

Exhibit E

TUSD Responses to Renewed Requests for a Report & Recommendation on the Outreach, Recruitment, and Retention Plan from Mendoza on 4/8/14 and from Fisher on 4/14/14

Preliminary Statement Regarding These Responses

On April 8, 2014, Counsel for the Mendoza Plaintiffs emailed the Special Master with a renewed request for a Report and Recommendation (R&R) on the District's Outreach, Recruitment, and Retention Plan. In the request, the Counsel for the Mendoza Plaintiffs listed four reasons/objections for the request (referred to below as "Mendoza Objections 1-4").

On April 14, 2014, Counsel for the Fisher Plaintiffs emailed the Special Master with a renewed request for a Report and Recommendation (R&R) on the District's Outreach, Recruitment, and Retention Plan. In the request, the Counsel for the Fisher Plaintiffs listed four reasons/objections for the request (referred to below as "Fisher Objections 5-8").

Below are the District's responses to the Mendoza and Fisher Objections contained within their renewed request for a report and recommendation:

1. Mendoza Objection 1 [in pertinent part]:

The Baker Report fails to answer or address any of the questions or concerns raised by Mendoza Plaintiffs related to the Report on Feb. 12, 2013, again on Sept. 6, 2013 and on Feb. 10, 2014. Mendoza Plaintiffs object to the District's reliance on a flawed and incomplete Labor Market Analysis as the basis for the Recruitment Plan as set forth in their request for a Report & Recommendation on Feb. 10, 2014, a copy of which is attached.

TUSD Response to Objection 1:

In communications on February 12, 2013, September 6, 2013, and February 10, 2014, the Mendoza Plaintiffs raised several questions or concerns, which Mary Baker (the author of the Baker Report), through the District, answered or addressed as outlined below. Regardless of whether the answers are contained in the Baker Report or have been provided elsewhere, the District has addressed all of the Mendoza Plaintiffs' questions and concerns.

Although the Mendoza Plaintiffs have questioned certain aspects of the Labor Market Analysis (LMA), they have not specified a single reason to support the assertion that the LMA was "flawed or incomplete." Earlier versions of the Plan certainly relied more heavily on the LMA, as the USP requires that the Plan address "any and all disparities identified in the Labor Market Analysis." But, the final version of the Plan can hardly be characterized as "relying" on the LMA as a basis for the entire Plan. Pursuant to the USP, the Plan seeks to aggressively recruit and retain "qualified African American and Latino candidates." Discussions about the validity of the LMA or any perceived "flaws" in the LMA should not operate to hinder or delay implementation of this Plan.

The following is a summary of all of the Mendoza Plaintiffs' questions and concerns regarding the LMA and the answers thereto:

- a. 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.

On March 24, 2014, the District answered and addressed this question/concern (See attached "District Responses to the Mendoza Plaintiffs' 2/13/13 Requests for Information and their 2/10/14 Objections re the Outreach, Recruitment and Retention Plan, TUSD Response to Objection 1 and RFI (1) pages 2-3).

- b. Mendoza Plaintiffs also questioned why California, New Mexico, and Texas were included with the four-state comparison and not other states, such as Colorado.

On March 24, 2014, the District answered and addressed this question/concern (See attached "District Responses to the Mendoza Plaintiffs' 2/13/13 Requests for Information and their 2/10/14 Objections re the Outreach, Recruitment and Retention Plan, TUSD Response to Objection 1 and RFI (1) page 3).

- c. 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.

On March 24, 2014, the District answered and addressed this question/concern (See attached "District Responses to the Mendoza Plaintiffs' 2/13/13 Requests for Information and their 2/10/14 Objections re the Outreach, Recruitment and Retention Plan, TUSD Response to Objection 1 and RFI (1) page 4).

- d. Mendoza Plaintiffs questioned the implications of using data from different years for different states.

On March 24, 2014, the District answered and addressed this question/concern (See attached "District Responses to the Mendoza Plaintiffs' 2/13/13 Requests for Information and their 2/10/14 Objections re the Outreach, Recruitment and Retention Plan, TUSD Response to Objection 1 and RFI (1) page 4).

- e. 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."

On March 24, 2014, the District answered and addressed this question/concern (See attached "District Responses to the Mendoza Plaintiffs' 2/13/13 Requests for Information and their 2/10/14 Objections re the Outreach, Recruitment and Retention Plan, TUSD Response to Objection 1 and RFI (1) page 4).

2. Mendoza Objection 2 [in pertinent part]:

Mendoza Plaintiffs object to the composition of the 2013-14 Recruitment/Retention Advisory Committee as it includes only one Latino member out of a total of 15 members. The USP requires the input of "a racially and ethnically diverse recruitment team" to "develop a plan to recruit qualified African American and Latino candidates for open administrator and certificated staff positions." USP, IV, C, 3. In the TUSD District, given its racial and ethnic composition with Latinos comprising approximately 60% of the student enrollment, the inclusion of a sole Latino on a committee of 15 is not reasonable or acceptable. Further, it is noteworthy that while the Committee includes representatives from the African American Studies, Pan-Asian Studies, and Native American Studies Departments, it fails to include a representative from the Mexican American Studies Department. In conversation among the parties and the Special Master on March 25, 2014, when the Special Master commented on the lack of diversity of the Committee, the District responded that it could only include on the Committee the representatives that the entities it had solicited had tendered. Mendoza Plaintiffs consider this response unacceptable and assert that the District has an affirmative duty to seek out appropriate members for Committees such as this. Mendoza Plaintiffs further note that the only identified "community" member is Asian. Surely there is a Latino community member who also could have been asked to serve on the Committee. The importance of informed Latino presence on the Committee is confirmed by the District's history. In 2012, Mendoza Plaintiffs objected to the District's failure to adequately recruit Latino administrators and certificated staff. Further, when it was apparent that the District was not sufficiently informed about how to go about doing that, Mendoza Plaintiffs provided guidance. This is the sort of input that should come from the Committee but cannot if the Committee is not appropriately constituted.

TUSD Response to Objection 2:

The USP requires the District to develop the Plan with "the input of a racially and ethnically diverse recruitment team comprised of school-level and district-level administrators, certificated staff and human resources personnel." There is no language or requirement in the USP that the committee reflect the "racial and ethnic composition" of the District, or that the committee satisfy the subjective opinion of what the Mendoza Plaintiffs deem "appropriate." The USP provides an avenue for the Mendoza Plaintiffs to provide exactly this sort of input if they felt earlier versions of the plan were lacking in this regard. The first version of the Plan was submitted to the parties in July 2013. If the District was "not sufficiently informed" on how to attract and recruit Latino candidates in 2012, the Mendoza Plaintiffs have had ample opportunities over the past two years to provide that type of input so that the District would be sufficiently informed (and the Mendoza Plaintiff objections include an admission to providing just that sort of "guidance"). As with objection #1, this is not a substantive objection to the Plan.

See also the 2014-15 Recruitment/Retention Advisory Committee Member List, attached hereto. The 2014-15 Committee is comprised of six African-American members, seven Latino members, three Anglo members, and one Asian member.

3. Mendoza Objection 3 [in pertinent part]:

The revised Recruitment Plan fails to address the objections raised by Mendoza Plaintiffs in their initial request for a Report & Recommendation. The only revisions made in response to Mendoza Plaintiffs' initial request for a Report & Recommendation are the following:

a. In response to Mendoza Plaintiffs' Objection No. 4 that the Recruitment Plan must demonstrate that members of the recruitment team are comprised of school-level and District-level administrators, certificated staff and human resources personnel, the District added language indicating that these groups are represented on the advisory committee. (Revised Recruitment Plan at 4.) b. In response to Mendoza Plaintiffs' Objection No. 6 that administrators were omitted from the recruiting goals for in-person recruiting, the District added "administrators" to the in-person recruiting goals and strategies. (Revised Recruitment Plan at 9.)

These revisions fail to adequately address Mendoza Plaintiffs' objections to the Recruitment Plan and they therefore renew their objections and request for a Report & Recommendation to the Special Master.

TUSD Response to Objection 3:

The Mendoza Plaintiffs raised a concern that future advisory committees would not be comprised of members of the identified groups. In response, the District included language to ensure that members of these identified groups would be included in future advisory committees.

The Mendoza Plaintiffs raised a concern that administrators were omitted from a key provision in the plan. In response, the District included administrators in the identified provision.

The Mendoza Plaintiffs objected to the omission of a USP provision in the Plan, and then asserted that the entire Plan is “noncompliant” due to the omission, notwithstanding that the USP does not require inclusion of that provision in the Plan. The District will comply with the USP, including the USP provision regarding nondiscrimination in recruiting, regardless of whether or not that language is in the Plan – the language is in the USP itself.

The Mendoza Plaintiffs objected to language indicating that a retention plan is not required by the USP. In fact, the USP does not require a retention plan; it requires a corrective action plan to address retention disparities “*if disparities are identified.*” And a “retention plan” is not the same as a “corrective action plan to address retention disparities.” Indeed, that the District – in good faith – has put forward a retention plan when none is required should be seen as a positive step in the right direction by going above and beyond the mandates of the USP. Instead, the Mendoza Plaintiffs have somehow twisted the District’s efforts into some nefarious attempt at creating “wiggle room” and getting out of its USP obligations. The District’s efforts to go above and beyond the USP language, to be more transparent and accountable than is called for in the USP, and to align retention efforts with recruitment efforts, has been grossly mischaracterized towards no apparent positive result for staff or students.

The Mendoza Plaintiffs assert that the Plan’s “...advertising strategy fails to include strategies for recruiting candidates with Spanish language bilingual certifications as required in the USP.”

The advertising strategy section of the Plan states that “TUSD may collaborate with the following entities to advertise open Administrator and Certificated Staff positions within TUSD” but does not state that the District may not pursue other advertising strategies. In the Plan, the District makes a firm commitment to evaluating and modifying “advertising strategies on an ongoing basis, and at least annually, based on a review of the previous year’s recruiting data and the effectiveness of past recruiting practices in attracting candidates with diverse backgrounds, including African-American and Latino candidates and candidates with Spanish language bilingual certifications.” See Appendix B to the Plan for additional entities being considered for future recruitment advertising, as applicable.”

In addition, the District has added the following collaborations into the attached revised plan at page 7:

- the National Association for Bilingual Education (NABE)
- The Arizona Association for Bilingual Education

The Mendoza Plaintiffs requested clarification as to whether the financial incentives section on page 9 will be targeted to African-American and Latino candidates. The District modified the language on page 9 to provide clarity in this regard.

“Considering local factors (such as comparatively low teacher salaries statewide, and a comparatively smaller African-American population) certain financial incentives will be promoted as part of the nationwide recruitment strategy to attract qualified candidates, including **targeting** African-American and Latino candidates.”

4. Mendoza Objection 4 [in pertinent part]:

Mendoza Plaintiffs also ask that the Special Master’s Report and Recommendation expressly address the District’s dilatory and unacceptably slow action with regard to the Recruitment Plan and the Mendoza Plaintiffs’ inquiries. As noted above, the Mendoza Plaintiffs first asked for explanations relating to the Labor Market Analysis in February 2013. No responses were provided until March, 2014 (and, as noted above, those responses were incomplete.) It now appears that some of the issues the Mendoza Plaintiffs raised were addressed in a report to the District that was prepared in September 2013; yet the District did not share that report for six months -- until it provided its limited response to the Mendoza Plaintiffs’ initial request for a Report & Recommendation.

TUSD Response to Objection 4:

The District’s action was neither dilatory nor unacceptably slow. The Mendoza Plaintiffs’ concerns and inquiries regarding the Recruitment Plan were extensive, and addressing them in a substantive and complete manner required working with Mary Baker, a necessarily time-consuming process. The District reviewed and considered Plaintiffs’ concerns, and then shared them with Ms. Baker to ensure that her report responded to them.

5. Fisher Objection 1 [in pertinent part]:

The Fisher Plaintiffs herewith join the Mendoza Plaintiffs in the entirety of their 04/08/14 objection to and request for a report and recommendation on the District's 03/24/14 revised recruitment and retention plan, especially where the Mendoza Plaintiffs: (1) "object to the District's reliance on a flawed and incomplete Labor Market Analysis as the basis for the Recruitment Plan" (see Ramirez 04/08/14 email renewal of Mendoza objection and request); (2) "object to the composition of the 2013-14 Recruitment/Retention Advisory Committee" (idem);⁴ and (3) "[object to] the District's dilatory and unacceptably slow action with regard to the Recruitment Plan and the Mendoza Plaintiffs' inquiries" (idem).

TUSD Response to Objection 5:

See responses to #1, #2, and #4 above.

6. Fisher Objection 2 [in pertinent part]:

...On 12/14/12, the Fisher Plaintiffs argued that "[t]he USP should not reference a labor market study commissioned and interpreted by the Defendant (at page 8 of Fisher 12/14/12 objection). In the same filing, the Fisher Plaintiffs objected: "to the labor market study conducted by the District and referenced in the USP [...]. The data the District bases its analysis on was provided by Dr. Mary Dunn Baker, a Florida-based consultant working with the ERS Group. The website for the ERS Group shows that the Group Labor and Employment practice specializes in defending institutional clients from charges of discrimination, in justifying reductions in force and generally minimizing employer accountability in the courts."⁵ In this context, it would be difficult to characterize the District's selection of Dr. Baker and the ERS Group as a disinterested inquiry into the realities of the labor market. The data which the District references cannot reasonably be claimed to be an analysis and the District's interpretation of that data glosses over a number of highly relevant normative questions that remain at issue in this case. In the context of the District's recent noncompliance with its desegregation obligations, it is inappropriate to allow it to define the relevant labor market for its incumbent workforce. While a legitimate labor market analysis certainly does need to be conducted, it should be conducted independently and be based on the best practices of similarly situated districts and should not be conducted by a consultant that specializes in defending institutional employers. In light of the foregoing facts, Fisher Plaintiffs respectfully move this Court to set aside the District's flawed labor market analysis and instruct the Special Master to commission an impartial labor market analysis to serve as the basis for goals for the recruitment, hiring, retention, promotion and recall of administrators and certificated staff (at pages 8-9 of Fisher 12/14/12 objection)." Again, in their response to the Special Master's 12/22/12 recommendations for the USP, the Fisher Plaintiffs repeated their objection to use of the flawed labor market analysis, explaining that retaining: "reference to the flawed labor market analysis will enable the District to unilaterally and fatally circumscribe the scope of the relevant labor market and thereby circumvent one of the primary requirements of the remedial desegregation plan: eliminating the

⁴ The Fisher Plaintiffs object, additionally, to the high percentage of District employees serving on the committee.

⁵ See selected cases at http://www.ersgroup.com/practiceAreas_L&E_overview.asp

vestiges of past discrimination in the area of faculty and staff. While the Special Master concedes that the District's analysis may be inadequate, he mistakenly concludes that the review process contemplated in the USP will be adequate to correct such an inadequacy (idem) [...]. While the District has not submitted a formal analysis, it did provide the plaintiff classes with the unanalyzed (and disputed) labor market data it commissioned in a 10/18/12 email circulated between counsel. The District prematurely references the disputed data in its 11/09/12 memorandum filed with this Court to argue that: '[t]he Labor Market Study shows that by virtually every possible measure, the District has more Latino administrators and certificated staff than would be expected based on a variety of possible labor markets. The District has the expected number of African American administrators and certificated staff based on the Arizona labor market. This data, combined with the lack of a finding of a constitutional violation and the limited obligations imposed by the Stipulation, does not support a remedy of financial support for Latino and African American employees to secure additional degrees or certifications' (at pages 12-13 of TUSD memorandum filed 11/09/12)" (at pages 2-3 of Fisher response entered into record on 02/06/13). In its ruling of the same date, the District Court found that because: "the adequacy of the [labor market] study cannot be fully determined until it is known how the District uses it, i.e., what conclusions the District draws from it [,] [t]he Court adopts the Special Master's recommendation to retain the provision allowing the District to assess the effectiveness of its outreach and recruitment plan based on the challenged Labor Market Study and to delete the deadline for review and objections to be made to the study. The Court agrees with the Special Master that review and objections regarding the adequacy of the Labor Market Study are better made at the time the District proposes to rely on it" (at page 25 of 02/06/13 order). Not surprisingly, the 09/30/13 LMA conclude that: "African-Americans and Hispanics were employed by TUSD as Teachers and Administrators in numbers consistent with or statistically significantly and/or substantially larger than the rates at which they are represented in public schools across Arizona. The data fail to produce any evidence whatsoever that these demographic groups are underrepresented in the District's workforce" (at pages 17-18 of Baker 09/30/13 labor market analysis). As shown above, the District now cites the flawed LMA to conclude that there is no underrepresentation of class members in the relevant categories of its incumbent workforce and that its recruitment and retention plan need not, therefore, focus on the racial and ethnic diversity of its administrators and certificated staff. On the basis of these facts and arguments, the Fisher Plaintiffs object to the District's reliance on the flawed LMA and restate their original argument, that "a legitimate labor market analysis certainly does need to be conducted, [but] it should be conducted independently and [should] be based on the best practices of similarly situated districts and should not be conducted by a consultant that specializes in defending institutional employers" (at pages 2-3 of Fisher response entered into record on 02/06/13 emphasis added). In light of the foregoing facts, Fisher Plaintiffs respectfully ask the Special Master to recommend that the District Court set aside the District's flawed labor market analysis and order whatever proceedings it deems necessary to commission an impartial labor market analysis to serve as the basis for goals for the recruitment, hiring, retention, promotion and recall of administrators and certificated staff.

TUSD Response to Objection 6:

The USP Consent Decree (to which the Fisher Plaintiffs agreed) states that the District will utilize an outside expert to conduct a Labor Market Analysis (LMA), and that the District would use the LMA in informing this Plan. The District has complied with the USP. And, like the Mendoza Plaintiffs, the Fisher Plaintiffs raise questions and concerns but fail to state specific reasons they feel the LMA is “flawed” and, more importantly, how those alleged flaws have operated to somehow taint or make any less effective this Plan.

7. Fisher Objection 3 [in pertinent part]:

The Fisher Plaintiffs strenuously object to the District’s suggestion that it is not required to develop a retention plan under the USP. In the executive summary to its 03/24/14 revised recruitment and retention plan, the District states that “[w]hile a retention plan is not required by the USP, TUSD’s strategy is to combine recruitment and retention efforts to attract and to keep a highly-qualified and diverse workforce” (at page 3 of 03/24/14 revised recruitment and retention plan). The provisions of the District’s plan are clearly premised on an understanding that efforts to recruit administrators and certificated staff will be made in vain, unless matched by parallel, equivalent and simultaneous efforts are made in the areas of hiring, retention, promotion and recall. The District, therefore, far from disputing the need for retention efforts, merely attempts to shirk future accountability for the success of those retention efforts. Thus, the District’s absurd assertion (in its retention plan) that it is not required to develop a retention plan demonstrates its failure to adhere to both the letter and spirit of the USP. The very title of the District’s “Outreach, Recruitment, and Retention Plan” highlights the duplicity of the District’s assertion. For these reasons, the Fisher Plaintiffs ask the Special Master to include in his report to the Court, a recommendation that the Court sanction the District for its attempt to shirk future accountability for the efficacy of its retention efforts.

TUSD Response to Objection 7:

See Response to #3 above, paragraph 4. In addition, the District’s Plan recognizes that efforts to recruit administrators and certificated staff must be matched by parallel, equivalent and simultaneous efforts in the areas of hiring, retention, promotion and recall.

8. Fisher Objection 4 [in pertinent part]:

The Fisher Plaintiffs object to the plan’s described focus of its recruitment efforts as “enhancing the diversity of the workforce, and in recruiting hard-to-fill positions as identified each year” (at page 3 of 03/24/14 revised recruitment and retention plan). Sections IV (A) (1) and (C) (3) of the Unitary Status Plan (USP) address the District’s responsibilities regarding its administrators and certificated staff and clearly provide that “[t]he District shall seek to enhance the racial and ethnic diversity of its administrators and certificated staff through its recruitment, hiring, assignment, promotion, pay, demotion, and dismissal practices and procedures” [in part by] develop[ing] and implement[ing] a plan to recruit qualified African American and Latino candidates for open administrator and certificated staff positions” (at pages 16 and 18 of 02/20/13 order adopting the USP emphasis added). Thus, the

USP explicitly contemplates and calls for the enhancement of racial and ethnic diversity, as opposed to diversity broadly construed. This distinction is not trivial, especially in the context of the Defendant's reliance on the results of a flawed 09/30/13 LMA to claim that there is no underrepresentation of African American or Mexican American certificated staff or administrators in its workforce.⁶ For these reasons, the Fisher Plaintiffs object to the District's substitution of its required focus on "racial and ethnic diversity" with a more general focus on "diversity."

TUSD Response to Objection 8:

The Plan is designed to increase racial diversity, including attracting and retaining qualified African-American and Latino candidates for administrator and certificated staff positions.

⁶ At page 6 of its 03/24/14 revised plan, the District "notes that the LMA findings revealed no negative disparities in hiring between TUSD's workforce and the local and state labor markets" and then states that, "[i]n light of the findings of the LMA, TUSD's outreach and recruitment strategies will focus on enhancing the diversity of TUSD's workforce. These strategies will focus on Hard-to-Fill Content Areas, Critical Needs Subject Areas, and staffing Hard-to-Fill sites" (at page 6 of 03/24/14 revised recruitment and retention plan).

2014-2015 RECRUITMENT / RETENTION ADVISORY COMMITTEE				
First Name	Last Name	Title	Affiliation	Ethnicity
Jimmy	Hart	Dir. African American Student Services	TUSD	African American
Maria	Figueroa	Dir. Mexican American Student Services	TUSD	Hispanic
Brain	Nelson	Advanced Program Manager	Pima CC	Anglo
Tirza	Sanders	Program Coordinator(SPED)	Pima CC	African American
Frank	Armenta	Principal	TUSD/Cholla	Hispanic
Melissa	Molina-Garcia	Assistant Principal	TUSD/Doolen	Hispanic
Chris	Loya	Principal	TUSD/Marshall	Hispanic
Ross	Iwamoto	Community Member	Community	Asian
Margaret	Chaney	SPED Teacher	TEA/Tucson HS	African American
Dan	Ireland	SPED Teacher	TEA/Rincon	Anglo
Francis	Banales	TEA Vice President	TEA	Hispanic
Deanna	Campos	Assistant Principal	TUSD/McCorkle	Hispanic
Eugene	Butler	Acting Exec Director SPED	TUSD/SPED	African American
Tolliver	Jason	Director	University of Arizona	African American
Murray	Lewis	Gate Teacher	TUSD/Cavett	African American
Frank	Larby	Instructional Data Intervention Coordinator	TUSD	Anglo
Leslie	Leon	Director	Hispanic Chamber of Commerce	Hispanic