

Mendoza Plaintiffs' Clarification Regarding TUSD's September 15, 2015 Alignment Response to the Special Master's Draft R&R on the Teacher Evaluation Plan

September 22, 2015

On September 15, 2015, the District provided the parties and Special Master with "TUSD's Alignment Response to the Special Master's Draft R&R on the Teacher Evaluation Instrument."<sup>1</sup> Mendoza Plaintiffs were disappointed and surprised by the number of mischaracterizations and omissions in the "Collaboration History" section of the District's response, and are therefore constrained to correct the District's inaccuracies here to clarify the record. They additionally indicate the status of their R&R requests so that the Special Master does not spend additional time reporting to the Court issues no longer requiring Court intervention.

As an initial matter, although the parties and Special Master have not always been perfectly consistent in their use of the terms "teacher evaluation instrument" (TEI) and "teacher evaluation plan" (TEP), those distinctions are necessary to understand some of the inaccuracies in the District's September 15 TEP Alignment Response. The TEI refers to the actual instrument that will be used in conducting in-person evaluations of teachers' instruction, which the District has indicated maps on to the Danielson Framework for Teaching. The TEP refers to the District's plan to evaluate teachers and identify those that are underperforming for referral to additional professional support through assessments such as the student surveys and TEI evaluation, among others.

Contrary to the District's assertion on page one of its alignment response, a "first draft of the revised instrument" was not provided on February 19, 2015. First, no evaluation "instrument" was provided. Rather what was provided on February 19 was only a general plan regarding the assessments that would be used to determine teacher evaluation outcomes and which included references to an evaluation instrument *that had not been provided*. (*Compare* February 19 Teacher Evaluation Memo, attached to the District's September 15 TEP Alignment Response as Attachment 1 *with* District's March 30 TEI, attached to the District's September 15 Alignment Response as Attachment 5 (evaluation instrument).) Second, in its February 19 submission, the District claimed that the not-yet-provided evaluation instrument already "addresses CRPI within its structure," and thus, contrary to the District's assertion, no revision had been made to the instrument up to that point to comply with the Court's January 30, 2015 Order to develop a teacher evaluation plan that complies with the USP. (February 19 Teacher Evaluation Memo at 2.)

Because no evaluation instrument was provided on February 19, the instrument the District describes as "Version 2.0 of the TEI" provided to the parties on March 30 and

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<sup>1</sup> Although that response indicates that the Special Master "submitted draft Reports and Recommendations on the Teacher Evaluation Procedures and Principal Evaluation Procedures" on September 5, its alignment response is directed at the Special Master's filed August 28 R&R (Doc. 1836).

included within its April 3 TEP was actually the first version of the evaluation instrument provided to the Plaintiffs and Special Master.<sup>2</sup> Moreover, the District's assertion that the Mendoza Plaintiffs "acknowledged an improvement in the infusion of CRP into the instrument" is materially misleading. Mendoza Plaintiffs indicated that the April 3 revised instrument was a "step in the right direction" because it was the first and only District attempt they had seen up to that point to modify the instrument to comply with the USP and the Court's January 30 Order. The District fails to include in its recital the fact that the Mendoza Plaintiffs additionally stated that "the rubric still falls far short of capturing [CRP] practices... Most of the redlined revisions are not aimed at infusing the rubric with an assessment of teacher's use of CRP; rather, they consist of the mere addition of words and phrases like 'and culture,' 'cultural,' and 'cultural background.' Notably absent from revisions to the Danielson rubric is any reference to race or ethnicity, notwithstanding that the USP expressly requires that the evaluation instrument give weight to "teacher efforts to include, engage, and support students from diverse **racial, ethnic**, cultural, and linguistic backgrounds using" CRP. USP Section IV, H, (i), (I)." (Emphasis in original.)

In addition, in its September 15 TEP Alignment Response, the District expends a great amount of effort in its attempt to describe the cut score and teacher evaluator issues as having been untimely raised. ("In none of these [pre-May 29] submissions did any party or the Special Master voice any concerns regarding the cut scores for teachers, nor the identity of their evaluators," "on June 16, 2015, the Special Master raised the evaluator issue for the first time more than two and a half months after the close of the objection period on March 21.") What the District fails to include is the fact that those issues could not have reasonably been identified or raised by the parties and Special Master before the "close of the objection period on March 21" because the District first revealed the inadequacy of cut scores and teacher evaluators in its **May 29** Teacher Evaluation submissions. (See May 29 Teacher Evaluation Submission, attached to the District's September 15 TEP Alignment Response as Attachment 16 (conceding that its data "calls into question the validity of the Teacher Evaluation Instrument," that "[c]hoosing different cut scores would reduce the concern," and demonstrating the existence of a very significant disparity between the number of teachers identified as "ineffective" in the 2013-14 school year and what the District called "[a]n appropriate (normal) distribution").<sup>3</sup> (A more detailed description of these issues raised by the

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<sup>2</sup> Although the District describes its April 3 documents as a "more detail-intensive draft," that submission did not include revisions to the March 30 TEI.

<sup>3</sup> The District also makes multiple references to these issues having been raised "months after the close of the objection period on March 21." However, as the District acknowledges in its September 15 TEP Alignment Response, "the parties agreed to extend the resolution period" to May 4. (See Attachment 8 to TUSD's September 15 TEP Alignment Response ("[p]er the Mendoza plaintiffs' suggestion... [the District] propose[s] to extend the resolution period by two weeks - until May 4").) Further, the District made substantive changes to the TEI/TEP to comply with the USP after the "close of the objection period on March 21," which then required the Mendoza Plaintiffs to review and comment on those changes. (See, e.g., Attachment 16 (dated May 29, 2015) to TUSD's September 15 TEP Alignment Response (revising the TEI to infuse it with CRP assessments as required by USP Section IV, H, 1, (i), (1)).)

District's May 29 Teacher Evaluation submissions is included in Mendoza Plaintiffs' July 30, 2015 TEP/PEP R&R request).

Mendoza Plaintiffs further call attention to the District's inaccurate statement that "[t]he parties resolved their disagreement regarding weights to be attributed to the student surveys within the evaluation process." (District's September 15 TEP Alignment Response at 3.) The Mendoza Plaintiffs have no idea on what basis the District concludes that the parties resolved this disagreement when the Mendoza Plaintiffs detailed their disagreement on this issue in their July 30 R&R request, their August 19 response to the Special Master's August 13 proposals to resolve disputes, and in their September 4 clarifications filed with the Court (Doc. 1842), among others. Mendoza Plaintiffs' surprise at the District's assertion that the parties resolved this disagreement is compounded by the fact that on September 8, a mere week before the District provided its September 15 Alignment Response, the Mendoza Plaintiffs requested that the District "consider [their] filing [detailing their disagreement] in aligning to the Special Master's R&R." In this regard, as they stated in their September 4 filing, they expressly request that the Special Master revise his R&R to address the weight of student surveys in teacher evaluations.<sup>4</sup>

Moreover, the District accuses the Mendoza Plaintiffs of having caused it to present its evaluation documents to the board for "study only" rather than as a "study/action" item on June 9 because "more than two months after the close of the objection period on March 21, the Mendozas **submitted their belated objection** to what they viewed as a deficiency in evaluating teachers based on data use." (District's September 15 TEP Alignment Response at 3.) However, in their June 9 comments, Mendoza Plaintiffs reminded the District of their long-outstanding objections stating that "[a]s detailed in Mendoza Plaintiffs' March 19, April 10, and April 30, 2015 comments, the District has failed to give adequate weight to teacher's use of data to improve student outcomes, target interventions, and to perform self-monitoring, as is expressly required for teacher evaluations under USP Section IV, H, 1, (ii). 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)." Thus, there was nothing "belated" about Mendoza Plaintiffs' reminder that the District must comply with USP Section IV, H, 1, (ii) obligations.

Notably, in the paragraphs of its narrative preceding its effort to detail Mendoza Plaintiffs' purported "belated objection" regarding teachers' use of data, the District acknowledged that Mendoza Plaintiffs had in fact raised the issue a number of times

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<sup>4</sup> In Mendoza Plaintiffs September 4 filing, they indicated that, in an effort to resolve the issue, they "are willing to accept the 10% weight currently proposed for student surveys in teacher evaluations if the District agrees to the Special Master's August 13 proposal that the District develop a chart demonstrating how teaching and leadership are reflected in the evaluation instruments and provide it to teachers and principals, and that it 'commit[] to evaluating the overall validity of the teacher evaluation process, as the Special Master described in his June 5, 2015 email.'" While the District now has agreed to develop the chart detailed above and to share it with teachers and principals (TUSD's September 15 TEP Alignment Response at 5), it has not agreed to evaluate the overall validity of its teacher evaluation process as contemplated in the Special Master's June 5 email.

before June 9 (“[t]he Mendoza’s [March 21] submission [included an objection regarding] “teacher ‘use’ of student achievement data to improve instruction,” the “Mendozas responded [on] April 10<sup>th</sup>... [and] again queried whether the document sufficiently factored in teacher use of ‘data to improve outcomes, target interventions, and improve self-monitoring,” “[o]n April 30, 2015, the Mendozas wrote to reiterate their concerns regarding the use of student data... a concern the DOJ echoed on May 4.”)

In addition to the above-described inaccuracies and omissions, the District notably failed to include in its “Collaboration History” any detail of its August 10 Response to Mendoza Plaintiffs’ July 30 R&R request.<sup>5</sup> That response contained unsupported allegations that, in their R&R request, Mendoza Plaintiffs developed “arguments based on an out-of-date version of the plan. Objections should relate to the final, revised TEP version provided Plaintiffs and the Special Master on July 20, 2015 – not the previous version provided to them two months earlier.” Because Mendoza Plaintiffs’ R&R request was clearly and expressly directed to the “final, revised TEP version” received on July 20, 2015, they were constrained to provide the District with a version of their R&R request with all references to the final TEP highlighted, and requested that the Special Master indicate in his R&R that Mendoza Plaintiffs’ R&R request did in fact address the Governing Board-approved July 20 teacher and principal evaluation plans so as to avoid any Court confusion. Similarly, because the District’s September 15 TEP Alignment Response contains a large number of inaccuracies and omissions, Mendoza Plaintiffs request that this clarifying document be submitted with the formal R&R that the Special Master files on outstanding TEP issues.

In addition to the clarification above, Mendoza Plaintiffs clarify (as they did in their July 30 R&R request) that they have viewed the issues of cut scores and teachers’ evaluators (principals) as related to the same problem: the under-identification of “ineffective” teachers. Thus, Mendoza Plaintiffs did not “abandon” the cut scores issue in their July 30 R&R request as the District suggests, but instead focused on principal evaluators as the “root cause” of the under-identification of “ineffective” teachers. Once the Special Master accepted the District’s insistence that it retain principals as evaluators and recommended that it conduct a “pilot study” involving independent evaluators, in an effort to resolve the issue, Mendoza Plaintiffs agreed to the proposal **on the condition** that cut scores be revised given that the under-identification of “ineffective” teachers would no longer be addressed through independent evaluators. The Special Master has now withdrawn his recommendation for the “pilot study.” In order to avoid litigation on this issue, Mendoza Plaintiffs request that the Special Master and Implementation Committee monitor principal evaluations of teacher performance to ensure that the District fully complies with the USP Section IV, J, 4 requirement that “[f]or administrators and certificated staff identified pursuant to their evaluations as in need of improvement, the District shall provide additional targeted professional development

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<sup>5</sup> In regard to the omitted TUSD August 10 response, the Special Master wrote that “the reticence of the District to be responsive to other concerns about the evaluation of teachers and principals and the difficulties in resolving issues among the parties is illustrated by its response to the Mendoza plaintiffs’ objections in which the District claims it is not required to do many things the plaintiffs are concerned about even when it does not object to doing some of them.” (Doc. 1836 at 3.)

designed to enhance the expertise of these personnel in the identified area(s) of need,” (which, as discussed above, they understand not to have adequately occurred in the 2013-14 school year).

Mendoza Plaintiffs withdraw their R&R request regarding “Alignment of Instruments for Measuring Teacher Effectiveness” and “Training Teacher Evaluators” while reserving their right to revisit the issues and request an R&R if the District fails to perform its alignment response commitments regarding these issues, or if the plan it ultimately develops for training teacher evaluators fails to comport with the requirements of the USP. Mendoza Plaintiffs withdraw their R&R request regarding “Assessing Academic Performance of Students for Purposes of Evaluating Teachers.” With regard to teachers’ use of data, Mendoza Plaintiffs reiterate their August 19 statements that they “do not believe that the assessments on the use of data to improve outcomes and target interventions in evaluation instruments constitute ‘adequate weight’ as contemplated in the USP. They further note that the evaluation instruments include no assessments on the use of data to perform self-monitoring. However, rather than require the District to further revise the teacher and principal evaluation instruments now that the fall 2015 semester has commenced, Mendoza Plaintiffs recommend that the District instead include in future professional development efforts specific references to teachers’ and principals’ duty to use data for the following three USP-mandated purposes: (1) improve outcomes, (2) target interventions, and (3) for self-monitoring/self-improvement. If the District undertakes such a commitment, Mendoza Plaintiffs will withdraw their R&R request on this issue.”