

Mendoza Plaintiffs' Request for an R&R regarding the Teacher and Principal Evaluation Plans

July 30, 2015

On January 30, 2015, the Court ordered that "TUSD [] provide the Plaintiffs and Special Master with Teacher and Principal Evaluation Action Plans" and explained that "pursuant to the express and unambiguous terms of [] USP [Section I, D, 1], the Special Master and the Plaintiffs 'shall' have an opportunity to review and provide input regarding Teacher Evaluation Procedures and Principal Evaluation Procedures." (Doc. 1760 at 3, 6.)

On July 20, 2015, the District provided the parties with its Governing Board-approved "principal evaluation tool" and "principal evaluation model" (collectively, "Final PEP"), and "Danielson framework for teacher evaluation instrument" and "teacher evaluation model" (collectively, "Final TEP").¹ As detailed below, Mendoza Plaintiffs request an R&R on a number of issues that they have been unable to resolve with the District.

USP Section IV, H requires that the District review and amend as appropriate teacher and principal evaluations so that 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..."

It further explains that the above assessments "be included in any future teacher and principal evaluation instruments that may be implemented. All teachers and principals shall be evaluated using the same instruments, as appropriate to their position."

Academic Growth Measures

The inclusion of provisions regarding teacher evaluations in the USP and the requirement that teachers be "evaluated using the same instruments" stemmed from the

¹ Mendoza Plaintiffs' references to pages of the Final TEP and Final PEP specifically refer to pages of the "teacher evaluation model" and "principal evaluation model," respectively.

parties' desire to develop a meaningful, accurate and fair teacher evaluation process that furthers the goals of the USP by, among other things, allowing for the identification of teachers in need of professional support. In its Final TEP, the District acknowledges the "limitations [of] standardized tests in ELA [English language arts] and Math [in that they] can measure the academic impact of only about a quarter of our teachers (called 'A' teachers). The non-ELA and non-Math teachers (called 'B' teachers) make up the other three-quarters of the teaching core. The 'B' teachers have been assigned growth points in the past based on the school or district label. This year, TUSD will make all teachers an 'A' teacher. Math and ELA teachers (formally known as 'A' teachers) will use the District's quarterly assessments in math and ELA to show academic growth. All other teachers (formally known as 'B' teachers) will administer pre-post assessments to their students that are relevant to their course material." (Final TEP at 1.) Mendoza Plaintiffs agree that such an overall approach is preferable to using "school or district label[s]," which are not specific to the performance of the evaluated teacher.

However, notwithstanding its indication that it "will make all teachers an 'A' teacher," the District proposes that "Grades 3-5 and math and ELA teachers in grades 6-10 will use the quarterly assessments as their pre-post assessment. The remaining courses in grades 6-12 will use the category assessments developed by the Curriculum and Instruction department..." (Final TEP at 2; *Compare with* TUSD's May 29 "Teacher Effectiveness Evaluation Model 2015-16 (Draft H)" ("May 29 Teacher Eval. Model") at 2 ("Grades 3-12 will use category assessments developed by [the] Curriculum and Instruction Department...").) Mendoza Plaintiffs do not understand, nor has the District explained, why TUSD now intends to use quarterly math and ELA assessments to measure the academic growth of non-math/ELA teachers who instruct third through fifth graders. The implementation of such a proposal would be extremely unfair to that subset of teachers as they alone would have their academic growth (totaling 1/3 of their evaluation outcome (Final TEP at 4)) measured by other teachers' performance. Such a result conflicts with the development of a fair and accurate evaluation process that was contemplated in the USP, and in practice would render meaningless the weight of the USP-required assessments (within the teacher evaluation instrument) in these teachers' overall evaluation outcomes.

Mendoza Plaintiffs therefore ask that the Special Master request that the Court order the District to develop a pre-post assessment(s) that it can apply to these teachers so that the academic growth component of their evaluation is based on their students' academic growth.

Teachers' Evaluators

As discussed above, the inclusion of provisions regarding teacher and principal evaluations in the USP stems from the desire to create a fair evaluation process that furthers the purposes of the USP, including by referring low-performing teachers for additional support to improve, for example, their understanding of culturally responsive pedagogy. In its May 29 Teacher Eval. Model, the District identified a major flaw in its teacher evaluation process. In describing "Cut Scores from 2013-14," the District

indicated that the “only way a teacher can score ‘ineffective’ with the cut scores is to score about 32 points (out of a possible 88) on the Danielson observation. No teacher scored below 39 on the Danielson observation last year (2013-14).” (May 29 Teacher Eval. Model at 5-6.) The District further described that “96.61 percent of all teachers in TUSD were considered either ‘Effective’ or ‘Highly Effective.’ Additionally, this data indicates that only 3.38 were considered ‘Developing’ or ‘Ineffective.’ *This data calls into question the validity of the Teacher Evaluation Instrument.*” (*Id.* (emphasis added)) The District then notes that new cut scores would likely result in “[a]n appropriate (normal) distribution... [and would] be more in line [with] psychometric standards and would also provide more discriminating data on teacher performance.” (*Id.*)²

While the Mendoza Plaintiffs initially focused on the need for new cut scores to address the major flaw in the teacher evaluation process described above, (*see* Mendoza Plaintiffs’ June 9 Comments), they now understand, in light of the comments and research provided by the Special Master, that such an approach would leave unaddressed the root cause of the flaw. Specifically, the cut score data the District described as “call[ing] into question the validity of the Teacher Evaluation Instrument” unambiguously confirms that, as the Special Master explained in his June 11 email, principals tend to score all their teachers well, which defeats the very purpose of conducting teacher evaluations. Mendoza Plaintiffs additionally found the research on principal and other “school leader” evaluations of teachers, provided by the Special Master on July 1, to be convincing and to fully explain the issue relating to the District’s cut score data.

They therefore believe that to make teacher evaluations accurate and meaningful as contemplated in USP Section IV, H, 1, principals and assistant principals should not serve as teachers’ evaluators. Indeed, if principals or assistant principals once again were to serve as teacher evaluators and find that no teachers are “ineffective,” as the District acknowledged to have occurred in the 2013-14 school year, (May 29 Teacher Eval. Model at 5-6), no teachers would be referred to additional support programs, (an outcome which Mendoza Plaintiffs understand to have occurred for the 2013-14 school year based on the information they have been provided.) The USP included Section IV, J, 4³ so that “certificated staff [who have been] identified pursuant to their evaluations as in need of improvement” would be provided “additional targeted professional development.” It is inconceivable that the District does not have a single teacher whose level of performance does not warrant improvement through targeted professional development.

² Mendoza Plaintiffs note that in TUSD’s June 22 Response, the District asserts that it “is not revising the cut scores at this time. The District will review the distribution of scores in the summer 2016-17 to assess the impact of the new surveys on teacher performance.” (TUSD’s June 22 Response at 3.) In a somewhat conflicting statement, the Final TEP indicates that “[i]t is recommended that new cuts [be] established to provide a more realistic distribution for teacher effectiveness” but no such new cut scores are articulated. (Final TEP at 7.)

³ USP Section IV, I, 2 also contemplates teacher referral to support programs based on “annual evaluations.”

Mendoza Plaintiffs therefore ask the Special Master to recommend that the Court order the District not to use school principals or assistant principals as teacher evaluators or, in the alternative, to be provided rigorous training in the evaluation tool and the evaluation process to be administered and overseen by a person or persons selected by the Special Master.

Weight of Student Surveys in Teacher Evaluations

The USP requires that “adequate weight” be given to student surveys in teachers’ evaluations. (USP Section IV, H, 1, (iii).) The inclusion of Section IV, H, 1, (iii) in the USP, as well as the specific reference to the “adequate weight” that must be given to surveys, was included in the USP to emphasize that those surveys are to be given meaningful weight in teachers’ overall evaluations. In their March 19 Comments, the Mendoza Plaintiffs objected to the District’s omission of student surveys in teacher evaluations. In their April 10 comments and June 9 comments, Mendoza Plaintiffs objected to the 3% and revised 10% weight given to these surveys, respectively, because they do not involve the meaningful weight that the USP contemplated surveys would be given in teachers’ overall evaluations. Indeed, in the District’s May 29 Teacher Eval. Model, the District acknowledged that “the results of the Student Survey (10%) ... w[ould] have a negligible impact on a teacher’s overall score.” (TUSD’s May 29 Teacher Eval. Model at 4.)

In an effort to resolve the dispute, in their June 9 Comments, the Mendoza Plaintiffs indicated that they “would accept this [10%] weight allocation if, as the Special Master proposes, the District agrees to undertake an evaluation of its teacher evaluation process, and to better align its student surveys to assess the behaviors on which teachers are assessed as part of the TEL.” On June 9, the District indicated that developing validity standards of the evaluation process is complicated and potentially beyond the scope of the evaluations. Additionally, although Mendoza Plaintiffs sought “*better align[ment]*” of student surveys, the District indicated that “to align *all* the different measures in the teacher and principal evaluations would become overly cumbersome and potentially redundant.” (TUSD’s June 9 email; emphasis added.) In TUSD’s June 22 Responses, in ambiguous and conflicting statements, the District indicated that it “undertakes an evaluation of its teacher evaluation process, in collaboration with TEA, on an annual basis and will continue this practice. As part of an ongoing process, TUSD will continually evaluate and realign (where necessary) its student surveys to assess the behaviors on which teachers are assessed.”

To be clear, Mendoza Plaintiffs do not understand the District’s June 22 response to be the agreement Mendoza Plaintiffs sought to resolve the dispute, but do reiterate that they would agree to a 10% weight for student surveys in teacher evaluations if the District undertakes the commitment Mendoza Plaintiffs sought on June 9. Mendoza Plaintiffs specifically seek that the district “commit[] to evaluating the *overall validity* of the evaluation process” as described in the Special Master’s June 5 email, and that the District better align student surveys to the behaviors on which teachers are assessed by having the surveys and teacher evaluation instruments use “the same terms and

concepts... to describe behaviors expected [of teachers] whenever possible,” as described in the Special Master’s April 21 comments. Given the Special Master’s expertise, Mendoza Plaintiffs’ would defer to his judgment on whether there exists adequate alignment of the student surveys with the teacher evaluation instruments.

Absent these commitments from the District, Mendoza Plaintiffs request that the Special Master address the issue of student survey’s inadequate weight in his R&R.

Weight of Teacher and Student Surveys in Principal Evaluations

The USP requires that “adequate weight” be given to “student and teacher surveys” in principal evaluations. (USP Section IV, H, 1, (iii).) Again, the inclusion of Section IV, H, 1, (iii) in the USP, as well as the specific reference to the “adequate weight” that must be given to surveys, was included in the USP to emphasize that those surveys are to be given meaningful weight in principal evaluations. In the Final PEP, the District proposes that a total of weight of 6% be given to teacher surveys (the SAI Survey and the “School Quality Survey”), and that 4% be given to student surveys. While the primary focus of Mendoza Plaintiffs’ comments have been on the weight given to student surveys in teacher evaluations, they equally object to the weight given to teacher and student surveys in principal evaluations because they do not accord any meaningful weight to those surveys. Like the 10% weight accorded to student surveys in teacher evaluations, which the District found to be “negligible,” the 10% total weight given to teacher and student surveys in principal evaluations is also negligible and therefore fails to comply with USP Section IV, H, 1, (iii).

Mendoza Plaintiffs thus request that the Special Master include in his R&R a recommendation that surveys be accorded a meaningful and “adequate weight” in principal evaluations, as the USP requires.

Lack of Process for Referral for Additional Supports and Lack of Professional Development for Evaluators

As discussed above, USP Section IV, J, 4 requires administrator and certificated staff referral to support programs, including additional professional development, based on evaluation outcomes. In addition, USP Section IV, J, 3, c requires that the District provide “[a]ny other training contemplated herein,” which includes the training necessary for teacher and principal evaluators to conduct evaluations. However, the District’s failure to provide an adequate response to Mendoza Plaintiffs’ inquiries regarding professional development for evaluators, and the evaluation outcomes that would warrant referral for additional support make clear that if full effect is to be given to these USP provisions, Court intervention is required.

First, Mendoza Plaintiffs requested that the District describe the evaluation outcomes that would warrant referral to support programs in each of their March 19 and April 10, 2015 comments. In its April 22 responses, the District indicated that the “Teacher Support Plan includes this information.” (See TUSD’s April 22 Responses at

4.) After reviewing that plan, Mendoza Plaintiffs were constrained to inform the District that they “did not find any reference to the type of evaluation outcomes that would result in a referral for additional professional development or support in the Teacher Support Plan, notwithstanding the District’s indication that such information is in the plan. The Teacher Support Plan merely indicates that [t]eachers shall be referred to the support program by school- or District-level administrators based on evidence (e.g., from . . . annual evaluations).” (Mendoza Plaintiffs April 30 Comments at 1-2.) The District having failed for months to provide a response, on June 9, 2015, Mendoza Plaintiffs for the fourth time asked “what type of evaluation outcome would result in a referral for additional professional development and support under each of the TEP and PEP? Mendoza Plaintiffs presume that, at a minimum, those teachers falling into the ‘Ineffective’ category and principals in the ‘Unsatisfactory’ category would be referred for additional support.” (Mendoza Plaintiffs’ June 9 Comments.) Rather than confirm that the lowest performance classifications that are possible would warrant referral for additional support or to provide any clarification in this regard, the District responded by directing the Mendoza Plaintiffs to “[s]ee the Teacher Support Plan document,” (TUSD’s June 22 Response), the very document Mendoza Plaintiffs had already informed the District did not contain the information sought.

Similarly, Mendoza Plaintiffs requested information on the amount and/or type of professional development teacher and principal evaluators would receive in each of their March 19, March 20, and April 10 comments. With regard to these requests, the District also referred Mendoza Plaintiffs to another plan, indicating that the information sought “exist[s] in the professional development plan that has already been sent to the parties.” (TUSD’s April 22 Response at 3.) After reviewing the referenced plan, the Mendoza Plaintiffs informed the District that “[t]hat document does not describe any professional development that evaluators would receive to prepare them to evaluate teachers.” (Mendoza Plaintiffs’ April 30 Comments at 1.) Subsequently, in their June 9 Comments, Mendoza Plaintiffs reminded the District that the response to their question was not in the “professional development plan” and “again ask[ed] that the District provide them sufficient information on the professional development evaluators, teachers, and principals would receive so that they may assess the adequacy of that training.” In its June 22 Response, the District indicated that “training is integrated throughout all of the professional development during the school year. The evaluation is part of every discussion from MTSS to curriculum to culture and climate.”

While it presumably is true that the professional development necessary for teachers and principals to develop the skills on which they will be assessed may be delivered through various professional development sessions delivered during the school year, those skills are different from the ones necessary to effectively, accurately and fairly evaluate teachers and principals. Moreover, the Governing-Board adopted 2015-16 USP Budget includes no allocations of 910G funds for professional development under the IV.11 activity code for “Evaluation Instruments,” the only activity code under which evaluator training allocations would make sense. (*See* Doc. 1829-1 at 44-45.) Notably, when the Mendoza Plaintiffs informed the District of this and asked whether the

“professional development related to teacher and principal evaluations [would] be paid from M&O funds” (Mendoza Plaintiffs’ June 9 Comments), they received no response.

Mendoza Plaintiffs’ repeated inability to obtain information regarding evaluator training and the evaluation outcomes that would warrant additional support, information that should be readily available if the District is prepared to implement USP Sections IV, J, 4 and IV, J, 3, c, lead Mendoza Plaintiffs to believe that the District has failed to prepare evaluation plans that comport with the referenced USP provisions.

They therefore request that the Special Master recommend to the Court that it order the District to develop a plan to train teacher and principal evaluators, and determine the evaluation outcomes that would warrant referral for additional support.

Assessment of Teachers’ Use Of Classroom And School-Level Data To Improve Student Outcomes, Target Interventions, And Perform Self-Monitoring

USP Section IV, H, 1, I, (ii) requires that teacher evaluations give adequate weight to “use of classroom and school-level data to improve student outcomes, target interventions, and perform self-monitoring.” In their March 19 and April 10 comments, the Mendoza Plaintiffs informed the District that the teacher evaluation plans/instruments and revisions it had provided to the parties failed to adequately give weight to the mandated assessment. In TUSD’s April 22 Responses, the District responded to Mendoza Plaintiffs comment by directing them to “See TEP section 1(f).” (TUSD’s April 22 Response at 4.) Upon reviewing that section of the teacher evaluation instrument, Mendoza Plaintiffs informed the District that it in fact does not comply with USP Section IV, H, 1, I, (ii). On May 4, 2015, The Department of Justice informed the District that it also “do[es] not believe [the evaluation instrument] adequately incorporates the USP (IV), (H), (1), (ii) requirement.” Upon reviewing the District’s May 29 revised teacher evaluation instrument, Mendoza Plaintiffs again informed the District that “as far as they can tell, since the time the Mendoza Plaintiffs first raised this issue in March, the District has made no effort to revise its TEP to comply with USP Section IV, H, 1, (ii).” (Mendoza Plaintiffs’ June 9 Comments.)

Most recently, in TUSD’s June 22 Responses, the District asserted that “[t]he rubric takes into account teacher’s use of data to improve student outcomes, target interventions, and to perform self-monitoring. If these activities are not present, teachers will score lower on the rubric therefore the tool gives adequate weight to these activities pursuant to the USP.” Mendoza Plaintiffs have carefully been monitoring proposed revisions to the TEP for compliance with USP Section IV, H, 1, I, (ii), and have not seen anything to suggest the District has seriously incorporated this mandated assessment into its TEP. Nor would the existence of a correlation between “teacher’s use of data to improve student outcomes, target interventions, and to perform self-monitoring” and “lower” scores, as the District seems to assert exists, involve the kind of “adequate weight” the USP requires be given to that assessment.

Academic Growth Component: PEP

In the Final PEP, the District proposes that the “Student Academic Progress Component” make up 33% of principals’ overall evaluation score. (Final PEP at 1.) However, its description of how that component will be measured makes little sense. Indeed, it appears that the vast majority of the discussion on the component (pages 3-5) is copied from the Final TEP. The only details the District provides specific to principals is within the “Scoring and point allocation” subsection (which describes how pre- and post-assessments will weigh in teacher evaluations) where it indicates that “Principals will receive the aggregate school total for all teachers in the school.” (*See Id.* at 5.) This does not make sense however because, in context, the measure appears to exclude consideration of math/ELA teachers’ student growth scores, which would not involve pre- and post-assessments. More importantly, because the number of teachers varies by school, it makes no sense that principals would be measured by the “aggregate” total of teachers’ academic growth score. Mendoza Plaintiffs therefore request an R&R on the issue, but anticipate that the error was inadvertent and welcome any District attempt to correct and/or provide clarification on the academic progress component of principal evaluations.

Academic Growth Component: TEP (Sample Size of Students)

In their June 9 Comments, the Mendoza Plaintiffs expressed their concern and “agree[ment] with the Special Master that the 30 student sample size proposed [for measuring student academic growth with pre- and post-assessments] may be problematic in schools with high mobility rates. They would support an ‘oversample’ at those schools as proposed by the Special Master, but would also consider any alternative methods the District may propose to deal with the issue.” Later that day, the District indicated that it “agree[s] with the small sample size concerns... for grades 6-12, we can sample 2 classes to ensure a minimum of matched pre-posts of 30 students.” However, that commitment is not reflected in the Final TEP, which only indicates that “pre-post category assessments will be administered by a sampling strategy so that each teacher of record will have a minimum of 30 students participating in the pre-post category assessment.” The need to have the District’s June 9 commitment reflected in the Final TEP is underscored by the fact that its Governing Board has “approved a target funding formula for the purpose of reducing class sizes across the District for SY 2014-15, which is 1:27.” (Court’s Order dated 10/22/15 (Doc. 1705) at 3 n.1 (citing TUSD’s 2014-15 USP Budget Response (Doc. 1678) at 7).)

Mendoza Plaintiffs therefore request that the Special Master recommend that the District be ordered to expressly include its June 9 commitment in the Final TEP.