

August 28, 2014 [Re-Filed September 8, 2014]

To: The Honorable David C. Bury

From: Willis Hawley, Special Master

**Re: Second Amended Report and Recommendation
Related to the District's Refusal to Submit Action
Plans Dealing with the Procedures for Evaluating
Teachers and Principals**

Reason for the R&R

On July 24, 2014, the Mendoza plaintiffs requested a report and recommendation that would bring TUSD's noncompliance with USP requirements regarding teacher and principal evaluations to the attention of the Court (*See Exhibit A*). This Report and Recommendation asks the Court to direct the Tucson Unified School District to prepare Action Plans to implement procedures for evaluating teachers and principals pursuant to Section I.D.1 of the Unitary Status Plan. Despite the fact that teacher and principal evaluation have been among the Action Plans specified by the Court and despite at least two recent efforts on the part of the special master to encourage the District to submit such plans, the District refuses to do so. (*See Exhibit B* for relevant emails).

On August 8, 2014 a draft of the R&R was submitted to the District to allow the alignment of its position with all or part of the R&R. The District responded on August 18, 2014 repeating its arguments and urging that I withdraw the R&R (*see Exhibit G*).

Background

A detailed history of events and memoranda related to this request that document the actions of the parties and the Court showing that Action Plans dealing with teacher and principal evaluation have been understood

by all of the parties, including the District, to be the responsibility of the District for almost a year is provided in the Mendoza plaintiffs request for this Report and Recommendation (*see* Exhibit A). So as not to burden the Court with a play-by-play, I will summarize key developments.

On December 2, 2013 the Court approved a set of Action Plans and Implementation Plans that specified dates for submission and approval of 28 Action Plans (Doc. 1510). Two of these involved the evaluation of teachers and principals. Because the District had missed several deadlines, it sought the opportunity to revise deadlines. On April 18, 2014, the Court authorized the District to work with the plaintiffs and the special master to revise the deadlines for submitting plans of action and for approval by the Governing Board or the Superintendent (Doc. 1593). The plans of action listed included Action Plans for teacher evaluation and principal evaluation.

The April 18, 2014, Order did not authorize the District to recommend omission of the named Action Plans and the District did not seek such amendment in its interaction with the plaintiffs and the special master about the changes in deadlines. However, when the District submitted its proposed changes in deadlines on June 20, 2014, which deadlines had been agreed to by the plaintiffs and the special master, the District also indicated that it would not be submitting Action Plans for teacher evaluation or principal evaluation (Doc. 1627). In its June 20, 2014 submission, the District says, “The parties disagree on whether Teacher Evaluation and Principal Evaluation procedures require the development of ‘Action Plans’ and are subject to USP I.D.1 review.” Note that in this document, teacher and principal evaluation procedures are identified as Action Plans, as they had been for over nine months in previous listings of Action Plans.

The District’s Justification for Its Refusal to Submit Action Plans for Teacher and Principal Evaluation

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 the special master on May 30, 2014 (*see* Exhibit C, C-2 and C-3). On July 9, 2014 (*see* Exhibits C-4, C-4A, C-4B, and C-4C) the District submitted documents describing what it has done with respect to teacher and principal evaluation. Exhibits C-4, and C-4A, C-4B, and C-4C provide almost 550 pages of documents, many of which are duplicates and triplicates of the same document.

On May 6, 2013, the District did send some information about the teacher evaluation process but not principal evaluation process. At my request the District provided me with information about principal evaluation later in May of 2013. This information indicates, as do the inquiries made by the implementation committee that no changes were made in the principal evaluation process or the instruments used prior to approval of the USP despite the fact that the USP calls for substantial changes in principal behavior and in procedures for evaluating principals.

In the May 6, 2013 memo, the District acknowledged that it had the responsibility to submit the evaluation processes for review and comment but also noted that the evaluation processes have been approved by the board and no substantive changes could be made. This memo asserted that the district anticipated working with the plaintiffs and the special master during 2013-14 to make further adjustments in the evaluation processes for 2014 15. (*See* C-4, and C-4A, C-4B, and C-4C, p.349). This consultation did not occur.

The District claims that by providing information about the evaluation processes in its Annual Report, submitted in February 2014, that this also satisfied whatever obligation it has for consultation. However, in the implementation plan for teacher and principal evaluation, which is derived from the annual report and authored by the District, several steps are outlined for implementation. These cover the period from prior to approval of the USP through the spring of 2014. None of those steps involves consultation with the plaintiffs or the special master. In its response to the Mendoza request for a Report and Recommendation, the District defends its position with astonishing interpretations of evidence it says shows that it

has no obligation to develop Action Plans at issue and that the plaintiffs and the special master have agreed to this until recently (*see* Exhibit D). Because the District will surely raise these arguments in its objections to this R&R, it may facilitate review by the Court if some of the District's errors in its assertions in response to the Mendoza objections are identified here.

District Assertion 1

TUSD: The USP language is unambiguous note regarding principal and teacher evaluation required and that no plan need be submitted unless it is explicitly required.

This is simply not true. The USP is unambiguous in saying that all major actions undertaken by the District are subject to review by the plaintiffs and the special master. Section I.D.1 says:

In addition to all specified reporting requirements identified for all new and amended plans, policies, procedures or other significant changes contemplated pursuant to this order, the District shall solicit input of the special master and the plaintiffs and submit such items for review before they are put into practice or use.

The District does not dispute that teacher and principal evaluation, to which the USP devoted significant attention, are very important actions that are essential to its achievement of its mission (*see* below). Moreover, there are number of Action Plans which the District has developed that are not identified in the USP as requiring plans. These include plans for a Technology Condition Index, a Facilities Condition Index, student outreach and recruitment, a comprehensive boundary plan and an equitable extra-curricular activities plan. Why the District submitted Action Plans on these matters and not principal and teacher evaluation is interesting.

District Assertion 2

TUSD: The special master, at a meeting in October 2013, confirmed that no plan for teacher or principal evaluation was required.

This is not true. The District cites an email from the special master dated October 18, 2014 as evidence. However this email makes a distinction between Action Plans and implementation plan and says that the latter will be monitored by the implementation committee. It is ironic that in the 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 by suggesting that the Action Plans focus on procedures, rather than the detailed content of the instruments. The operative lines in my October 18 email says, “The review of the teacher and principal evaluations is described [in the ‘final’ timelines] as procedures, what will be involved, when, etc. The IC will monitor the content and report to the plaintiffs accordingly.” This email was attached to timelines listing deadlines for approval of Action Plans for teacher and principal evaluations. Moreover, in May, 2013, as noted above, the District explicitly acknowledged its responsibility to submit evaluation plans to the plaintiffs and the special master.

The District seems not to understand the difference between an Action Plan and an Implementation Plan even though that distinction is clear in every one of the several versions of the Implementation Addendum that was ordered by the Court and reviewed but the parties. One purpose of the distinction is to reduce the number of Action Plans that require I.D.1 review so as to lessen the burden on the parties. That the District really believes that in October, 2013 I would have said that 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 for several months thereafter defies credulity.

District Assertion 3

TUSD: 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. In this email, which is a response to a draft of the proposed timelines that listed dates for teacher and principal evaluation, the Desegregation Director acknowledges that the District has been late in submission of the plans but promises a date in the future when the plan will be submitted (*see Exhibit E for the full email*):

(2) The teacher and principal evaluations (new revisions) are tricky because of the numbers of multiple stakeholders (new state statute language, bargaining units, Board, etc.). It could be complete in April if all goes well, but it could also not be voted on until May or June (unlikely since they need to be approved with enough time that folks can be trained on the new instruments). But I just want to flag this issue now because it is one of the more complicated issues.

District Assertion 4

TUSD: The plaintiffs have always understood that the plan for teacher and principal evaluation was not required and evidence of this is that they had not objected to the District's decision not to submit plans for teacher and principal evaluation until urged by the special master to do so.

I did not “urge” the plaintiffs to request an R&R. Just as I asked the District at the same time to clarify its position, I asked the plaintiffs to indicate their intentions. (*See Exhibit F.*) In its June 20, 2014 submission to the Court and prior to my email allegedly urging the plaintiffs to object, the District notes that the plaintiffs and the District disagree about the need

for Action Plans for teacher and principal evaluation. That the plaintiffs did not until recently object to the District's position can be accounted for by the fact that the Action Plans had for months identified evaluation plans for teachers and principal as being behind schedule and "yet to be submitted to the plaintiffs." That the District believed it had no obligation to prepare such plans it is surprising because they did not indicate this until May 2014 when they requested that the wording be changed on the list of Action Plans. However, even then, the plaintiffs had no need to object since the matter was not due to the Court until June 20, 2014.

The District's Obligation to Submit Action Plans for Teacher and Principal Evaluation

As noted above, Section I.D.1 of the USP says:

In addition to all specified reporting requirements identified for all new and amended plans, policies, procedures or other significant changes contemplated pursuant to this order, the District shall solicit input of the special master and the plaintiffs and submit such items for review before they are put into practice or use.

The core technology of schooling is the interaction among professional educators and students. Teachers are the single most important influence on student learning and effective teaching and student learning are influenced importantly by principals. Teacher and principal evaluation are the key tools for influencing teacher and principal effectiveness. The results of evaluation determine who is retained, the need for and content of professional development, opportunities for teacher and administrative leadership, and candidacy for special efforts to improve performance for struggling teachers. Section IV.H.1 of the USP deals with the responsibility of the District for teacher and principal evaluation and specifies several characteristics of such evaluations that, in effect, requires the amendment of previous procedures. *See* Mendoza excerpt from Section IV.H.1 of the USP in Exhibit 1, at 1.

There is little doubt that procedures for evaluating teachers and principals meet the criteria set forth in Section I.D.1; namely, significant new policies and procedures pursuant to this Order. In a memo to the parties on June 2, 2014, the District emphasizes the importance of teacher and principal evaluation, "...these evaluation instruments and processes are extremely important to the district's mission and the responsibilities to the children it is educating."

There's simply no question that the District has an obligation to submit Action Plans dealing with the evaluation of teachers and principals. Since mid-2013, teacher and principal evaluation plans have been listed among the required Action Plans. Discussions have been held between the special master and District staff about the nature of what those plans might look like in an effort to simplify and expedite the District's submission of these plans.

Conclusion

It is critically important to the success of the USP that the Court direct the District to submit to the plaintiffs and special master Action Plans for evaluating teachers and principals. The District should be required to submit these plans within 20 days of the issuance of the Court order. This timeframe should be easy for the District to meet since the District argues that it is already developed the procedures involved.