

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
3 PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
4 Los Angeles, California 90067-3206
Telephone: (310) 557-2900
5 Facsimile: (310) 557-2193

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
8 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
9 634 S. Spring St.
11th Floor
10 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs
12

13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA
15

16 Roy and Josie Fisher, et al.,
17 Plaintiffs,
18 v.
19 United States of America,
20 Plaintiff-Intervenors,
21 v.
22 Anita Lohr, et al.,
23 Defendants,
24 Sidney L. Sutton, et al.,
25 Defendant-Intervenors,
26

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’
CLARIFICATIONS AND OBJECTION
TO THE SPECIAL MASTER’S REPORT
AND RECOMMENDATION
REGARDING PRINCIPAL AND
TEACHER EVALUATION PLANS**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et al.,

7 Defendants.

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11 **INTRODUCTION**

12 On July 30, 2015, the Mendoza Plaintiffs requested an R&R to resolve disputes
13 regarding the Tucson Unified School District, No. One (“TUSD” or the “District”) teacher
14 evaluation plan (“TEP”) and principal evaluation plan (“PEP”). On August 10, the District
15 provided its response to Mendoza Plaintiffs’ R&R request (“TUSD’s August 10
16 Response”) (attached as Exhibit C to the Special Master’s R&R; Doc. 1836-6).¹ On
17 August 13, the Special Master provided the parties a memo in which he provided proposals
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19 ¹ In TUSD’s August 10 Response, the District inaccurately asserted that, in their R&R
20 request, Mendoza Plaintiffs developed “arguments based on an out-of-date version of the
21 plan. Objections should relate to the final, revised TEP version provided Plaintiffs and the
22 Special Master on July 20, 2015 – not the previous version provided to them two months
23 earlier.” On August 11, Mendoza Plaintiffs corrected the District’s inaccuracy, stating that
24 the “R&R request is clearly and expressly directed to the ‘final, revised TEP version’
25 received on July 20, 2015 as is unambiguously stated in the first page and repeated
26 throughout the request with multiple references to the ‘July 20, 2015’ ‘Final TEP’ and
27 ‘Final PEP.’” They further provided a version of their R&R request with all such
28 references highlighted (*see* Mendoza Counsel August 11, 2015 email and attachment,
attached hereto as Exhibit A) and requested that “[t]o avoid any Court confusion... the
Special Master expressly indicate in his R&R that Mendoza Plaintiffs’ R&R request does
in fact address the Governing Board-approved July 20 teacher and principal evaluation
plans.” *Id.* Due to the Special Master’s indication that Mendoza Plaintiffs merely
“contest” the District’s inaccuracy (rather than to provide the express indication they
sought) and the District’s accusation that Mendoza Plaintiffs “caus[ed] District staff to
expend more time and energy responding to [the Mendoza R&R request] based on an out-
of-date version of the plan,” Mendoza Plaintiffs are constrained to provide clarification here
to avoid any potential Court confusion.

1 to resolve outstanding TEP and PEP disputes. On August 19, 2015, Mendoza Plaintiffs
2 provided the parties their response to the Special Master’s August 13 proposals (“Mendoza
3 Plaintiffs’ August 19 Response”) (attached to the TEP/PEP R&R as Exhibit E (Doc. 1836-
4 8)). On August 28, 2015, the Special Master filed his TEP/PEP R&R (Doc. 1836).

5 Mendoza Plaintiffs clarify their position on various TEP/PEP issues below as the
6 Special Master’s R&R does not sufficiently detail those positions, and therefore may
7 inadvertently confuse the Court. They also object to the Special Master’s recommendation
8 that the District justify (but not revise) its current cut scores used to determine teachers’
9 performance as the District’s own data and express statements that that data “call[s] into
10 question the validity of the teacher evaluation instrument” demonstrate that the cut scores
11 fail to adequately identify ineffective teachers in need of additional professional support.
12 They therefore request that if the Court orders the District to undertake the pilot study
13 proposed by the Special Master, that it also require the District to revise its cut scores to
14 accurately identify ineffective teachers under USP Section IV, J, 4.

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16 **CLARIFICATIONS AND OBJECTION**

17 *Mendoza Plaintiffs’ Agreement with the Special Master’s Proposal for a*
18 *“Pilot Study” Involving Trained Evaluators is Conditioned on Plaintiffs’ Ability to*
19 *Revisit the Issue if TUSD Abandons Such a Study and the District’s Development of*
20 *Revised Cut Scores*

21
22 In response to the existing disagreement regarding the adequacy of principal and
23 principal assistants to serve as teacher evaluators, the Special Master proposes “that the
24 Court order that a pilot study be conducted that will allow comparison of assessments of
25 teaching practice by principals and assistant principals on the one hand and trained
26 evaluators on the other. It should be possible to design such a pilot within the next 3 to 4
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1 weeks and implement it this school year.” (TEP/PEP R&R at 7.) He indicates that the
2 “Mendoza Plaintiffs support this proposal.” (*Id.*)

3 However, the Special Master does not make any reference to the fact that Mendoza
4 Plaintiffs’ agreement with his proposal is conditioned on “District [agreement] (1) that the
5 issue can be revisited if it does not ultimately move forward with the pilot study after it is
6 designed, and (2) to revise its cut scores to more accurately identify ‘ineffective’
7 teachers[.]” (*See* Mendoza Plaintiffs’ August 19 Response.)

8
9 *Mendoza Plaintiffs Do Not Support the Pilot Study for the Purpose of*
10 *“evaluat[ing] cut scores” and Object to the Special Master’s Recommendation that*
11 *the District Justify Current Cut Scores Because the District’s Own Data and*
12 *Statement that Cut Scores “Call into Question the Validity of the Teacher*
13 *Evaluation Instrument” Demonstrate that No Such Justification Exists*

14
15 With regard to cut scores, the Special Master recommends that “this matter be
16 ‘resolved’ by having the District commit to describing and justifying the bases on which it
17 establishes cut scores that differentiate levels of teacher proficiency.” (TEP/PEP R&R at
18 8.) The Special Master further states that “Mendoza [P]laintiffs support the pilot study
19 proposed above and believe that [it] should be used to evaluate cut scores.” (*Id.*)

20 First, Mendoza Plaintiffs clarify that they support the proposed pilot study for the
21 purpose of evaluating who teacher evaluators should be, not for the purpose of
22 “evaluat[ing] cut scores.”

23 Second, they object to the Special Master’s recommendation that the District
24 explain and justify cut scores because the District’s own data and statements reveal that
25 those cut scores are indisputably inadequate to identify ineffective teachers, as detailed
26 below. (*See* Mendoza Plaintiffs’ R&R request (attached to the TEP/PEP R&R as Exhibit
27 B); Mendoza Plaintiffs’ August 19 Response.) There therefore exists no justification for
28 the use of those cut scores.

1 USP Section IV, J, 4 requires that “certificated staff [who have been] identified
2 pursuant to their evaluation as in need of improvement” be provided “additional targeted
3 professional development.” Mendoza Plaintiffs first understood that the under-
4 identification of ineffective teachers in the 2013-14 school year resulted from the need to
5 revise cut scores (*see* Mendoza Plaintiffs R&R Request at 3), but then understood that the
6 root cause of such under-identification was principals’ and assistant principals’ service as
7 teacher evaluators, as detailed in the TEP/PEP R&R Request. If the District were to
8 proceed with the Special Master’s recommended pilot study and have principals again
9 serve as teacher evaluators, cut scores would have to be revised so that the significant
10 under-identification of teachers in need of additional support that occurred in the 2013-14
11 school year does not reoccur in the 2015-16 school year.

12 Specifically, as the Special Master indicates, “the USP cut scores came nowhere
13 near identifying 4-6% as ineffective” in the 2013-14 school year. (TEP/PEP R&R at 7.)
14 Further, the District has itself conceded that its own 2013-14 data² “calls into question the
15 validity of the Teacher Evaluation Instrument” and that “[c]hoosing different cut scores
16 would reduce the concern.” (TUSD’s May 29 Model at 6.) Thus, given the District’s data
17 and acknowledgement of the inadequacy of its existing cut scores in identifying ineffective
18 teachers, there can exist no “justif[ication of] the bases on which it establish[ed] cut
19 scores.” Therefore, to give USP Section IV, J, 4 its intended effect, if this Court orders the
20 District to proceed with the Special Master’s proposed pilot study, it should also order the
21 District to revise its cut scores to better identify underperforming teachers in need of
22 additional professional support.

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25 ² The District demonstrated the existence of a very significant disparity between the
26 number of “ineffective” teachers in the 2013-14 school year (*see* TUSD’s May 29, 2015
27 “Teacher Effectiveness Evaluation Model 2015-16 (Draft H)” (“TUSD’s May 29 Model”)
28 at 6 (Figure 5), attached hereto as Exhibit B.), which Mendoza Plaintiffs understand to
correspond to only 14 teachers (TUSD’s August 10 Response at 4), and what the District
calls “[a]n appropriate (normal) distribution” (*see* TUSD’s May 29 Model at 6, 7).

1 *The Mendoza Plaintiffs Only Agree with The Special Master’s Proposal to*
2 *Develop a Chart Demonstrating How Teaching and Leadership are Reflected in*
3 *Evaluation Instruments if The District Also Commits to Providing that Chart to Its*
4 *Teachers and Principals*

5
6 The Special Master recommends that the issue of alignment of observational
7 measures in teacher and principal evaluations “be resolved by the District developing a
8 chart showing how important aspects of teaching and leadership are reflected in these
9 [evaluation] instruments... The Mendoza plaintiffs agree with this proposal.” (TEP/PEP
10 R&R at 9.) However, Mendoza Plaintiffs only agree with the proposal if the District
11 additionally “commits to providing these charts to teachers and principals, as the Special
12 Master implicitly propose[d] in his August 13 memo.” (*See* Mendoza Plaintiffs’ August
13 19 Response at 2.) Mendoza Plaintiffs therefore request that in addition to the
14 development of the proposed chart identifying how aspects of teaching and leadership are
15 reflected in evaluation instruments, that the District also be expressly ordered to provide
16 this chart to teachers and principals.³

17
18 *The Special Master’s R&R Fails to Address the Issue of the Weight of*
19 *Student Surveys in Teacher Evaluations*

20
21 In their R&R request, the Mendoza Plaintiffs raised the issue of the weight allocated
22 to student surveys for teachers’ evaluation under USP Section IV, H, 1, (iii). (*See*
23 Mendoza Plaintiffs’ R&R Request at 4, 5.) In an attempt to resolve the dispute of whether
24 the District’s proposed 10% weight constitutes adequate weight under USP Section IV, H,
25 1, (iii), Mendoza Plaintiffs’ indicated that they would withdraw their R&R request if the

26
27 ³ Mendoza Plaintiffs understand that in the TEP/PEP R&R, the Special Master implicitly
28 proposes that these charts be provided to teachers and principals as he references that the
charts would “mak[e] clear to principals and teachers behaviors that are important for them
to know about and be able to do.” (TEP/PEP R&R at 9.)

1 District “commit[s] to evaluating the overall validity of the [teacher] evaluation process’
2 as described in the Special Master’s June 5 email [providing a proposal to resolve the
3 disagreement], and that the District better align the student surveys to the behaviors on
4 which teachers are assessed by having the surveys and teacher evaluation instruments”
5 align. (*Id.* at 4) The Mendoza Plaintiffs did not receive these commitments. (*See*
6 Mendoza Plaintiffs’ R&R Request at 5.)

7 In light of the Special Master’s August 13 Proposals to Resolve Teacher and
8 Principal Evaluation Plan Disputes (Exhibit D (Doc. 1836-5) to the TEP/PEP R&R),
9 Mendoza Plaintiffs stated that “[a]lthough the Special Master did not include a specific
10 proposal to resolve this issue, Mendoza Plaintiffs are willing to accept the 10% weight
11 currently proposed for student surveys in teacher evaluations if the District agrees to the
12 Special Master’s August 13 proposal that the District develop a chart demonstrating how
13 teaching and leadership are reflected in evaluation instruments and provide it to teacher
14 and principals, and that it “commit[] to evaluating the overall validity of the teacher
15 evaluation process, as the Special Master described in his June 5, 2015 email.” (Mendoza
16 Plaintiffs’ August 19 Response at 4.) Mendoza Plaintiffs have received no such
17 commitments from the District. The Special Master should therefore have reported the
18 dispute in the TEP/PEP R&R and provided the Court with his recommendation, but he
19 failed to do so. Mendoza Plaintiffs’ therefore request that the Court order the Special
20 Master to prepare a report and recommendation on this issue.

21 22 **CONCLUSION**

23 For the reasons set forth above, this Court should sustain the objection of the
24 Mendoza Plaintiffs.
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1 Dated: September 4, 2015

Respectfully submitted,

2 PROSKAUER ROSE LLP
3 LOIS D. THOMPSON
4 JENNIFER L. ROCHE

5 MALDEF
6 JUAN RODRIGUEZ
7 THOMAS A. SAENZ

8 /s/ Juan Rodriguez
9 JUAN RODRIGUEZ
10 MEXICAN AMERICAN LEGAL
11 DEFENSE AND EDUCATIONAL FUND

12 *Attorney for Mendoza Plaintiffs*

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2015, I electronically submitted the foregoing Mendoza Plaintiffs' Clarifications and Objection to the Special Master's Report and Recommendation Regarding Principal and Teacher Evaluation Plans to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.
wbrammer@rllaz.com

Oscar S. Lizardi
olizardi@rllaz.com

Michael J. Rusing
mrusing@rllaz.com

Patricia V. Waterkotte
pvictory@rllaz.com

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

Zoe Savitsky
Zoe.savitsky@usdoj.gov

Anurima Bhargava
Anurima.bhargava@usdoj.gov

James Eichner
James.eichner@usdoj.gov

Andrew H. Marks
amarks@markslawoffice.com

Dr. Willis D. Hawley
wdh@umd.edu

Dated: September 4, 2015 ___s/___ Juan Rodriguez___