

TUSD's 8/18/14 Alignment Response to the Special Master's 8/7/14 Proposed Principal/Teacher R&R

TUSD writes in response to the Special Master's August 7, 2014 proposed Principal and Teacher Report and Recommendation ("Proposed Principal/Teacher R&R"). TUSD addresses the points in the Proposed Principal/Teacher R&R, in hopes that the Special Master may reconsider what TUSD perceives as an inappropriate attempt to create and enforce new requirements that are outside of the USP.

1. *"The District argues that it has satisfied that needs of the plaintiffs and special master for information about teacher and principal evaluation by its discussion in its annual report and a memorandum which it submitted to the plaintiffs and special master on May 30, 2014."* (Proposed R&R, p.2)

This is not an accurate statement. TUSD complied with the USP by conducting the required review and assessment and adopting new principal and teacher evaluation procedures in 2013. TUSD reported and summarized these efforts in its January 2014 annual report and attached copies of the teacher and principal evaluation instruments and summary data from the student surveys (as required by USP § IV.K.1.m) for review of the Special Master and Plaintiffs. TUSD has complied with every provision relating to teacher and principal evaluations under USP § IV.H.1. Aside from the Special Master's proposed requirement of two additional plans, TUSD has received no objections to the substance of TUSD's principal and teacher instruments or compliance with USP § IV.H.1.

2. *"Let me emphasize, no consultation about or review of these procedures by the plaintiffs or the special master has occurred."* (Proposed R&R, p.2)

The USP neither contemplates nor requires TUSD to consult with the Special Master and Plaintiffs on every provision of the USP, including the evaluation of its principal and teacher evaluation instruments. Instead, this USP provision expressly requires that TUSD make the assessment on its own. *See* USP § IV.H.1 ("The District shall review, amend as appropriate and adopt teacher and principal evaluation instruments...." and adopt measures "the District deems

appropriate.”) Part of the rationale behind much of the provisions not requiring §I.D.1 review is that during formulation of the USP, the Special Master and the Plaintiffs negotiated detailed factors that TUSD must give weight to in making its assessment of what “the District deems appropriate” for principal and teacher evaluations. *See* USP § IV.H.1. Accordingly, the Special Master and Plaintiffs provided significant feedback on the “front end” in framing the language of the USP requirements.

Furthermore, TUSD has provided Plaintiffs and the Special Master opportunity to comment on the substance of its principal and teacher evaluations, and has received no complaints or criticisms. For example, in May 2013, TUSD provided a copy of its teacher evaluation process to the Plaintiffs and Special Master and also a copy of its principal evaluation process to the Special Master. In TUSD’s July 2013 status report, it provided the Plaintiffs and Special Master with a summary of its efforts and, again, received no objections. TUSD also provided copies of the principal and teacher evaluations to the Plaintiffs and Special Master in January 2014 as part of its Annual Report. Although Plaintiffs had many follow up questions and comments regarding TUSD’s Annual Report, Plaintiffs had no comments on the principal and teacher evaluations they were provided. Accordingly, TUSD did provide the Plaintiffs and Special Master the opportunity to consult.

3. *The USP is unambiguous in saying that all major actions undertaken by the District are subject to review by the plaintiffs and special master [citing to USP § I.D.1].* (Proposed R&R, p.3)

First, the Proposed Principal/Teacher R&R cites TUSD’s recognition that principal and teacher evaluations are “very important actions” to support that USP § I.D.1 should be required. TUSD believes all of its compliance efforts under the USP are very important actions. That does not mean that every provision under the USP requires § I.D.1 review, as all parties and Special Master agree. This is why § I.D.1 is qualified, and does not state that it is applicable to all provisions of the USP.

Second, the Proposed Principal/Teacher R&R alludes to TUSD’s agreement to develop five plans pursuant to § I.D.1 review where no plan was expressly

required. The parties reached an agreement with respect to these plans that have been developed by TUSD. However, this does not provide a basis to assert that TUSD can be required to develop non-USP plans.

4. *However this [October 2013] email makes a distinction between Action Plans and implementation plan [sic] and says that the latter will be monitored by the implementation committee. ... That the District really believes that in October, 2013 I would have said there is no requirement for an Action Plan for teacher and principal evaluation and then continue to list teacher and principal evaluation as an Action Plans [sic] for several months thereafter defies credulity.* (Proposed R&R, p.4)

It appears the Special Master and TUSD have a different interpretation of the October 2013 meeting which took place between two District personnel and the Special Master as well as the Special Master's October 18, 2013 confirming email. TUSD understood the statement in the Special Master's October 13, 2013 email which singled out principal/teacher evaluations as subject to IC monitoring – not Plaintiffs' review. TUSD also believed that the principal/teacher evaluations remained on the list of review items to identify TUSD's deadline to review its principal/teacher evaluation instruments. *See* TUSD Principal/Teacher Memo, Attachment 6 (“The review of [revisions to the] teacher and principal evaluations is described as procedure, what will be involved, when, etc. The IC will monitor the content and report to the Plaintiffs accordingly.”)

5. *It is ironic that in the [October 2013] meeting that the District refers to, I tried to make it easier for the District to submit an Action Plan on teacher and principal evaluation [sic] by suggesting that the Action Plans focus on procedures, rather than the detailed content of the instruments.* (Proposed R&R, p.4)

TUSD does not agree that the Special Master advised plans should be required during this meeting. This statement regarding suggested changes in requirements for plans supports why plans should not be imposed by the Special Master where the USP does not require them – this results in lack of clarity of what such a plan would entail. USP required plans identify in detail their requirements and provide a roadmap of the plan that should be developed. It would be very

difficult for TUSD to attain unitary status by developing USP-compliant plans where there is no USP language specifying plan requirements.

6. *The District does not seem to understand the difference between an Action Plan and an Implementation Plan...*

TUSD does not know why this statement was made in the Proposed Principal/Teacher R&R and requests clarification.

7. *A memorandum from the TUSD Desegregation Director to the special master on October 11, 2014 confirms that no plan or I.D.1 review is required. This memorandum says just the opposite. (Proposed R&R, p.4-5)*

This message was drafted in the context of TUSD's understanding from its October 2013 Special Master meeting that no plan or §I.D.1 review was required, and TUSD's evaluations would be subject to IC monitoring (as confirmed by the Special Master's October 18, 2013 email). Indeed, Mr. Brown included as a parenthetical that he understood the deadline to mean TUSD would perform its "new revisions" in accordance with the language of the USP. Nowhere does his message assent to creation of a plan, or a costly and time-consuming §I.D.1 review.

8. *That the District believed it had no obligation to prepare such plans is surprising because they did not indicate this until May 2014 when they requested the wording be changed on the list of Action Plans. (Proposed R&R, p.5)*

Not so. First, TUSD received the Special Master's October 2013 confirming email that principal and teacher evaluations would be reviewed by the implementation committee, and had no reason to further raise the issue after that. Second, TUSD advised the Plaintiffs and Special Master both in January and February 2014 as part of its status report and Annual Report that compliance with this provision of the USP was complete, and attached the evaluation instruments for Plaintiffs and Special Master to review. It does not seem procedurally appropriate or fair to raise this issue to the Court now when the Plaintiffs and Special Master have been aware since January 2014 (if not sooner) that TUSD completed its compliance with this provision.

9. *...the Plaintiffs had no need to object since the matter was not due to the Court until June 20, 2014.* (Proposed R&R, p.5)

See response to No. 8 above. Plaintiffs have had copies of the principal and teacher evaluations since, at a minimum, January and February 2014, as well as confirmation that TUSD deemed compliance with this USP provision completed. Not a peep from any Plaintiff or the Special Master disagreeing until the Special Master suggested in April 2014 that TUSD should create two additional action plans for principal and teacher evaluation instruments.

10. *The District's Obligation to Submit Action Plans for Teacher and Principal Evaluation* (Proposed R&R, p.6-7)

The sole argument in the Proposed R&R is that principal and teacher evaluations are very important - a sentiment with which TUSD agrees. However, every provision in the USP is important, or it would not have been included in the USP. There is nothing to suggest additional non-USP plans would be helpful, particularly given that the neither the Plaintiffs nor the Special Master have any substantive complaint with the instruments developed by TUSD in accordance with the USP requirements regarding the same.