as soon as possible.

[As a threshold matter, the District agreed to bring proposed changes to the 2014-15 GSRR to the Governing Board for vote next Tuesday, October 14, 2014. If adopted, the District will modify the online version, and will notify students, parents, and staff of the modifications.](#)

1. In response to the draft R&R, the District clarified its commitment to limit the elevation of offenses to one level thereby addressing one of the concerns of the plaintiffs. This will be clarified in the forms used to deal with the elevation of offenses. [The District has also agreed to submit modified language to the Governing Board to clarify its commitment to prohibit two-level elevations in the GSRR itself – in addition to the forms.](#)

2. The District agrees to clarify the distinction between “continuing and accelerating” as criteria for elevating an offense and provide examples of accelerating misbehavior. This will be done in written guidance to teachers and administrators responsible for implementing the GSRR and in training. This distinction will be used in monitoring the fairness and nondiscriminatory characteristics of specific disciplinary actions. [The District agreed to address this distinction in training, but did not agree to do so in written guidance to teachers and administrators. However, the District is willing to provide guidance to all principals, along with instructions for principals to discuss the guidance with site staff.](#)

3. It is unlikely that those who authored the initial version of the GSRR, which was carefully reviewed in 2013 not long after the USP was approved, would have been agreement that Level I offenses could lead to short-term suspension or that a Level II offense could lead to long-term suspension. The District agrees to include provisions in the GSRR (a) disallowing out-of-school suspension when the offense involved had been elevated to Level II from Level I in the 2014-15 GSRR (e.g., “Improper Use of Technology, Telecommunication Device” and “Other Technology”) and (b) disallowing long-term suspension when an offense has been elevated from Level III to Level IV when that offense had previously been a Level II offense (for example, “Improper Use of Technology, Computer”). This agreement does not disallow elevation but constrains the use of out of school suspension.

Changes may be made on October 14, 2014, depending on the outcome of the Governing Board vote. If adopted, changes to the published handbook ~~Changes is the GSRR~~ will be made when the GSRR is published again for the 2015-16 school year but staff, parents and students will be advised of these clarifications.

One other matter was addressed in the draft R&R. The Fisher plaintiffs object to the revisions of the GSRR that involve the elimination of the role of the Department of Student Equity and Intervention in the disciplinary process except with respect to the collection and organization of data, ~~and~~ the overall review of implementation strategies, and the review of disciplinary actions to provide advice and counsel to Elementary and Secondary Leadership regarding the appropriateness of those actions. However, the USP gives the Superintendent the authority to organize the procedures and practices needed to implement the USP except in those instances otherwise prescribed by the USP. The USP does not specify a role for the Department of Student Equity and Intervention in disciplinary matters. Thus, I would not ask the Court to amend the R&R with respect to the role of the Department of Student Equity and Intervention but I will, with the help of the IC, pay particular attention to the consequences of review of actions taken at school level by Assistant Superintendent and Directors as we monitor implementation.

Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Wednesday, October 8, 2014 4:50 PM
To: Brown, Samuel; Willis D. Hawley; rsjr3@aol.com; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie
Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

Dear Special Master Hawley and Counsel,

As an initial matter, Mendoza Plaintiffs note that they understand the references to “continuing and accelerating” misbehavior in the proposed agreement to reference “ongoing and escalating” misbehavior language in the GSRR.

Mendoza Plaintiffs agree with the Special Master that the District should directly inform teachers of the exact meaning of “ongoing and escalating” misbehavior, as well as other GSRR changes or clarifications identified in the proposed agreement. Teachers are most directly involved with students in the administration of discipline because, as Dr. Hawley stated, the “discipline process starts with teachers.” Thus, we believe that the reference to “instructions for principals to discuss the guidance with site staff” while appropriate is not sufficient and that there should be direct communication to teachers of all changes and clarifications. Mendoza Plaintiffs appreciate the District’s explanation that teachers do not directly request elevations of disciplinary consequences. However, teachers presumably assert in some form that disciplinary action is necessary when a student misbehaves. They also play a role in reporting the behavior that forms the basis for finding that a student’s misbehavior is “ongoing and escalating.” Indeed, it appears administrators must consult teachers before they can request elevations of discipline because the form administrators use to make such requests, which the District provided to the parties and Special Master on September 15, 2014, requires a description of the “ongoing and escalating” behavior, previous interventions, and reasons for the request. Thus, under these circumstances, teachers should have a clear understanding of the consequences of their referrals for discipline and of all potential consequences.

Absent from this proposed agreement is any language to address Mendoza Plaintiffs’ objection regarding long-term suspensions. The USP requires that the GSRR “limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating[.]” As Mendoza Plaintiffs noted during the October 2 meetings and in prior comments, Mendoza Plaintiffs seek to have long-term suspensions expressly limited to “ongoing and escalating” misbehavior under the “Long-Term Suspension” section on page 17 of the revised GSRR, just as that limitation appears for the “Short-Term Suspensions” section on the same page. Mendoza Plaintiffs believe that this change, as with the clarification of the meaning of “ongoing and escalating”, must be communicated directly to teachers.

Additionally, Mendoza Plaintiffs note that in their prior comments, they requested that the GSRR be revised to include the processes for ensuring non-discrimination in the administration of disciplinary consequences as they were described on page 3 of the District’s July 24 response. It appears to Mendoza Plaintiffs that the processes described at the October 2 meeting by Mr. Eugene Butler provided a clearer understanding of the process by which the District ensures non-discrimination. Mendoza Plaintiffs now ask that the Board be presented with a proposal to include the processes described by Mr. Butler in the 2015-16 GSRR at the October 14 Board meeting. Presumably, because this only involves inclusion of a description of processes the District is already engaged in, the Governing Board would likely approve this proposed change.

Mendoza Plaintiffs appreciate the additions and clarifications that the District has made to this GSRR agreement. However, it is clear that the changes contemplated here may not come to fruition because “[c]hanges may be made on October 14, 2014, depending on the outcome of the Governing Board vote.” Accordingly, Mendoza

Plaintiffs expressly reserve their right to pursue an R&R as to any matter contained in the agreement or this email if the Governing Board does not approve them on October 14, 2014.

Thank you,

Juan Rodriguez | Staff Attorney

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jrodriguez@maldef.org

MALDEF: The Latino Legal Voice for Civil Rights in America.

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From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]
Sent: Wednesday, October 08, 2014 1:48 PM
To: Willis D. Hawley; rsjr3@aol.com; Juan Rodriguez; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie
Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

Bill: I had a sense that teachers did not play such a role. But to verify, I reached out to educational leadership who confirmed that teachers do not play a role in recommending elevation.

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, October 7, 2014 5:23 PM
To: Brown, Samuel; rsjr3@aol.com; jrodriguez@MALDEF.org; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie
Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

If teachers play a role in recommending elevation, they should receive information directly. There is no way to tell if teachers get information if it is up to principals. The discipline process starts with teachers, they should understand as much as possible of the intent of the GSRR. Bill

From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]
Sent: Tuesday, October 07, 2014 8:08 PM
To: Willis D. Hawley; rsjr3@aol.com; jrodriguez@MALDEF.org; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie
Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

Bill: we include teachers in the reference to "site staff" – Principals would discuss the changes with teachers and other site staff.

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, October 7, 2014 4:59 PM
To: Brown, Samuel; rsjr3@aol.com; jrodriguez@MALDEF.org; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie

Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

Why would you not inform teachers? The other changes seem fine with two typos—one probably mine. See attached.

From: Brown, Samuel [<mailto:Samuel.Brown@tusd1.org>]
Sent: Tuesday, October 07, 2014 7:23 PM
To: Willis D. Hawley; rsjr3@aol.com; jrodriguez@MALDEF.org; Thompson, Lois D.; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD; Tolleson, Julie
Cc: Butler Jr, Eugene
Subject: RE: GSRR Agreement?

Bill/All: please see attached. Mr. Butler and I reviewed the proposed agreement and made some corrections so that the agreement accurately aligns with our discussions. Thanks, Sam

From: Willis D. Hawley [<mailto:wdh@umd.edu>]
Sent: Tuesday, October 7, 2014 2:41 PM
To: rsjr3@aol.com; Juan Rodriguez (jrodriguez@MALDEF.org); Thompson, Lois D.; Anurima Bhargava (Anurima.Bhargava@usdoj.gov); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov); Brown, Samuel; TUSD; Tolleson, Julie
Subject: GSRR Agreement?

Please see attached.

Willis D. Hawley
Professor of Education and Public Policy
University of Maryland
Director, Teaching Diverse Student Initiative
Southern Poverty Law Center

Brown, Samuel

From: Sarah J. Stanton <Sstanton@rllaz.com>
Sent: Friday, October 10, 2014 4:55 PM
To: Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu); lthompson@proskauer.com; Juan Rodriguez (jrodriguez@MALDEF.org); Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Sanchez, HT; Desegregation; TUSD
Subject: RFI re GSRR Implementation

Dr. Hawley:

We have been working on TUSD's response to your September 12, 2014 RFI regarding GSRR implementation. We have almost all the information you have requested but, because the District is closed this week and not back in session until next Tuesday – a period agreed at last week's "Summit" to be a standstill period - we simply have been unable to finalize the response and obtain approval from District leadership to release it. Given the importance of this issue and the attendant information, we cannot provide information without verifying that it is accurate and complete. We should have complete responses to you no later than next Wednesday, the day after we can obtain district input and information. We realize, however, this may be of limited utility to you given that the current deadline for you to file your report falls on that same day, October 15. Of course, should you need additional time to incorporate this information into your report, we would be happy to stipulate to a reasonable extension to provide you adequate time to review the information the District provides and incorporate it into your report. Please let us know if this solution is acceptable to you. Thank you.

Sarah Stanton
Rusing Lopez & Lizardi, P.L.L.C.
6363 North Swan Road, Suite 151
Tucson, Arizona 85718
Tel: 520.792.4800
Fax: 520.529.4262
sstanton@rllaz.com
www.rllaz.com



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Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Sunday, October 12, 2014 12:01 PM
To: Sarah J. Stanton; Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu); lthompson@proskauer.com; Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie; Sanchez, HT; Desegregation; TUSD
Subject: RE: RFI re GSRR Implementation

Dear Sarah,

Mendoza Plaintiffs write in response to your email below, which indicates that the District will be unable to provide responses to the Special Master's September 12, 2014 RFI until Wednesday, October 15. In the past week, in an effort to avoid an R&R, the parties and Special Master have communicated with each other extensively regarding a proposed GSRR agreement in order to come to a common understanding of the proposed changes to be presented to the Governing Board on October 14, 2014. The Special Master's RFI regards data on discipline, including information on disciplinary elevations, which would help to identify any disparities in the administration of discipline. These comprise some of the very subjects of the proposed changes that have been discussed by the parties and Special Master. We are therefore confused by the District's indication that the data cannot be finalized until the day after the Governing Board is to decide on whether to approve the proposed GSRR changes and the absence of any reference in your email to the process in which the parties, including the District, and the Special Master have been engaged since our meetings in Tucson. It seems to us that the issue is not merely an extension of time for the Special Master to file his R&R as you suggest in your email but, rather, whether the process of attempting to resolve the issues to avoid an R&R is to go forward and if so, on what schedule given that the District plans to go forward with a Governing Board vote on October 14 but not provide information that the Special Master, the plaintiffs, and --presumably, the Governing Board -- consider relevant to that vote until October 15 and given that a full terms of a resolution have not been resolved.

In that regard: Mendoza Plaintiffs have reviewed the agenda for the October 14, 2014 Governing Board meeting. The GSRR item includes links to a cover sheet dated October 6, 2014, which describes proposed changes to the GSRR, and a redlined page from the 2014-15 GSRR that contains the changes. Mendoza Plaintiffs request that the District update the GSRR agenda items to include the proposed changes they requested that the Governing Board be presented with in their email of October 8, 2014, a copy of which is attached immediately below for your convenience. We remind the District that Mendoza Plaintiffs' withdrawal of their GSRR R&R request is conditioned on the Governing Board's approval of changes required by the USP, which includes those identified in their October 8 email.

Thank you,
Juan Rodriguez

Sent: Wednesday, October 08, 2014 4:50 PM
To: Brown, Samuel [Samuel.Brown@tUSD1.org]; Willis D. Hawley [wdh@umd.edu]; rsjr3@aol.com; Thompson, Lois D. [lthompson@proskauer.com]; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD [TUSD@rllaz.com]; Tolleson, Julie [Julie.Tolleson@tUSD1.org]
Cc: Butler Jr, Eugene [Eugene.ButlerJr@tUSD1.org]

Dear Special Master Hawley and Counsel,

As an initial matter, Mendoza Plaintiffs note that they understand the references to "continuing and accelerating" misbehavior in the proposed agreement to reference "ongoing and escalating" misbehavior language in the GSRR.

Mendoza Plaintiffs agree with the Special Master that the District should directly inform teachers of the exact meaning of “ongoing and escalating” misbehavior, as well as other GSRR changes or clarifications identified in the proposed agreement. Teachers are most directly involved with students in the administration of discipline because, as Dr. Hawley stated, the “discipline process starts with teachers.” Thus, we believe that the reference to “instructions for principals to discuss the guidance with site staff” while appropriate is not sufficient and that there should be direct communication to teachers of all changes and clarifications. Mendoza Plaintiffs appreciate the District’s explanation that teachers do not directly request elevations of disciplinary consequences. However, teachers presumably assert in some form that disciplinary action is necessary when a student misbehaves. They also play a role in reporting the behavior that forms the basis for finding that a student’s misbehavior is “ongoing and escalating.” Indeed, it appears administrators must consult teachers before they can request elevations of discipline because the form administrators use to make such requests, which the District provided to the parties and Special Master on September 15, 2014, requires a description of the “ongoing and escalating” behavior, previous interventions, and reasons for the request. Thus, under these circumstances, teachers should have a clear understanding of the consequences of their referrals for discipline and of all potential consequences.

Absent from this proposed agreement is any language to address Mendoza Plaintiffs’ objection regarding long-term suspensions. The USP requires that the GSRR “limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating[.]” As Mendoza Plaintiffs noted during the October 2 meetings and in prior comments, Mendoza Plaintiffs seek to have long-term suspensions expressly limited to “ongoing and escalating” misbehavior under the “Long-Term Suspension” section on page 17 of the revised GSRR, just as that limitation appears for the “Short-Term Suspensions” section on the same page. Mendoza Plaintiffs believe that this change, as with the clarification of the meaning of “ongoing and escalating”, must be communicated directly to teachers.

Additionally, Mendoza Plaintiffs note that in their prior comments, they requested that the GSRR be revised to include the processes for ensuring non-discrimination in the administration of disciplinary consequences as they were described on page 3 of the District’s July 24 response. It appears to Mendoza Plaintiffs that the processes described at the October 2 meeting by Mr. Eugene Butler provided a clearer understanding of the process by which the District ensures non-discrimination. Mendoza Plaintiffs now ask that the Board be presented with a proposal to include the processes described by Mr. Butler in the 2015-16 GSRR at the October 14 Board meeting. Presumably, because this only involves inclusion of a description of processes the District is already engaged in, the Governing Board would likely approve this proposed change.

Mendoza Plaintiffs appreciate the additions and clarifications that the District has made to this GSRR agreement. However, it is clear that the changes contemplated here may not come to fruition because “[c]hanges may be made on October 14, 2014, depending on the outcome of the Governing Board vote.” Accordingly, Mendoza Plaintiffs expressly reserve their right to pursue an R&R as to any matter contained in the agreement or this email if the Governing Board does not approve them on October 14, 2014.

Thank you,

Juan Rodriguez | Staff Attorney

MALDEF | www.maldef.org

634 South Spring Street, 11th Floor, Los Angeles, CA 90014 213.629.2512, ext. 136 t / 213.629.0266 f
jrodriguez@maldef.org

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From: Sarah J. Stanton [Sstanton@rllaz.com]
Sent: Friday, October 10, 2014 4:54 PM
To: Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu); lthompson@proskauer.com; Juan Rodriguez; Rubin Salter Jr. (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT) (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
Cc: Tolleson, Julie (Julie.Tolleson@tusd1.org); Sanchez, HT (HT.Sanchez@tusd1.org); Desegregation (deseg@tusd1.org); TUSD
Subject: RFI re GSRR Implementation

Dr. Hawley:

We have been working on TUSD's response to your September 12, 2014 RFI regarding GSRR implementation. We have almost all the information you have requested but, because the District is closed this week and not back in session until next Tuesday – a period agreed at last week's "Summit" to be a standstill period - we simply have been unable to finalize the response and obtain approval from District leadership to release it. Given the importance of this issue and the attendant information, we cannot provide information without verifying that it is accurate and complete. We should have complete responses to you no later than next Wednesday, the day after we can obtain district input and information. We realize, however, this may be of limited utility to you given that the current deadline for you to file your report falls on that same day, October 15. Of course, should you need additional time to incorporate this information into your report, we would be happy to stipulate to a reasonable extension to provide you adequate time to review the information the District provides and incorporate it into your report. Please let us know if this solution is acceptable to you. Thank you.

Sarah Stanton
Rusing Lopez & Lizardi, P.L.L.C.
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[cid:image002.jpg@01CFE4AA.E5EAB050]

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Brown, Samuel

From: Juan Rodriguez <jrodriguez@MALDEF.org>
Sent: Monday, October 13, 2014 8:51 PM
To: Willis D. Hawley; Sanchez, HT
Cc: Sarah J. Stanton; lthompson@proskauer.com; Rsjr3@aol.com; Zoe.Savitsky@usdoj.gov; Anurima.Bhargava@usdoj.gov; Tolleson, Julie; Desegregation; TUSD; brammer@rllaz.com; Butler Jr, Eugene
Subject: RE: RFI re GSRR Implementation

Dear Special Master Hawley and Counsel,

Mendoza Plaintiffs have reviewed Dr. Sanchez's email of this afternoon regarding the GSRR items on the agenda for tomorrow's Governing Board meeting. Because the proposed changes implicate the R&R process and possible court proceedings, we address our response to the Special Master and counsel. Mendoza Plaintiffs understand that the Board will be presented with some of the GSRR revisions that have been proposed. However, Mendoza Plaintiffs do not understand the two proposed GSRR changes to fully address their pending R&R request. In their October 8 email last week, attached in email thread below, Mendoza Plaintiffs identified two bases for their R&R request that were not addressed in the parties' and Special Master's emails regarding the proposed GSRR agreement and that have been the subject of Mendoza Plaintiffs' comments and objections for months. It appears that Special Master Hawley has the same understanding that a full agreement has not yet been finalized and that the referenced issues remain outstanding, as he wrote in his email below that "[t]here is more to it than the note below and does not include the specifics of the Mendoza request."

Dr. Sanchez's emails indicate that the Governing Board may be presented with additional GSRR issues after tomorrow's meeting. While Mendoza Plaintiffs believed that it would have been preferable to have presented the Governing Board all GSRR issues at one time, they now understand that that will not occur. Mendoza Plaintiffs therefore remind the parties and Special Master that in their October 8 email, they expressly reserved their right to pursue an R&R as to any matter contained in the agreement or the email if the Governing Board did not approve them. Accordingly, Mendoza Plaintiffs believe that to avoid an R&R, the Governing Board must be presented with and approve the GSRR issues described in Mendoza Plaintiffs' October 8 email in a future meeting, presumably the October 28 meeting. In order to facilitate that process, Mendoza Plaintiffs are willing to defer seeking an R&R until after the Governing Board has had further opportunity to act so long as the District so agrees.

Thank you,

Juan Rodriguez | Staff Attorney

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jrodriguez@maldef.org

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From: Willis D. Hawley [wdh@umd.edu]
Sent: Monday, October 13, 2014 1:11 PM
To: Sanchez, HT; Juan Rodriguez
Cc: Sarah J. Stanton; lthompson@proskauer.com; Rsjr3@aol.com; Zoe.Savitsky@usdoj.gov;
Anurima.Bhargava@usdoj.gov; Tolleson, Julie; Desegregation; TUSD; brammer@rllaz.com; Butler Jr, Eugene
Subject: RE: RFI re GSRR Implementation

Here is the status of the discussions I have had with staff re the GSRR. There is more to it than the note below and does not include the specifics of the Mendoza request. BH

-----Original Message-----

From: Sanchez, HT [mailto:HT.Sanchez@tusd1.org]
Sent: Monday, October 13, 2014 2:09 PM
To: Juan Rodriguez
Cc: Sarah J. Stanton; Willis D. Hawley; lthompson@proskauer.com; Rsjr3@aol.com; Zoe.Savitsky@usdoj.gov;
Anurima.Bhargava@usdoj.gov; Tolleson, Julie; Desegregation; TUSD; brammer@rllaz.com; Butler Jr, Eugene
Subject: RE: RFI re GSRR Implementation

Juan:

We have the GSRR on the agenda for tomorrow (see item 21). We have the two revisions we discussed up for a vote: 1. Can't move students up past a level without assist sup approval and 2. Electronic equipment and suspension. These were the two we discussed last week. They are on for a Board vote as we agreed.

All will have the data by tomorrow. Should we have other work we need to do as a result of the data review on your part and our part, we will have those opportunities moving forward to discuss corrective actions and adjustments to processes and/or policies.

HT

-----Original Message-----

From: Juan Rodriguez [mailto:jrodriguez@MALDEF.org]
Sent: Monday, October 13, 2014 9:31 AM
To: Sanchez, HT
Cc: Sarah J. Stanton; wdh@umd.edu; lthompson@proskauer.com; Rsjr3@aol.com; Zoe.Savitsky@usdoj.gov;
Anurima.Bhargava@usdoj.gov; Tolleson, Julie; Desegregation; TUSD
Subject: RE: RFI re GSRR Implementation

Dear Dr. Sanchez,

Mendoza Plaintiffs are responding directly to you, with a copy to your counsel, because you were included on the email they initially sent on the topic referenced below and because you responded directly to us after we had replied to that email. We understand that in these specific circumstances they have no objection to a direct communication from us to you. If we are wrong, we ask that District counsel let us know and we will refrain from any such direct communication in similar circumstances in the future.

Mendoza Plaintiffs appreciate your prompt responses to their October 12 email. Mendoza Plaintiffs also appreciate what they understood to be a proposal to postpone presentation of the GSRR proposals to the Governing Board until the October 28 Board meeting, or until a 24-hour noticed meeting after October 14. If Mendoza Plaintiffs have misunderstood your email in this regard, please let us know. Mendoza Plaintiffs believe that postponing action on the GSRR changes until October 28 would provide sufficient time for the parties, Special Master, and Governing Board to review the data that the District is currently finalizing, and would allow time for the parties and Special Master to come to a common understanding of the terms for the resolution of GSRR issues in order to avoid an R&R. As discussed further below, postponement of Board action would also allow time for a description of processes for ensuring non-discrimination to be developed for inclusion in the GSRR. Because the Governing Board is currently scheduled to consider GSRR changes tomorrow, Mendoza Plaintiffs ask that the parties and Special Master promptly indicate whether they agree so that the District can adjust accordingly.

With respect to specific language that could be included in the GSRR:

Mendoza Plaintiffs propose that, "principals must limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating", which currently exists under "Short-Term Suspension" on page 17 of the GSRR, be included under the "Long-Term Suspension" section on the same page. With regard to the request that a description of the District's processes for ensuring non-discrimination be included in the GSRR, Mendoza Plaintiffs propose that Mr. Eugene Butler prepare such a description as they found Mr. Butler's description of the processes at the Tucson meetings to be most clear and helpful.

Thank you,

Juan Rodriguez | Staff Attorney

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136 t / 213.629.0266 f jrodriguez@maldef.org

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From: Sanchez, HT [HT.Sanchez@tUSD1.org]

Sent: Sunday, October 12, 2014 4:42 PM

To: Sanchez, HT

Cc: Juan Rodriguez; Sarah J. Stanton; wdh@umd.edu; lthompson@proskauer.com; Rsjr3@aol.com;

Zoe.Savitsky@usdoj.gov; Anurima.Bhargava@usdoj.gov; Julie.Tolleson@tUSD1.org; deseg@tUSD1.org; TUSD

Subject: Re: RFI re GSRR Implementation

Juan:

What would help us would be specific language. This way, we can make the best adjustments prior to my recommendation to the Board. HT

Sent from my iPhone

> On Oct 12, 2014, at 4:38 PM, Sanchez, HT <HT.Sanchez@tusd1.org> wrote:

>

> We have another meeting on the 28th. We can also call a Board meeting
> with 24 hour notice. All will have the data no later than Tuesday. HT

>

> Sent from my iPhone

>

>> On Oct 12, 2014, at 12:00 PM, Juan Rodriguez <jrodriguez@MALDEF.org>
wrote:

>>

>> Dear Sarah,

>>

>> Mendoza Plaintiffs write in response to your email below, which
>> indicates

that the District will be unable to provide responses to the Special Master's September 12, 2014 RFI until Wednesday, October 15. In the past week, in an effort to avoid an R&R, the parties and Special Master have communicated with each other extensively regarding a proposed GSRR agreement in order to come to a common understanding of the proposed changes to be presented to the Governing Board on October 14, 2014. The Special Master's RFI regards data on discipline, including information on disciplinary elevations, which would help to identify any disparities in the administration of discipline. These comprise some of the very subjects of the proposed changes that have been discussed by the parties and Special Master. We are therefore confused by the District's indication that the data cannot be finalized until the day after the Governing Board is to decide on whether to approve the proposed GSRR changes and the absence of any reference in your email to the process in which the parties, including the District, and the Special Master have been engaged since our meetings in Tucson. It seems to us that the issue is not merely an extension of time for the Special Master to file his R&R as you suggest in your email but, rather, whether the process of attempting to resolve the issues to avoid an R&R is to go forward and if so, on what schedule given that the District plans to go forward with a Governing Board vote on October 14 but not provide information that the Special Master, the plaintiffs, and -- presumably, the Governing Board - consider relevant to that vote until October 15 and given that a full terms of a resolution have not been resolved.

>>

>> In that regard: Mendoza Plaintiffs have reviewed the agenda for the October 14, 2014 Governing Board meeting. The GSRR item includes links to a cover sheet dated October 6, 2014, which describes proposed changes to the GSRR, and a redlined page from the 2014-15 GSRR that contains the changes. Mendoza Plaintiffs request that the District update the GSRR agenda items to include the proposed changes they requested that the Governing Board be presented with in their email of October 8, 2014, a copy of which is attached immediately below for your convenience. We remind the District that Mendoza Plaintiffs' withdrawal of their GSRR R&R request is conditioned on the Governing Board's approval of changes required by the USP, which includes those identified in their October 8 email.

>>

>> Thank you,

>> Juan Rodriguez

>>

>> Sent: Wednesday, October 08, 2014 4:50 PM

>> To: Brown, Samuel [Samuel.Brown@tusd1.org]; Willis D. Hawley [wdh@umd.edu]; rsjr3@aol.com; Thompson, Lois D. [lthompson@proskauer.com]; Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; TUSD [TUSD@rllaz.com]; Tolleson, Julie [Julie.Tolleson@tusd1.org]

>> Cc: Butler Jr, Eugene [Eugene.ButlerJr@tusd1.org]

>>

>> Dear Special Master Hawley and Counsel,

>>

>> As an initial matter, Mendoza Plaintiffs note that they understand

>> the

references to "continuing and accelerating" misbehavior in the proposed agreement to reference "ongoing and escalating" misbehavior language in the GSRR.

>>

>> Mendoza Plaintiffs agree with the Special Master that the District

>> should

directly inform teachers of the exact meaning of "ongoing and escalating"

misbehavior, as well as other GSRR changes or clarifications identified in the proposed agreement. Teachers are most directly involved with students in the administration of discipline because, as Dr. Hawley stated, the "discipline process starts with teachers." Thus, we believe that the reference to "instructions for principals to discuss the guidance with site staff" while appropriate is not sufficient and that there should be direct communication to teachers of all changes and clarifications. Mendoza Plaintiffs appreciate the District's explanation that teachers do not directly request elevations of disciplinary consequences. However, teachers presumably assert in some form that disciplinary action is necessary when a student misbehaves. They also play a role in reporting the behavior that forms the basis for finding that a student's misbehavior is "ongoing and escalating." Indeed, it appears administrators must consult teachers before they can request elevations of discipline because the form administrators use to make such requests, which the District provided to the parties and Special Master on September 15, 2014, requires a description of the "ongoing and escalating" behavior, previous interventions, and reasons for the request.

Thus, under these circumstances, teachers should have a clear understanding of the consequences of their referrals for discipline and of all potential consequences.

>>

>> Absent from this proposed agreement is any language to address

>> Mendoza

Plaintiffs' objection regarding long-term suspensions. The USP requires that the GSRR "limit exclusionary consequences to instances in which student misbehavior is ongoing and escalating[.]" As Mendoza Plaintiffs noted during the October 2 meetings and in prior comments, Mendoza Plaintiffs seek to have long-term suspensions expressly limited to "ongoing and escalating"

misbehavior under the "Long-Term Suspension" section on page 17 of the revised GSRR, just as that limitation appears for the "Short-Term Suspensions" section on the same page. Mendoza Plaintiffs believe that this change, as with the clarification of the meaning of "ongoing and escalating", must be communicated directly to teachers.

>>

>> Additionally, Mendoza Plaintiffs note that in their prior comments,

>> they

requested that the GSRR be revised to include the processes for ensuring non-discrimination in the administration of disciplinary consequences as they were described on page 3 of the District's July 24 response. It appears to Mendoza Plaintiffs that the processes described at the October 2 meeting by Mr. Eugene Butler provided a clearer understanding of the process by which the District ensures non-discrimination. Mendoza Plaintiffs now ask that the Board be presented with a proposal to include the processes described by Mr.

Butler in the 2015-16 GSRR at the October 14 Board meeting. Presumably, because this only involves inclusion of a description of processes the District is already engaged in, the Governing Board would likely approve this proposed change.

>>

>> Mendoza Plaintiffs appreciate the additions and clarifications that

>> the

District has made to this GSRR agreement. However, it is clear that the changes contemplated here may not come to fruition because "[c]hanges may be made on October 14, 2014, depending on the outcome of the Governing Board vote." Accordingly, Mendoza Plaintiffs expressly reserve their right to pursue an R&R as to any matter contained in the agreement or this email if the Governing Board does not approve them on October 14, 2014.

>>

>> Thank you,

>>

>> Juan Rodriguez | Staff Attorney

>>

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>>
>> _____
>> From: Sarah J. Stanton [Sstanton@rllaz.com]
>> Sent: Friday, October 10, 2014 4:54 PM
>> To: Willis D. Hawley (wdh@umd.edu) (wdh@umd.edu);
>> Ithompson@proskauer.com; Juan Rodriguez; Rubin Salter Jr.
>> (Rsjr3@aol.com) (Rsjr3@aol.com); Savitsky, Zoe (CRT)
>> (Zoe.Savitsky@usdoj.gov) (Zoe.Savitsky@usdoj.gov); Anurima Bhargava
>> (Anurima.Bhargava@usdoj.gov) (Anurima.Bhargava@usdoj.gov)
>> Cc: Tolleson, Julie (Julie.Tolleson@tusd1.org); Sanchez, HT
>> (HT.Sanchez@tusd1.org); Desegregation (deseg@tusd1.org); TUSD
>> Subject: RFI re GSRR Implementation

>> Dr. Hawley:

>>
>> We have been working on TUSD's response to your September 12, 2014
>> RFI
regarding GSRR implementation. We have almost all the information you have requested but, because the District is closed this week and not back in session until next Tuesday - a period agreed at last week's "Summit" to be a standstill period - we simply have been unable to finalize the response and obtain approval from District leadership to release it. Given the importance of this issue and the attendant information, we cannot provide information without verifying that it is accurate and complete. We should have complete responses to you no later than next Wednesday, the day after we can obtain district input and information. We realize, however, this may be of limited utility to you given that the current deadline for you to file your report falls on that same day, October 15. Of course, should you need additional time to incorporate this information into your report, we would be happy to stipulate to a reasonable extension to provide you adequate time to review the information the District provides and incorporate it into your report. Please let us know if this solution is acceptable to you. Thank you.

>>
>>
>> Sarah Stanton
>> Rusing Lopez & Lizardi, P.L.L.C.
>> 6363 North Swan Road, Suite 151
>> Tucson, Arizona 85718
>> Tel: 520.792.4800
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