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14 UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 Roy and Josie Fisher, et al.,
17 Plaintiffs,
18 v.
19 United States of America,
20 Plaintiff-Intervenors,
21 v.
22 Anita Lohr, et al.,
23 Defendants,
24 Sidney L. Sutton, et al.,
25 Defendant-Intervenors,
26

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

**MENDOZA PLAINTIFFS’
OBJECTION TO SPECIAL MASTER
REPORT AND RECOMMENDATION
RELATING TO TUSD’S ACTION
PLAN FOR RECRUITMENT AND
RETENTION**

“REQUEST FOR ACTION”

Hon. David C. Bury

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1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et al.,
7 Defendants.

Case No. CV 74-204 TUC DCB

10 **Introduction**

11 Mendoza Plaintiffs object to the Special Master’s Report and Recommendation
12 Relating to TUSD¹’s Action Plan for Recruitment and Retention (“R&R”) (Doc. 1612)
13 because it does not correct the District’s reliance upon a flawed Labor Market Analysis
14 (“LMA”) that, Mendoza Plaintiffs believe, wrongly determined that Latinos and African
15 Americans were not underrepresented in TUSD’s workforce and does not call for the
16 District to undertake a new labor market analysis. It fails to correct TUSD’s omission in
17 its Action Plan for Recruitment and Retention (“Recruitment and Retention Plan”) of
18 language to incorporate the USP provision requiring the District to take corrective action if
19 disparities in attrition rates of African American or Latino administrators or certificated
20 staff are identified and its failure to require a remedial plan to address disparate attrition to
21 be developed in the semester subsequent to the semester in which the attrition was
22 identified. Mendoza Plaintiffs also object to the R&R’s failure to require the District to
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28 ¹ Tucson Unified School District No. 1 (“TUSD” or “District”).

1 include as part of its advertising strategies to recruit Latino and African American
2 candidates, national newspapers, education publications and periodicals targeting African
3 American and Latino communities pursuant to the USP.

4 Mendoza Plaintiffs urge the Court to require the District to conduct a new labor
5 market analysis that does not suffer from the deficiencies outlined below, to require the
6 District to correct the omission of language to incorporate the USP provision requiring the
7 District to take corrective action if disparities in attrition rates of Latino or African
8 American administrators or certificated staff are identified, and to correct the District's
9 omission of national newspapers, educational publications and periodicals targeting
10 African American and Latino communities as part of its advertising strategy.

13 **Mendoza Plaintiffs Object to the Special Master's Recommendation that the District**
14 **Not Be Required to Conduct a New Labor Market Analysis Notwithstanding that He**
15 **Found the Labor Market Analysis the District Obtained Is Flawed and**
16 **Notwithstanding That the District Is Invoking that Flawed Labor Market Analysis**
17 **To Justify Its Failure to Take the Robust Retention and Recruitment Efforts Called**
18 **for by the USP**

19 Mendoza Plaintiffs object to the Special Master's recommendation that the District
20 not be required to conduct a new labor market analysis and his tolerance of the District's
21 continued reliance on a flawed LMA, that at the time of adoption of the USP it
22 represented would be used to "determine the expected number of African American and
23 Latino administrators and certificated staff in the District, based on the number of African
24 American and Latino administrators and certificated staff in the State of Arizona, in a four-
25 state region, a six-state region and the United States." (USP, Doc. 1450 at 17.)

1 The LMA conducted for the District does not meet the stated purpose because it
2 fails to apply a definition of “administrator” that is consistent with the USP definition and
3 that is applied consistently in the data relied upon.

4 The USP defines an “administrator” as a “certificated educator who directs and
5 manages the daily operation of an individual school” such as a principal and assistant
6 principal and other persons who “direct[] and manage[.]” (USP, Appendix A, Doc. 1450-1
7 at 2.) This definition does not include “administrative assistants” yet “administrative
8 assistants” are classified as “administrator” in the Arizona state-level data relied upon in
9 the LMA. (Arizona Position Counts by Ethnicity/Race at 1, attached hereto as Exhibit 1.)
10 The Arizona state-level data also includes a category “other” under the “administrator”
11 classification. It is not clear whether data in the “other” category should have been
12 included in the Hispanic availability rate. (*See*, Exh. 1 at 2.) The California data relied
13 upon in the LMA contains only a lump sum category for “administrators” that makes it
14 unclear whether it is coterminous with the USP definition or consistent with the way
15 Arizona applies that category. (California Teachers and Administrators by Ethnicity
16 2011, attached hereto as Exhibit 2.) Further, the New Mexico data includes a category
17 called “administrator” and then other categories called “principal” and “supervisor.” (New
18 Mexico Number of Personnel by Assignment, Ethnicity & Gender, 2009-2010, at 1-3,
19 attached hereto as Exhibit 3.) New Mexico also has a category of “other personnel” that
20 includes “business official,” “dean of students,” and “other personnel.” (*See*, Exh. 3 at 2.)
21 It is not clear which of these categories if any are included in the LMA or whether any
22 judgments about any of the listings within any of these categories (for example, making
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1 any judgments about whether "supervisors" in this New Mexico list equated to "directors"
2 or "managers" under the USP definition) were relied upon. Additionally, the Texas data
3 does not categorize positions but simply lists titles. (Texas School Personnel by Ethnicity,
4 attached hereto as Exhibit 4.) It is not clear whether the LMA includes judgments as to
5 which of these titles were to be treated as "administrators" and, if so, how that judgment
6 was made and where it is memorialized.
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8 The LMA also suffers from additional flaws. It fails to explain why the states of
9 California, New Mexico, and Texas were included with Arizona for the four state
10 comparison and the state of Colorado, for example, was not. It is not clear whether any
11 effort was made to weight averages given the different populations of the referenced states,
12 especially for the purposes of the "surrounding states" data. It is also not clear what would
13 happen to the overall result if averages were weighted based on population and if one of
14 the states relied upon was excluded from the "surrounding states" data.
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17 The LMA suffers from the additional deficiencies of using data from different years
18 (Arizona - 2012; California - 2011; New Mexico - 2009; [Texas is undated]; (*See*, Exhibits
19 1, 2, 3, 4) and whether action should be taken to adjust for the different dates. In addition,
20 the LMA does not address the cautionary note with respect to Arizona data "Interpret data
21 with caution. The standard error for this estimate is equal to 30 percent or more of the
22 estimate's value." (Analysis of the Racial/Ethnic Composition of TUSD Principals at 2,
23 attached hereto as Exhibit 5.)
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26 Mendoza Plaintiffs object to the Special Master's failure to correct for the District's
27 reliance on the flawed LMA and his failure to call for a new labor market analysis. TUSD
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1 is using the results of the flawed LMA to minimize its obligations under the USP. For
2 example, on page 9 of his R&R, the Special Master states that the District justifies its
3 minimal response to the USP requirement that it provide support for African American and
4 Latino non-certified staff for attainment of certification with an assertion that the flawed
5 LMA “showed no disparities.”
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8 **Mendoza Plaintiffs Object to the Special Master’s Failure to Correct TUSD’s**
9 **Omission of Language to Incorporate the USP Provision Requiring the District to**
10 **Take Corrective Action if Disparities in Attrition Rates of African American or**
11 **Latino Administrators or Certificated Staff are Identified**

12 The R&R fails to correct the District’s omission of the USP requirement in
13 Section IV (F)(1)(a) that expressly states: “If disparities [in attrition rates for African
14 American or Latino administrators or certificated staff] are identified, the District
15 shall...develop a plan to take appropriate corrective action. If a remedial plan to address
16 disparate attrition is needed, it shall be developed and implemented in the semester
17 subsequent to the semester in which the attrition concern was identified.” (USP, Doc.
18 1450 at 20.) That language has not been incorporated in the District’s Recruitment and
19 Retention Plan. Rather, the Plan says only that “[i]f disparities exist TUSD will develop
20 and implement strategies, where feasible, to address disparate attrition.” CITE This
21 language with its wiggle room reference to “strategies, where feasible” and its absolute
22 failure to mandate a remedial plan to be developed and implemented in the very semester
23 following the semester in which the disparity is found is woefully inadequate and a failure
24 to properly implement the USP.
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27 Mendoza Plaintiffs urge the Court to require TUSD to correct this omission.
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1 **Mendoza Plaintiffs Object to the Special Master’s Failure to Correct the District’s**
2 **Omission of National Newspapers, Educational Publications and Periodicals**
3 **Targeting African American and Latino Communities as Part of its Advertising**
4 **Strategy**

5 The Special Master failed to correct the District’s omission of “national newspapers,
6 education publications and periodicals targeting African American and Latino
7 communities” as required under USP section IV, C, 3 (a)(i)(i). Mendoza Plaintiffs request
8 the Court require TUSD to include this strategy in its Recruitment and Retention Plan.

9 **Conclusion**

10 For the foregoing reasons, Mendoza Plaintiffs object to the R&R and request the
11 Court to require the District to conduct a new labor market analysis that does not suffer
12 from the deficiencies identified above, to require the District to correct the omission of
13 language to incorporate the USP provision requiring the District to take corrective action if
14 disparities in attrition rates of Latino or African American administrators or certificated
15 staff are identified, and to correct the District’s omission of national newspapers,
16 educational publications and periodicals targeting African American and Latino
17 communities as part of its advertising strategy.
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Dated: June 10, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2014, I electronically submitted the foregoing Mendoza Plaintiffs' Objection to Special Master Report and Recommendation Re TUSD's Action Plan for Recruitment and Retention 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:

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I further certify that on June 10, 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
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Dated: June 10, 2014



IMELDA APARICIO