

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
PROSKAUER ROSE LLP
3 2049 Century Park East, 32nd Floor
Los Angeles, California 90067-3206
4 Telephone: (310) 557-2900
Facsimile: (310) 557-2193
5

6 NANCY RAMIREZ, Cal. Bar. No. 152629 (Admitted Pro Hac Vice)
nramirez@maldef.org
7 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
8 634 S. Spring St.
11th Floor
9 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

10 Attorneys for Mendoza Plaintiffs

11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA

14 Roy and Josie Fisher, et al.,
15 Plaintiffs,
16 v.
17 United States of America,
18 Plaintiff-Intervenors,
19 v.
20 Anita Lohr, et al.,
21 Defendants,
22 Sidney L. Sutton, et al.,
23 Defendant-Intervenors,
24

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’
OBJECTION TO SPECIAL MASTER’S
REPORT & RECOMMENDATION
REGARDING THE APPOINTMENT
OF THE DIRECTOR FOR
CULTURALLY RESPONSIVE
PEDAGOGY AND INSTRUCTION**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et al.,

7 Defendants.

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10 **Introduction**

11 On April 29, 2014, the Special Master submitted a Report and Recommendation
12 Regarding the Appointment of the Director for Culturally Responsive Pedagogy and
13 Instruction (“CRPI R&R”). (CRPI R&R, Doc. No. 1579, filed 4/29/2014.) In the CRPI
14 R&R the Special Master recommended that the Court approve Mr. Salvador Gabaldón as
15 Acting Director of Culturally Responsive Pedagogy and Instruction (“CRPI”) while the
16 Tucson Unified School District (“TUSD” or “District”) conducts “a new search for the
17 CRPI director.” (CRPI R&R at 3.) The Special Master proposes the CRPI Director “be
18 appointed no later than December 2014.” (*Id.*) Mendoza Plaintiffs do not object to the
19 appointment of Mr. Gabaldón as acting CRPI Director but rather to the continued delay in
20 the selection of the CRPI Director to December 2014 for the reasons set forth below.
21 Mendoza Plaintiffs urge the Court to revise the timeline in the CRPI R&R for the selection
22 of a new CRPI Director from December 2014 to August 2014.
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1 **TUSD’s Failure to Follow the Express Requirements Set Forth in the USP for the**
2 **Selection of the CRPI Director Already Has Caused Undue Delay; No Further Delays**
3 **Should be Tolerated**

4 The Unitary Status Plan (“USP”), adopted by this Court on February 20, 2013,
5 under the provision entitled “Director of Culturally Responsive Pedagogy and Instruction”
6 requires the District to “hire or designate an individual who shall supervise the
7 implementation of courses of instruction that focus on the cultural and historical
8 experiences and perspectives of African American and Latino communities.” (USP §V, E,
9 4, c at 36.) Despite the express language of the USP, the District initially combined the
10 CRPI Director position with the separate Director of Multicultural Curriculum position
11 created by the USP (USP §V, E, 4, d at 36), asserting, wrongly, that the “the USP does not
12 call for two separate positions.” (USP Expenditure Plan 3.0 at 18 located at
13 [http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-](http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-TUSDFinalBudgetResponse.pdf)
14 [TUSDFinalBudgetResponse.pdf](http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-TUSDFinalBudgetResponse.pdf); relevant portions of which are attached as Exhibit 1.)
15 After the Mendoza Plaintiffs objected to the District’s collapse of the two positions into
16 one, the District agreed to appoint two different people to fill them. (Mendoza Plaintiffs’
17 Response to TUSD’s Notice of Adoption of Desegregation Budget, Doc. No. 1470, filed
18 5/20/2013 at 16:16-17.)

19 Months later, in September 2013, the District posted a job announcement for the
20 CRPI Director. However, the job announcement failed to comply with the requirements
21 for the position explicitly set forth in the USP. The USP requires that the CRPI Director
22 "shall have experience developing and teaching curriculum focused on the African
23 American and/or Latino social, cultural, and historical experience at the secondary
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1 level." (USP, V, E, 4, (c) at 37.) The posted announcement did not require candidates to
2 have secondary experience and was silent regarding the level of experience candidates
3 should have. Listed as a "minimum requirement" was "[f]ive (5) or more years of any
4 combination of teaching experience, administrative/supervisory or program management
5 experience in a multicultural setting." (Job Announcement, Director, Culturally
6 Responsive Pedagogy, located at
7 <http://www.tusd1.org/contents/employment/descriptions/JOB16176.pdf>, a copy of which is
8 attached as Exhibit 2.) It did not satisfy the requirement that candidates have experience
9 "developing curriculum." In addition, requiring candidates to have experience "in a
10 multicultural setting" is not equivalent to having experience developing and teaching
11 curriculum that is "focused on the African American and/or Latino social, cultural, and
12 historical experience." It listed among the "preferred requirements" "[e]xperience
13 designing and implementing academic and/or social programs focusing on multicultural
14 students." (*Id.*) Based on this description, the posting failed to satisfy the requirement that
15 candidates have experience "developing and teaching curriculum." For example, if a
16 candidate only has experience designing and implementing a social program, this would
17 not satisfy the requirement in the USP. Further, designing programs "focusing on
18 multicultural students" is not the same as developing curriculum focused on the "African
19 American and/or Latino social, cultural and historical experience."

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Mendoza Plaintiffs objected to the District's job announcement on September 24,
2013. (See E-mail from N. Ramirez to Willis D. Hawley, dated 9/24/2013, Subject:
Mendoza Plaintiffs' Objection to Description of CRPI Director Qualifications, attached

1 hereto as Exhibit 3.) The District “declined” to change the job description to incorporate
2 the USP-required qualifications for the CRPI Director. (See Memorandum from Lisa
3 Anne Smith to Parties, Dr. Hawley, dated September 30, 2013 Re Mendoza Request for
4 Intervention Regarding the Job Description for CRPI Director, attached hereto as Exhibit
5 4.) Thereafter, the Special Master informed the parties that since he did not have the
6 authority to mandate the language of the job posting, the issue would be addressed if the
7 person actually appointed to the position failed to have all the qualifications mandated by
8 the USP. (See Memorandum from Bill Hawley to Parties dated September 26, 2013, Re:
9 Mendoza Request for Intervention Regarding the Job Description for CRPI Director at 2,
10 attached hereto as Exhibit 5.)
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13 Mendoza Plaintiffs raise this issue now because they believe it is essential that the
14 new job posting, contemplated by the process recommended by the Special Master, be
15 required to conform with the requirements of the USP so that we do not find ourselves
16 months from now facing the prospect that candidates to fill the CRPI Director position lack
17 mandated qualifications.
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19 On March 11, 2014, over one year after the USP had been adopted by this Court,
20 the TUSD Governing Board approved the designation of Mr. Gabaldón as CRPI Director.
21 (District Response to Fisher and Mendoza Plaintiffs’ Requests for Report &
22 Recommendation and Special Master Proposal (and Mendoza Plaintiffs’ Modified
23 Proposal) Regarding CRPI Director Selection Process (“District Response”), Doc. No.
24 1579-1, filed 4/29/2014, at 1.) On April 9, 2014, Mendoza Plaintiffs objected to the
25 District’s selection process because it failed to follow the hiring process set forth in the
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1 USP. (See E-mail from N. Ramirez to Willis Hawley dated 4/9/2014 Subject: Mendoza
2 Plaintiffs' Request for R&R Re CRPI Director Selection Process, CRPI R&R at 6.) The
3 USP requires an interview committee including African American and Latino members for
4 the hiring of administrators and that the committee is to "utilize a standard interview
5 instrument with core uniform questions to be asked of each candidate that applies for that
6 position and a scoring rubric." (USP § IV, D, 1; USP § IV, D, 3 at 18.) According to
7 documents provided by the District, Mr. Gabaldón was not interviewed by the USP-
8 required interview committee and was instead interviewed by Steven Holmes and
9 Superintendent Sanchez. According to an email from the Special Master dated April 4,
10 2014, the interview committee interviewed 37 candidates and eight candidates met the
11 minimum threshold. (See E-mail from Willis D. Hawley to Parties, dated 4/4/2014, Re
12 Appointment of CRPI Director ("SM April 4 Email"), attached hereto as Exhibit 6.)
13 However, according to the same email from the Special Master, none of the eight was
14 considered for the position because the process was "compromised" as a result of a "leak
15 to the public from the panel." (*Id.*) Mr. Gabaldón did not apply for the position and
16 therefore apparently never responded in the manner of all other candidates to the "core
17 uniform questions."
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22 While the Special Master reported that the District "thought about starting the
23 process again, but felt the need for the position was urgent," Mendoza Plaintiffs do not
24 believe that this was an acceptable reason to bypass the process set forth in the USP. (SM
25 April 4 Email, Exh. 6.) In fact, in so far as they are able to determine, the need to fill the
26 position was no more urgent when the process was "compromised" than it has been for
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1 months. While Mendoza Plaintiffs have been concerned about the extensive delay in
2 filling this position and while they have tremendous respect for Mr. Gabaldón, they are
3 also concerned about how quickly the selection process was aborted based on it being
4 “compromised.” The District could have assembled a new interview team and re-
5 interviewed all eight candidates; it could have rescreened all 37 candidates and gone
6 through interviewing the top eight candidates or done a myriad of other things to execute
7 some damage control in dealing with the “compromise.” Last year when Mendoza
8 Plaintiffs expressed concern over the length of time to fill this position they were informed
9 that the District was undertaking a national search in order to hire the best person for the
10 job. It is therefore of concern to them that regardless of the respect they have for Mr.
11 Gabaldón, the District abandoned the national search for the best possible candidate and
12 hired Mr. Gabaldón outside the mandated process.

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16 Mendoza Plaintiffs object to the further delay proposed by the Special Master to
17 select the CRPI Director by December 2014. Candidates for this position who are school
18 district employees will have signed contracts for the academic year by August and
19 September and would not be in a position to start a new job in December. In fact, there
20 may well be qualified individuals who would decline even to seek the position, knowing
21 that they would not be in a position to commence a new job in the middle of the school
22 year. They propose that the position be advertised beginning in May 2014 for six weeks,
23 with candidate screening and selection process to occur in June and July and hiring in
24 August 2014. Given the many delays caused by TUSD’s failure to timely act and follow
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1 the requirements of the USP, Mendoza Plaintiffs urge the Court to require the District to
2 act with true urgency¹ to fill the position by August 2014.

3 Given the circumstances and the pertinent Court filings, Mendoza Plaintiffs do not
4 believe there is sufficient basis for the concerns expressed by the Special Master to warrant
5 the schedule he has proposed. There is nothing about the interviewing and hiring process
6 that should interfere with the work that Mr. Gabaldón will be doing or slow it down.
7 Rather the issue is and has been the need to act in compliance with the USP and to seek to
8 have the best qualified person recruited and hired for the position.
9

10 **Conclusion**

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12 While Mendoza Plaintiffs do not object to the Special Master's recommendation to
13 appoint Mr. Gabaldón as acting Director of CRPI and initiate a new search for the CRPI
14 Director, they urge the Court to require the District to act with urgency so as to be able to
15 select the CRPI Director by August 2014 and have that person commence work in the
16 position as early in the 2014-15 school year as possible. Mendoza Plaintiffs have been and
17 remain available to the District to assist them in locating appropriate candidates. Further,
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19 ¹ Mendoza Plaintiffs stress the need for the District to be directed to act with urgency given
20 its past delay and the fact that it repeatedly has failed to accord the position the support
21 that it requires. It is remarkable and of extreme concern to the Mendoza Plaintiffs that
22 having finally acknowledged that the CRPI Director position was not meant to be merged
23 with another position but, given the nature of the CRPI Director's responsibilities and the
24 mandate of the USP, was a stand-alone position, the District placed in the position of
25 Acting CRPI Director someone who already held a position of responsibility with the
26 District as Director of Academic Equity for Asian and Pacific Student Services. (District
27 Response at 4.) Significantly, although Mr. Gabaldón presumably was as available in
28 September 2013 as he was in March 2014, he was not asked to step in and serve as CRPI
Director at that time. Then, in further diminution of the time that could be devoted to the
responsibilities of the CRPI Director, Ms. Tsuru Bailey-Jones who was then serving as
both Director of Academic Equity for Asian and Pacific Student Services AND CRPI
Director was asked to join the team working to develop the Family Engagement Plan. (*Id.*)
The District cites this as a reason why it needed to fill the CRPI Director position as
promptly as possible after the interview process was "compromised." In fact, it is
evidence that the District has failed to accord the position of CRPI Director the support
and attention to which it has long been entitled.

1 as noted above they ask this Court to enter an order requiring the job posting for the
2 position to conform to the express requirements of the USP.

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4 Dated: May 6, 2014

5 PROSKAUER ROSE LLP
6 LOIS D. THOMPSON
7 JENNIFER L. ROCHE

8 MALDEF
9 NANCY RAMIREZ

10 /s/Nancy Ramirez
11 NANCY RAMIREZ
12 MEXICAN AMERICAN LEGAL
13 DEFENSE AND EDUCATIONAL
14 FUND
15 *Attorneys for Mendoza Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2014, I electronically submitted the foregoing Mendoza Plaintiffs' Opposition To Special Master's Report & Recommendation Regarding the Appointment of the Director for Culturally Responsive Pedagogy and Instruction to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.
wbrammer@rllaz.com

Oscar S. Lizardi
olizardi@rllaz.com

Michael J. Rusing
mrusing@rllaz.com

Patricia V. Waterkotte
pvictory@rllaz.com

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

Zoe Savitsky
Zoe.savitsky@usdoj.gov

Anurima Bhargava
Anurima.bhargava@usdoj.gov

I further certify that on May 6, 2014, I sent an e-mail copy of the foregoing to the following that is not a CM/ECF registrant:

Special Master
Dr. Willis D. Hawley
wdh@umd.edu

Dated: May 6, 2014



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