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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs

CV 74-90 TUC DCB  
(Lead Case)

v.

United States of America,

Plaintiff-Intervenor,

**REPLY TO MENDOZA  
PLAINTIFFS' OBJECTION TO  
REPORT AND  
RECOMMENDATION ON  
TUSD'S OUTREACH,  
RECRUITMENT AND  
RETENTION PLAN (ECF 1620)**

v.

Anita Lohr, et al.,

Defendants,

**Oral Argument Requested**

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-204 TUC DCB  
(Consolidated Case)

Maria Mendoza, et al.

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.

Defendants.

1           **I. INTRODUCTION**

2           Defendant Tucson Unified School District No. One (“TUSD”) hereby replies to the  
3 Mendoza Plaintiffs’ Objection to the Special Master’s Report and Recommendation  
4 (“R&R”) on TUSD’s Outreach, Recruitment & Retention Plan (“ORR Plan”), in  
5 accordance with the Court’s Order of August 21, 2014 (ECF 1651) (“Order”).

6           Mendoza Plaintiffs objected to what they deemed several omissions in the R&R, and  
7 the Court ordered TUSD to file a reply addressing each. The points raised by the Mendoza  
8 Plaintiffs were not included in the R&R and presumably not deemed by the Special Master  
9 to warrant Court action. The Court also ordered TUSD to make several revisions to the  
10 ORR Plan. First, the Court ordered that the Plan be revised to make it clear that it is aimed  
11 at the express objective of recruiting qualified African-American and Latino candidates for  
12 open administrator and certificated staff positions, not at improving ethnic and racial  
13 diversity generally or recruiting generally for hard-to-fill positions. ECF 1651 at 9.  
14 Second, the Court ordered that the Plan be revised to “clarify the links between the  
15 [financial] incentives and a USP goal” and ordered TUSD to explain why it chose to use  
16 financial incentives for recruitment rather than as a method of enabling currently  
17 noncertificated African-American and Latino employees to receive the required education  
18 needed to be promoted to administrator or certificated staff level. *Id.* at 14. Finally, the  
19 Court ordered that TUSD include “Methods for Growing Our Own” in Section V of the  
20 Plan or point the Court to the methods if they are already included in the Plan. *Id.* at 15.  
21 TUSD addresses each of these items below, and also provides the explanations requested by  
22 the Court. In addition, a revised ORR Plan is being filed concurrently herewith that reflects  
23 both those changes ordered by the Court and those TUSD feels are appropriate in addition.  
24 A redline reflecting all of the changes is attached to the Notice of Filing Revised Outreach,  
25 Recruitment and Retention Plan at Exhibit B.

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1           **II.    ALTHOUGH THE EXISTING ORR PLAN COMPLIES WITH THE**  
2           **USP, TUSD HAS REVISED THE ORR PLAN TO ADD THE USP**  
3           **LANGUAGE BY THE MENDOZA PLAINTIFFS CITE RELATED TO**  
4           **ADDRESSING DISPARITIES IN ATTRITION RATES.**

5           As noted by the Court, the Mendoza Plaintiffs “complain[ed] that the ORR Plan does  
6 not reflect that remedial measures are mandatory and required the very semester following  
7 the semester in which a disparity is found to exist.” ECF 1651 at 15. Specifically, they  
8 point to language in USP § IV(F)(1)(a) that requires TUSD to evaluate on an ongoing basis  
9 whether there are disparities in the attrition rates of African American and Latino  
10 administrators or certificated staff. “If disparities are identified, the District shall, on an  
11 ongoing basis, assess the reason(s) for these disparities and develop a plan to take  
12 appropriate corrective action. If a remedial plan to address disparate attrition is needed, it  
13 shall be developed and implemented in the semester in which the attrition concern was  
14 identified.” ECF 1450 at 20.

15           The Mendoza Plaintiffs assert the failure to insert this specific language into the  
16 ORR Plan renders the Plan “woefully inadequate” and the current ORR Plan language gives  
17 TUSD “wiggle room.” ECF 1620 at 6. This simply is not true. The language in the ORR  
18 Plan, although not identical to the USP language, certainly is consistent with it.

19           The Plan confirms that TUSD will: “(1) evaluate the attrition rates of all racial and  
20 ethnic groups to assess whether disparities exist between African-American and Latino  
21 administrators and certificated staff compared to other racial and ethnic groups; and (2) if  
22 disparities exist, assess the reasons for the disparities (to the extent possible). If disparities  
23 exist TUSD will develop and implement strategies, where feasible, to address disparate  
24 attrition.” ECF 1612-4 at 14. Clearly, this language embodies what the USP requires of  
25 TUSD. TUSD must evaluate whether disparities exist, assess the reasons for those  
26 disparities, and develop strategies to address the disparities. Nevertheless, in good faith,  
27 TUSD agrees to revise its ORR Plan to insert language identical to that in USP §  
28 IV(F)(1)(a). These revisions are reflected in the revised ORR Plan filed concurrently  
herewith (“Revised Plan”), at 12.

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1           **III. ALTHOUGH THE EXISTING ORR PLAN COMPLIES WITH THE**  
2           **USP, TUSD HAS REVISED THE PLAN TO EXPAND ON ITS**  
3           **NATIONAL ADVERTISING STRATEGIES.**

4           The Mendoza Plaintiffs also object to the R&R on the basis that it does not address  
5           the fact that TUSD “omitted” “national newspapers, education publications and periodicals  
6           targeting African American and Latino communities” as they assert is required under USP §  
7           IV(C)(3)(a)(i)(i). Education publications and periodicals targeting African American and  
8           Latino communities already are included in the ORR Plan as part of TUSD’s advertising  
9           strategy. ECF 1612-11 at 9. In addition, on March 24, 2014, TUSD solicited the Mendoza  
10          Plaintiffs for additional suggestions of publications to include in the Plan, a request also  
11          directed to the Fisher Plaintiffs and the Special Master. *See* ECF 1612-3 at 2, 10 & 11.  
12          TUSD received no further suggestions from the Plaintiffs or the Special Master.

13          Despite that the existing Plan complies with the USP, TUSD has revised the ORR  
14          Plan to list explicitly the national publications in which it plans to advertise administrator  
15          and certificated staff positions. *See* Revised Plan at Appendix B. This list was derived  
16          from an internet search conducted in September 2014, which revealed that the top six  
17          newspapers in the United States are (with their respective circulations):

- 18                 • *USA Today* (2,528,437)
- 19                 • *The Wall Street Journal* (2,058,342)
- 20                 • *The New York Times* (1,683,855)
- 21                 • *The Los Angeles Times* (1,231,318)
- 22                 • *The Washington Post* (960,684)
- 23                 • *The Chicago Tribune* (957,212)

24          These newspapers have been included in the revised Appendix B to the ORR Plan.  
25          However, the list of publications in the revised ORR Plan is not necessarily exhaustive and  
26          may change depending on which publications will best serve TUSD’s goal of ensuring that  
27          vacancy notices enjoy the largest dissemination possible and that the advertising promotes  
28          diversity within TUSD, including attracting African-American and Latino candidates. In  
addition, to take full advantage of the prospective labor market noted in the Labor Market

1 Analysis, job postings should and will be included in newspapers in Phoenix, Nevada,  
2 California and New Mexico.

3 **IV. TUSD HAS REVISED THE PLAN TO COMPLY WITH THE**  
4 **COURT’S ORDER.**

5 **A. THE ORR PLAN HAS BEEN REVISED TO CLARIFY THAT ITS**  
6 **EXPRESS OBJECTIVE IS, PURSUANT TO THE USP, TO**  
7 **RECRUIT QUALIFIED AFRICAN-AMERICAN AND LATINO**  
8 **CANDIDATES FOR OPEN ADMINISTRATOR AND**  
9 **CERTIFICATED STAFF POSITIONS.**

10 The Court notes in its Order that the ORR Plan, in its Overview section, does not  
11 explicitly mention the USP goal of “recruit[ing] qualified African American and Latino  
12 candidates for open administrator and certificated staff positions.” The ORR Plan was  
13 developed, and since its inception has been meant, to help TUSD achieve the goal of a  
14 racially and ethnically diverse workforce, including recruiting and retaining qualified  
15 African-American and Latino candidates for open administrator and certificated staff  
16 positions, pursuant to USP § IV(C)(3). The Plan has been revised to state explicitly the  
17 District’s goal of recruiting qualified African-American and Latino candidates for open  
18 administrator and certificated staff positions. *See* Revised Plan at 3.

19 **B. TUSD INCLUDED FINANCIAL RECRUITMENT INCENTIVES IN**  
20 **ITS ORR PLAN BECAUSE THE LABOR MARKET ANALYSIS**  
21 **INDICATES THAT MARKETS OUTSIDE ARIZONA HAVE**  
22 **SIGNIFICANT NUMBERS OF AFRICAN AMERICAN AND**  
23 **LATINO CANDIDATES FOR ADMINISTRATOR AND**  
24 **CERTIFICATED STAFF CANDIDATES.**

25 The Court stated its concern that the financial incentives targeting African-American  
26 and Latino candidates “be clearly linked to the USP objectives of recruiting qualified  
27 African American and Latino candidates for open administrator and certificated staff  
28 positions, and candidates with Spanish language bilingual certifications.” ECF 1651 at 14.  
It required that the ORR Plan be “revised to clarify the links between the incentives and a  
USP goal” and asked that TUSD “explain why it chose to use financial incentives,  
alternatively, for recruitment rather than as proposed in the USP as a possible method of

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1 enabling current noncertificated African American and Latino employees to receive  
2 required certifications and educational degrees needed for promotions to administrators or  
3 certificated staff.” *Id.* at 14 – 15.

4 The financial recruitment incentives in the Plan are linked directly to the findings of  
5 the Labor Market Analysis. As described more fully in the Revised Plan, the LMA found  
6 that Nevada and California are large labor markets for African-American potential TUSD  
7 teachers, and New Mexico and California are large labor markets for Latino potential  
8 TUSD teachers. Revised Plan at 5 – 6. Because the LMA concluded that there were no  
9 negative disparities in African-American or Latino hiring between TUSD’s workforce and  
10 the local and state labor markets, TUSD believes that out-of-state recruitment will help it  
11 meet its USP mandate of recruiting qualified African-American and Latino administrators  
12 and certificated staff. *Id.*

13 TUSD also is offering a one-time “Relocation Expense Reimbursement” of up to  
14 \$10,000.00, which is meant to help recruit qualified African-American and Latino staff  
15 who, as explained above, are likely to be recruited from outside of Arizona. Revised Plan  
16 at 8. The “Dual-Language/Bilingual Recruitment and Retention Incentive” is also meant to  
17 help TUSD meet its USP obligation of recruiting qualified African-American and Latino  
18 administrators and certificated staff, and at the same time helps the District meet its USP  
19 obligation of focusing recruitment efforts on dual-language certified teachers. *See* ECF  
20 1450 at 33, USP § V(C)(1); *see also* Revised Plan at 8 – 9.

21 As made clear in the Revised Plan, at § VI(A)(8), the financial recruitment  
22 incentives described in the Plan do not foreclose offering financial incentives to existing  
23 African-American and Latino staff members who want to obtain certification. *See* Revised  
24 Plan at 11. The Plan has been revised to add a section reporting the results of a staff survey  
25 to gauge interest in certification. The District is in the developmental stage of formulating  
26 strategies to encourage and provide support for African-American and Latino  
27 noncertificated staff who are interested in pursuing certification. These strategies will be  
28 finalized, implemented and reported in the Annual Report for SY 2014-15. *Id.*

**C. METHODS FOR “GROWING OUR OWN” ARE INCLUDED IN APPENDIX F TO THE EXISTING ORR PLAN.**

The Court ordered TUSD to “include the Methods for Growing Our Own in § V, if there was an oversight or provide the Court with a copy of the ORR Plan that includes it, if the copy provided by the Special Master is inaccurate.” ECF 1651 at 15. TUSD directs the Court to Appendix F to the ORR Plan, titled “Prospective Administrative Leaders Plan.” ECF 1612-2 at 34. This appendix includes the proposed methods for “growing our own.”

**V. CONCLUSION**

Based on the foregoing, TUSD respectfully requests that the Court deny the Mendoza Plaintiffs’ Objection to the ORR Plan R&R.

DATED this 11<sup>th</sup> day of September, 2014.

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**ORIGINAL** of the foregoing filed via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case, as listed below.

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