

Exhibit C-2

Mendoza Plaintiffs' Objections to and Request for Report and Recommendation Re TUSD's Administrator and Certificated Staff Outreach, Recruitment, and Retention Plan ("Plan")

1. Mendoza Plaintiffs Object to the District's Reliance on a Flawed and Incomplete Labor Market Analysis Both Because They Cannot Fully Assess the Validity of the Analysis Without Information They First Requested from TUSD in February 2013 But Which Has Never Been Provided and Because Certain Deficiencies, as Noted Below, Are Apparent on the Face of the Information that Was Provided and Call into Question the Purported Factual Predicate for the Plan

Mendoza Plaintiffs object to the District's reliance on the Labor Market Analysis ("LMA") for the reasons set forth in Mendoza Plaintiffs' objections provided to the District on September 6, 2013 and repeated here.

In an e-mail dated February 12, 2013, Mendoza Plaintiffs raised a number of questions regarding the validity of the LMA. These questions are summarized below and a copy of the February 12, 2013 email is attached as Exhibit 1.

Mendoza Plaintiffs questioned the LMA's definition of "administrator" and whether it was consistent with the definition in the USP and whether the definition was applied consistently in the data collected. Mendoza Plaintiffs also questioned why the states of California, New Mexico, and Texas were included with the four-state comparison and not other states, such as the state of Colorado. Mendoza Plaintiffs questioned whether any effort was made to weight averages given the different populations of the referenced states, for the purpose of the "surrounding states" data. Further, Mendoza Plaintiffs questioned the implications of using data from different years for different states. In addition, Mendoza Plaintiffs questioned what action the drafters of the LMA took to address the cautionary note on the NCES data sheet with respect to Arizona: "Interpret data with caution. The standard error for this estimate is equal to 30 percent or more of the estimate's value."

Mendoza Plaintiffs requested a response to these questions in February and in September 2013 and have not received any response from the District.¹ Mendoza Plaintiffs noted that an earlier draft of the Plan referenced an updated LMA apparently prepared in March 2013, and they therefore requested a copy of that updated LMA when they commented on the draft Plan in July 2013. That, too, was never provided.

2. Mendoza Plaintiffs Object to the Plan's Omission of the USP Provision that States the District Shall Conduct Recruitment for All Employment Vacancies on a Nondiscriminatory Basis

¹ Mendoza Plaintiffs timely raised their objections to the LMA when the District relied on its findings. *See* Order, Doc. 1436, filed 2/6/13, at 25:21, "... review and objections regarding the adequacy of the Labor Market Study are better made at the time the District proposes to rely on it."

In Section I, USP Language, TUSD omits from its presentation of the controlling USP language USP Section IV, C, 1, which states, “[t]he District shall conduct recruitment for all employment vacancies on a nondiscriminatory basis.” While the Plan states in its Executive Summary that the Plan is intended to ensure that TUSD conducts recruitment for all employment vacancies on a nondiscriminatory basis, the subsequent operative language of the Plan does not in fact include that requirement. Rather, in Section A, 1, the Plan states that the District will follow Governing Board policies relating to hiring, etc. But, recruitment precedes hiring and the fact that an express statement to recruit on a nondiscriminatory basis is omitted from the Plan renders it noncompliant with this express provision of the USP. (In this regard we note that the USP expressly recognized the difference between “outreach and recruitment,” on the one hand, and “hiring,” on the other with separate subsections addressing them in Section IV at C and D.) Therefore, there is no justification for the Plan’s omission of an express undertaking to recruit on a nondiscriminatory basis.

3. Mendoza Plaintiffs Object to the Plan’s Statement that “a Retention Plan is Not Required by the USP” and Its Failure to Include Express USP Requirements for Addressing, Through a Plan, Disparities in Attrition Rates for African American and Latino Administrators and Staff

Mendoza Plaintiffs object to the language in section III, Executive Summary, stating that “a retention plan is not required by the USP.” Plan at 3. This statement reflects an extraordinarily narrow reading of the USP and a misperception of the scope of Section IV of the USP which contains a subsection on “Retention” that is of the same weight as the subsections on Outreach and Recruitment, Hiring, Assignment of Administrative and Certificated Staff, and Reductions in Force. Moreover, while it may not use the word “plan” the USP states in Section IV, F, 1 that the “District shall adopt measures intended to increase the retention of African American and Latino administrators and certificated staff.” Further, the USP requires “a plan to take appropriate corrective action” if disparities in attrition rates of African America and Latino administrators or certificated staff compared to other racial and ethnic groups are identified. USP, Section IV, F, 1, a. The statement that a retention plan is not required by the USP is incorrect and should be stricken.

Further, the assertion that no retention plan is required by the USP infects the substance of the Plan as well. The USP expressly states: “If disparities [in attrition rates for African American or Latino administrators or certificated staff] are identified, the District shall...develop a plan to take appropriate corrective action. If a remedial plan to address disparate attrition is needed, it shall be developed and implemented in the semester subsequent to the semester in which the attrition concern was identified.” USP, Section IV, F, 1, a. That language has not been incorporated in the Plan. Rather, it says (at page 13) only that “[i]f disparities exist TUSD will develop and implement strategies, where feasible, to address disparate attrition.” This language with its wiggle room reference to “strategies, where feasible” and its absolute failure to mandate a remedial plan to be developed and implemented in the very semester following the semester in which the disparity is found is woefully inadequate and a failure to properly implement the USP.

4. Mendoza Plaintiffs Object to the Plan's Failure to Demonstrate that Members of the Recruitment Team are Racially and Ethnically Diverse and Comprised of School-Level and District-Level Administrators, Certificated Staff and Human Resources Personnel

In Section IV Recruitment and Retention Advisory Committee (Recruitment Team) the Plan states that the Recruitment and Retention Advisory Committee consists of a “diverse” group of community members and “diverse” TUSD leaders. Plan at 4. Mendoza Plaintiffs repeat their objection to the July 11, 2013 draft TUSD recruitment plan that having a “diverse” committee does not adhere to the USP requirement that TUSD seek the “input of a racially and ethnically diverse recruitment team comprised of school-level and district-level administrators, certificated staff and human resources personnel.” USP, IV, C, 3 at 17. In addition to failing to state whether the committee is racially and ethnically diverse, the Plan does not specify that the committee includes school-level and district-level administrators and human resources personnel.

5. Mendoza Plaintiffs Object to the Plan's Omission of Advertising Strategies for Recruiting Candidates with Spanish Language Bilingual Certifications and the Omission of National Newspapers, Education Publications, and Periodicals Targeting African American and Latino Communities as Part of the Advertising Strategy

Mendoza Plaintiffs object to the strategies for advertising described on page 7 of the Plan. That advertising strategy fails to include strategies for recruiting candidates with Spanish language bilingual certifications as required in the USP. The USP requires the District to establish a recruiting strategy that includes “specific techniques to recruit...candidates with Spanish language bilingual certifications from across the country.” USP Section IV.C.3(a)(i) at 17. Appendix B to the Plan, which the Plan describes as including “additional entities” considered for “future recruitment” does not include websites that target candidates with Spanish language bilingual certifications. The site www.hispanic-jobs.com included in Appendix C is described as “bilingual job opportunities for English-Spanish speaking professionals” and is not focused on educators who have Spanish language bilingual certifications. Further, the advertising strategies listed on page 7 of the Plan fail to include “national newspapers, education publications and periodicals targeting African American and Latino communities” as required under USP section IV, C, 3 (a)(i)(i).

6. Mendoza Plaintiffs Object to the Omission of Administrators from the Recruiting Goals for In-Person Recruiting and to the Omission of African American and Latino Administrators from the In-Person Recruiting Strategies

Mendoza Plaintiffs object to the Plan's stated goal in the In-Person Recruiting section on page 8 of increasing “the ethnic/racial diversity of TUSD's certificated staff.” Mendoza Plaintiffs object to the omission of administrators from the stated recruitment goal. The USP specifically requires recruitment for open administrator positions. USP Section IV, C, 3 at 17. In addition, Mendoza Plaintiffs object to the Plan's mention of “ethnic/racial diversity” when the USP calls for recruiting “qualified African American and Latino” candidates. USP section IV,

C, 3 at 17. Mendoza Plaintiffs also object to the in-person recruiting strategies because they fail to include strategies for recruiting African American and Latino administrators as required by the USP.

7. Mendoza Plaintiffs Seek Clarification Regarding the Financial Incentives

In the Financial incentives section on page 9, Mendoza Plaintiffs seek clarification regarding whether the financial incentives included in the Plan will be targeted to African American and Latino candidates or to all candidates since the sentence in the Plan (“The following reimbursements and stipends are to be utilized as tools for recruitment and retention and are therefore not available to all incoming or existing administrators or teachers”) is unclear.²

² The Definitions section is incorrectly labeled as section III, when it should be section IV. The remaining sections should be renumbered to reflect this change. Also, in Section V, 3. Annual Review and Process for Modification, the Plan refers to “SPED” under critical needs. “SPED” is undefined and should be defined in the Plan. Plan at 6.