

Mendoza Plaintiffs' Request that the Special Master Bring TUSD's Noncompliance with  
USP Requirements Regarding Teacher and Principal Evaluations to the Attention of the  
Court

July 24, 2014

USP Section X.E.6. authorizes the Special Master to “bring to the court’s attention at any time instances of alleged noncompliance with this Order.” Mendoza Plaintiffs request that the Special Master bring to the Court’s attention TUSD’s noncompliance with USP requirements regarding teacher and principal evaluation instruments, as set forth below.

It is the District’s recent position that it has reviewed and made whatever changes it deemed appropriate to its teacher and principal evaluation instruments and that they are not subject to review and comment by plaintiffs and the Special Master under Section I.D.1. of the USP. *See* Response to April 2, 2014 Order to Show Cause Regarding Development of Implementation Plans [Doc. 1575] and May 16, May 30, July 10, and July 15, 2014 emails from J. William Brammer Jr.

USP subsection IV.H. is titled “**Evaluation.**” That subsection requires that the District review and amend as appropriate teacher and principal evaluations so that “in addition to requirements of State law and other measures the District deems appropriate, [they] give[] adequate weight to:

- (i) an assessment of
  - (I) teacher efforts to include, engage, and support students from diverse racial, ethnic, cultural, and linguistic backgrounds using culturally responsive pedagogy and
  - (II) efforts by principals to create school conditions, processes, and practices that support learning for racially, ethnically, culturally and linguistically diverse students;
- (ii) teacher and principal use of classroom and school-level data to improve student outcomes, target interventions, and perform self-monitoring; and
- (iii) aggregated responses from student and teacher surveys to be developed by the District, protecting the anonymity of survey respondents...”

The importance of teacher and principal evaluations in the USP is highlighted by the parties’ agreement to create an entire subsection dedicated solely to such evaluations and to describe with specificity in that subsection the areas of assessment that must be considered.

USP Section I.D.1 states: “[F]or all new or amended plans, policies, procedures, or other significant changes contemplated pursuant to this Order, the District shall solicit

the input of the Special Master and the Plaintiffs and submit such items for review before they are put into practice or use.”

The history of the District’s actions since the Court’s approval of the USP evidences the District’s long-held understanding that teacher and principal evaluation provisions in the USP are subject to I.D.1 review as, indeed they are.

On May 14, 2013, TUSD emailed the parties and Special Master a memo attachment regarding the District’s review of teacher and principal evaluation instruments for state-law compliance in which TUSD cited USP section I.D.1. and then stated” “[a]ccordingly, this evaluation process is being submitted to you now for that [plaintiff and Special Master I.D.1] review.” TUSD also “anticipate[d] working with the Parties and Special Master during the 2013-14 school year to assess the result of this TUSD Model, and to make further adjustments for the 2014-15 school year.” In an email to the Special Master on May 6, 2013, TUSD “agree[d] to work with you and Plaintiffs over the next year to strengthen the USP components of the evaluation process.”

On October 4, 2013, the Special Master sent the parties an email with an attached proposal to establish timelines for implementation of USP provisions. The Special Master’s cover email acknowledged that the District would likely propose changes. Each “review item” in the proposal was subject to conditions, including that the District “identif[y] its plan for acting to develop the proposal required by the USP” and a “formal comment and review by P/SM.” Both teacher and principal evaluations were given a December 1, 2013 date for “report of final action by the District.” In an October 11, 2013 email, TUSD did indeed propose changes and also made comments, including that revised evaluation instruments would not be complete until May or June 2014, and thus implicitly agreed that it was obligated to develop a plan subject to review and comment by plaintiffs and the Special Master. In response to Mendoza Plaintiffs’ objection to the proposed dates, TUSD responded by email on October 11, 2013 that “if a plan needs two or three more months to get to the level of quality that our students deserve, it is worth two or three months.” Notably, it did not assert that the referenced evaluation instruments would not be subject to plaintiff and Special Master review.

In additional implementation “timelines” email attachments sent by the Special Master to the parties on October 18, 2013, and to the Court and the parties on October 21 and 27, 2013, review of evaluations was again subject to the same December 1, 2013 final action date and formal review and comment by plaintiff and Special Master as contemplated in the USP. On November 1, 2013, the Special Master emailed the parties yet another revised timeline “after discussing [board meeting cancellations] with Sam [Brown]” and again, contained the same conditions. In addition, on November 14, 2013, the USP Status Plan emailed by the Special Master described the teacher and principal evaluations as “[y]et to be submitted.” Although TUSD made a number of comments and proposals for changes with respect to the six implementation “timelines” sent by the Special Master in October and November 2013, it did not once protest the characterization of the review of teacher and principal evaluations as requiring a plan subject to USP I.D.1 review and comment.

On January 31, 2014, the Special Master emailed the parties the USP Status Report that “deals only with Action Plans.” It again contained the same date for final board action on teacher and principal evaluations and indicated that each plan was “yet to be submitted” by the District. In connection with the Court’s December 2, 2013 Order directing the Special Master to develop an Implementation Addendum (“IA”), the Special Master emailed the parties a draft of the IA on February 3, 2014, emailed the Court and the parties the IA on March 19, 2014, and emailed the Court and parties an updated IA on April 2, 2014. Each version of the IA that was emailed described the teacher and principal evaluations review under the USP as requiring an action plan subject to plaintiff and Special Master review. It was not until May 16, 2014, when TUSD provided its second set of revisions to IA tables following the Court’s Order to show cause why the District should not develop implementation plans, that the District asserted that the evaluation instruments were not subject to review and comment by the plaintiffs and Special Master.

Because the District now has made clear that it does not intend to provide its revised teacher and principal evaluation instruments to the plaintiffs and the Special Master for review and comment or otherwise submit its plan for compliance and implementation of USP Section IV. H to the plaintiffs and the Special Master for review and comment pursuant to USP Section I.D.1, Mendoza Plaintiffs request that the Special Master bring TUSD’s noncompliance to the attention of the Court.