

August 12, 2014

To: The Honorable David C. Bury

From: Willis Hawley, Special Master

Re: Report and Recommendation Regarding TUSD's Advanced Learning Experiences Plan

Overview

On March 3, 2014, TUSD submitted its plan to enhance advanced learning experiences (ALE) pursuant to Section V.A of the USP (see Exhibit A). After requests for information and comments by the Mendoza plaintiffs and responses from the District, Mendoza plaintiffs submitted extensive comments expressing concerns with the ALE plan on May 1, 2014 (see Exhibit B). On May 14, 2014, the Mendoza plaintiffs requested a Report and Recommendation (R&R) which it renewed on May 22 and in which its objections were specified and narrowed in response to District efforts to address some of the Mendoza concerns. This May 22 request was joined by the Fisher plaintiffs (see Exhibit C). The District revised the ALE plan in early May and again on May 30, 2014 (See Exhibit D). On June 6, 2014, the Mendoza plaintiff's filed another request for a Report and Recommendation (R&R) and this request was joined by the Fisher plaintiffs (See Exhibit B). On July 16, 2014, I submitted a draft of the requested R&R to the District and the plaintiffs to allow the District the opportunity to align its positions with the recommendations in the R&R. The District responded and agreed to make some changes in its ALE plan (see Exhibit E). As a result of certain agreements made by the District, I revised the R&R which I am now submitting to the Court.

The USP describes several different types of advanced learning experiences and in its communications the District identifies still others. Many of the initial objections of the plaintiffs to earlier versions of the plan have been resolved but three provisions of the May 30, 2014 plan remain in dispute. The learning experiences that are the focus of the plaintiffs objections are gifted and talented education (GATE) and "Advanced Academic Courses" (AAC), specifically Advanced Placement (AP) pre-AP, Dual Credit, International Baccalaureate (IB) programs, and dual language programs. Dual language programs are not identified in the USP

as ALE but the Governing Board has done so. In this R&R, I identify each of the plaintiffs' three objections, summarize the District's position, examine the issues, and then make a recommendation with respect to each.

Issue One: Should Goals for Student Participation be Program-specific?

Plaintiffs' Objection

The District's ALE plan establishes one goal for AAC and another for gifted and talented programs. The plaintiffs assert, however, that there are multiple types of programs within each of these categories of Advanced Learning Experiences and goals should be set for each.

The District's Position

In its response to the draft of the R&R and objections of the plaintiffs, the District proposes to amend its ALE plan to commit to reporting participation in various ALE programs by race, ethnicity and ELL status but says it will not set goals for such participation (see Exhibit E). Speaking about AAC's but then generalizing to ALEs, the District claims that, "more harm than good would come from setting specific goals for each individual program within ALE"... because ... "this would hinder the District from being able to emphasize or deemphasize certain AAC programs precisely because they have more or less interest". The District acknowledges that there are differences among ALE programs but then says that these differences have to do with the appeal of these programs and the District's ability to market them. In a related argument, the District asserts that having goals for different programs would cause programs to compete against one another.

Analysis

The District's reasoning with respect to goal setting is mysterious. Knowing how well the District is performing with respect to efforts to increase participation by different ethnic groups could only help (1) target recruiting, enrollment and retention efforts and (2) measure the success of its initiatives to implement the provisions of the USP.

Within each of two of the categories of ALE—AAC and GATE--there is a great deal of difference among the programs. While these differences do relate to their

appeal, other more important differences have to do with what and how students learn as well as the amount of time in which students are engaged and the benefit students get from the learning experiences. For example, some students in GATE programs are involved in GATE virtually full time while others may have less than half a day once a week of GATE. The District's data show that the percentage of African American and Latino students participating in more intensive and more rigorous ALE is lower than the percentage of African American and Latino students involved in limited programs taught by a teacher who visits their school once a week.

The District argues that the USP only requires goals for ALE in the aggregate. However, these programs have different purposes and different students are served. So why does it make sense to have aggregate goals? How would one evaluate whether the District is providing access to these different programs if there are no goals for these different programs?

The District speculates that having separate goals will result in programs competing with one another. But this is not a zero-sum game. A student should be encouraged and supported to take different AAC programs and dual credit courses, to participate in GATE programs, and to pursue other AL programs. And, of course, parents should seek programs that best serve their children's needs. Such choice-making should drive the offering of programs. If parents seek some programs over others and if the District is responsive, the attractiveness of the District schools would be enhanced and enrollment sustained, if not increased.

The District argues (See Exhibit E) that is unrealistic set to set goals by program level, race and ELL status because there are too many different variables to be considered in assessing student outcomes. But, at the same time, the District acknowledges that it will report such data on participation. If it is to engage in responsible evaluation of its efforts to implement the USP, as it is required to do by the USP, it will have to examine outcomes for student participation by these categories and could best judge the efficacy of programs against specific goals. The problem the District seeks to solve by not setting goals for individual programs is the problem of being held accountable

The purpose of Section V.A. of the USP is to enhance the opportunity that Latino and African American students have to engage in learning experiences that improve their academic achievement and life chances. Suggesting, as the District implies, that it is equally important to recruit and retain African American and Latino students in any ALE regardless of its content, extent and rigor makes little sense and is inconsistent not only with this section of the USP but with the spirit of the USP in general.

Recommendation

The District should be required to set goals for African American, Latino and ELL (see recommendation for issue three) student participation in each of the various types of ACC and GATE programs. With respect to GATE programs, the District has agreed to categorize these programs by the amount of time students are engaged in them in a typical week. These data should be broken down by school level--elementary, middle, K-8, and high school. If the District wishes to use additional criteria to differentiate ALE, it should be allowed to do so.

Issue Two: The Level of Goals for Participation

Plaintiff Objection

The goals set for of participation in ALEs by African-American and Latino students—a total (emphasis added) of one percent and one and a half percent respectively over five years-- are too low and should be increased.

District Position

The District consulted with Dr. Donna Ford of Vanderbilt University, a nationally prominent researcher in the field of “minority” student access to gifted and talented programs. The District reports that Dr. Ford advised that she recommends uses a “rule of thumb” that sets as a target the percentage of minority student participation--in this case African-American and Latino students—as being no less (emphasis added) than 20 percent of the District average population for each group. The District presents data showing that participation among African-American and Latino students is relatively close to the no less than 20 percent goal using 2012-13 enrollment numbers as its baseline. The District sets a five year goal (not annual) of a one percent increase in African American participation in

GATE and a less than one and a half percent increase in GATE participation for Latino students. With respect to AAC, the District asserts that it now meets the criteria for Latino students and will set a goal of increasing African American participation by less than one half of one percent over a five year period.

Analysis

The plaintiffs argue that the rule of thumb used by the District does not take into account specific conditions relevant to the likely success of African American and Latino students in ALE. The Mendoza plaintiffs also point out that the USP says that the goal is “equal access” and that an 80 percent participation is not “equal”. The District argues that the less than 20 percent rule is “research-based”. It is not. Dr. Ford describes this as a “rule of thumb” and research is not cited to support it. Moreover, Dr. Ford, in testimony in an Illinois case, says that the less than the 20 percent guideline should be a minimal measure of equal access.

It does seem that the District’s goals are embarrassingly low. In the absence of a threat of not having complied with the USP, it is doubtful that the District would advocate increasing education opportunity for any group in any program at the levels it advocates for ALE. Imagine that the Superintendent, in presenting his strategic plan for the District, would have said that student achievement will increase a total of one percent over the next five years. The plaintiffs do not offer an alternative based on research or expert opinion. As far as I know, there is not a research-based consensus target for equitable participation in the types of advanced learning experiences and issues here. Just as we take into account student’s socioeconomic backgrounds in assessing academic progress of different groups of students, such a consideration would make it reasonable to not use “equal” as a goal (although no such analysis was undertaken nor am I advocating that it should be).

As the analysis of issue number one indicates, there is considerable variation in the types of experiences that fit under the category of Advanced Learning Experiences. It follows that specific goals, whether determined by the “rule of thumb” used by the District or some more ambitious goals, should be applied to specific types of ALEs. As indicated, there is a very big difference between the experience of students in classrooms and schools that offer gifted and talented learning all day

every day and the experience of many of the District's students who experience a GATE program of very limited—one to two hours a week duration taught by an itinerant gifted and talented teacher who cannot possibly know all her students well.

The District proposes to use 2012-13 enrollment as the baseline for computing its goals. However, Latino enrollment has increased since then and it makes no sense to set goals this way, unless the purpose is to limit the goals. If a percentage of students is to be used, that percentage should apply to the actual percentage of students in each racial group in a given year. The District can project the percentage of students in future years based on past trends, something it regularly does in its strategic planning.

Further, since the District hopes to be declared unitary in the summer of 2017, it should set its targets accordingly. This means that the goals should be set for each specific ALE using actual or projected disaggregated student enrollment for the three year period beginning in 2014-15.

Which leaves the issue of what the specific goals should be of for students participating in ALE, if not the actual proportion of African American and Latino students enrolled District-wide. The District has selected a target that its consultant suggests should be a minimal goal. The plaintiffs want parity. Splitting the difference—that is 90 percent—is arbitrary but not much different than selecting the lowest possible number that might be justified, as the District did. Splitting the difference again would mean that that the annual targets should be 15 percent or less that the current population of African American and Latino students calculated over a three year period. This would mean, for example, using all GATE programs, that the annual rate of growth in participation would average about 2.6 percent for Latino students (this calculation used a conservative estimate of 1.5 percentage growth of the Latino student population).

Recommendation

The District should use a 15 percent or less rule calculated over three years starting in 2014-15 based on actual enrollment in each year to set goals for African-American, Latino and ELL students in each distinctive type of ALE. Moreover, these goals should vary by school level (elementary, middle, K-8, and high

school). This will result in significant differences in the goals for some ALE and for African American and Latino students respectively. If the District believes some of these goals are unrealistic given human and financial constraints, it should propose alternative but consequential goals and explain why. For example, it may be that the goals for self-contained GATE programs would be more difficult to meet than goals for a less resource intensive program because of resource issues and the fact that the gap in present enrollment is greatest in this type of GATE program.

Issue Three: Goals for ELLs

Plaintiffs' Objection

There are no specific goals for participation in advanced learning experiences for English Language Learners (ELL).

District Position

The TUSD ALE plan does not set goals for ELL participation. In response to Mendoza plaintiffs' objection, TUSD indicated that the data for ELL participation is not sufficiently broken out thereby making it hard to set goals. TUSD says that less than 50 ELL students participated in ALE in 2012-13 and that it expects the same pattern for the current year but says nothing about future years. Further, the District argues, in what seems a non sequitur, that a "significant" number of ELL students are not members of the subject classes.

Analysis

The District initially argued that the USP does not require breakout participation of or goals for ELL students in its response to objections by the Mendoza plaintiffs. However, it subsequently agreed to report participation by ELL, a concession that rather undermines its argument that goals should not be set for ELL. The fact that only 50 ELL students participated in ALE programs should be a reason to focus attention on their participation rather than a reason to avoid setting goals for their involvement.

The District further argues in its response to the Mendoza objection (see Exhibit E) that the USP does not require separate goals for ELL because a significant

proportion of the District's ELL population are is not members of the subject classes. Putting aside the meaning of "significant" --the District codes African students as African-American--nowhere in the USP is it suggested that any provision of the USP relating to ELL students is limited to those students who are African-American or Latino.

It is clear that the USP means to promote the engagement of ELL. For example, see Section V.A. 2. a, b, c and d (these sections are included in the first pages of the TUSD ALE plan, Exhibit D). However, there are unique challenges for engaging ELL. So the recommendations for setting goals for African American and Latino students generally do not apply.

Recommendation

The District should develop goals for the involvement of ELL students in specific ALE programs and indicate how it arrived at these proposals. For example, the District could examine the programs that now have ELL enrollment and learn how this came about and with what outcomes for student learning.

Summary of Recommendations

The Court should order the District to:

1. Set goals for African American, Latino and ELL student participation in each of the various types of ACC and GATE programs. With respect to participation, the District has agreed to categorize GATE programs by the amount of time students are engaged in them in a typical week and for all AAC programs to break data down by school level--elementary, middle, K-8, and high school. It should report goals in the same way. The District should comply with these requirements no later than September 30, 2014.
2. Use a 15 percent or less rule calculated over three years starting in 2014-15 based on actual enrollment in each year to set goals for African-American and Latino students in each distinctive type of ALE. Moreover, these goals should vary by school level (elementary, middle, K-8, and high school). If the District believes some of these goals are unrealistic given human and financial constraints, it should propose alternative but consequential goals and explain why. This should be

accomplished no later than September 15, 2014 and the alternative goals should be approved by the special master.

3. Develop goals for the participation of ELL students in specific ALE programs and indicate how it arrived at these proposals. This analysis should be completed and recommendations for increasing the enrollment of ELL in ALE by December 15, 2014.
4. Order the Special Master to monitor the compliance with these requirements.