TUSD Response to Mendoza Plaintiffs' 7/30/15 Request for an R&R ("Request") Regarding the Teacher and Principal Evaluation Plans

Introduction

On January 30, 2015, the Court ordered the District to submit Action Plans for Teacher Evaluation Procedures (TEP) and Principal Evaluation Procedures (PEP). ECF 1760. On February 19, 2015, the District provided Special Master Hawley and Plaintiffs with drafts of each plan. Over the next few months, District staff worked closely with Dr. Hawley to review Plaintiffs' comments and revise the plans. In April, Dr. Hawley sent the then-current version of the TEP to Dr. Jacqueline Irvine. Through Dr. Hawley, Dr. Irvine provided feedback – the majority of which was incorporated into the final version of the TEP. The plans, along with feedback from Dr. Hawley and the Plaintiffs, were shared with the Governing Board before being adopted in July.

On July 20, 2015, the District provided Dr. Hawley and the Plaintiffs with the Governing Board-approved TEP and PEP. On July 30, 2015, the Mendoza Plaintiffs submitted to Dr. Hawley a request for an R&R ("Request") on both action plans. Throughout the Request, Mendoza Plaintiffs refer to an as-of-yet unknown proposed standard Dr. Hawley should utilize to review the Request: that the purpose of USP § IV(H)(1) is the creation of evaluation instruments that are "fair," "accurate," and "meaningful." Although laudable goals, none of these terms exist in USP § IV(H)(1) and have no business being used as any standard for reviewing the Request, much less as a basis for making a recommendation to the Court. The standard of review of the TEP and PEP is compliance with the USP, the Constitution, and the Court's prior orders.

The bulk of the Mendoza TEP objections are directed to the May 29, 2015 version ("Draft H") – and much of that to which they object has been revised in the final TEP that resulted from District collaboration with Dr. Hawley and meaningful consideration of Plaintiffs' comments.[1] Moreover, in more than five months of collaboration, the Mendoza Plaintiffs never raised a concern about the role of principals in conducting teacher evaluations. If the I(D)(1) process is to mean anything at all, it means that recommendations and objections should be raised before the development of a final Action Plan. Mendoza Plaintiffs' subsequent efforts to invoke judicial resolution should have been timely raised so the issue could have been fully vetted.

[1] It is both troubling and unfortunate that Mendoza Plaintiffs expended so much time and energy developing (and causing District staff to expend more time and energy responding to) 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 them two months earlier.

As a threshold matter, the parties agreed to the language in USP § IV(H)(1). This section of the USP is devoted exclusively to teacher and principal evaluation *instruments*. The USP does not contain a provision for the development of teacher and principal evaluation procedures.[2] With due deference to the Court's Order of January 30, 2015 (in which the Court ordered the District to submit action plans on teacher and principal evaluation procedures), the District notes its continuing objection to the expansion of its USP obligations, and the increasing restrictions on its exercise of reasonable discretion in generating and implementing educational policy. As a direct result of this expansion, the Mendoza Plaintiffs now object to the District's determination of the appropriate person to evaluate its teachers, an issue neither covered nor contemplated, let alone mentioned, by the Parties in developing the USP, and a matter entirely separate from the content of the instrument which is the subject of USP § IV(H)(1).

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The TEP was neither developed, nor does it exist, in a vacuum. USP § IV(H)(1) requires the District to consider various enumerated factors in revising its teacher evaluation instrument. Importantly, it also specifically authorizes the District to take into account "requirements of State law and other considerations." Under Arizona law, teacher evaluation systems must provide for the use of student achievement data in teacher evaluation. ARS § 15-537. In addition, the legislature directs the Arizona Department of Education to "adopt and maintain a model framework for a teacher and principal evaluation instrument that includes quantitative data on student academic progress that accounts for between thirty-three percent and fifty percent of the evaluation outcomes." ARS § 15-203(A)(38).[3] Most recently, the measure for student achievement was the state's "high stakes" test (AIMS). However, transition to Az MERIT (Arizona's statewide achievement assessment for English Language Arts "ELA" and Math) means that for at least one year school districts will lack a standardized statewide measure. As a result, all districts are tasked with identifying another assessment that can serve to measure achievement and growth. The District is thus using its benchmark assessment

[2] The teacher evaluation "process" and the evaluation "instrument" are two distinct things. The process includes a delineation of the number and timing of observations, the requirement of performance improvement conversations, and the circumstances under which a teacher must be placed on a Performance Improvement Plan. Although the Court directed the District to submit procedures for teacher and principal evaluation for Special Master and Plaintiff review and comment, neither the USP nor the Court directed the District to amend the underlying process which continues the use of site administrators as evaluators .

[3] The most recent framework adopted by the State Board of Education under this statute may be found at http://www.azed.gov/teacherprincipal-evaluation/files/2013/08/2014-15-arizonaframeworkformeasuringeducatoreffectiveness.pdf?20150113.

system, as described in the TEP, of pre- and post-tests to measure students' academic growth.

1. Academic Growth Measures

Mendoza Plaintiffs ask the Special Master to request an order from the Court directing the District to develop a pre-post assessment(s) that it can apply to non-math/non-ELA teachers in grades 3-5. Teachers in grades 3-5 are generalists: there are no non-math/non-ELA teachers in grades 3-5. As described on page two of the TEP, these teachers "…and math and ELA teachers in grades 6 – 10 will use the quarterly assessments as their pre-post assessment." Accordingly, the Special Master must reject this request.

2. Teachers' Evaluators

Mendoza Plaintiffs ask the Special Master to request an order from the Court prohibiting outright the use of principals or assistant principals as teacher evaluators. Or, alternatively, that the principals and assistant principals receive "rigorous" training in the evaluation tool and process to be "administered and overseen by a person(s) selected by the Special Master.[4] Aside from the fact that the Mendoza Plaintiffs did not raise this objection at any time during the collaborative process, the objection that forms the basis for this request includes incorrect conclusions, and relies on incorrect information in Draft H that the final version of the TEP does not contain. If the facts and conclusions underlying an objection are wrong, the request for a recommendation based on the flawed objection must be denied.

(a) <u>The conclusions the objection contains are incorrect</u>

Mendoza Plaintiffs argue that under the board-adopted process, principals will not identify any teachers as "Ineffective," and therefore "no teachers [will] be referred to additional support programs." This is incorrect. The USP requires the District to refer teachers to additional support programs based on a wide variety of evidence. USP § IV(I)(2) states: "Teachers shall be referred to the [Teacher Support Program] … based on evidence (e.g., from student surveys, administrator observations, discipline referrals, *and/or annual evaluations*)…." Last year, for example, 14 teachers were placed on Teacher Support Plans and, based on evaluation results, 10 were put on Improvement Plans. There is simply no factual basis for the Mendoza Plaintiffs' claim.

[4] As the District has noted in several recent court filings, discretionary policy and process decisions not in conflict with law or the USP are beyond the authority of the court (and its designee) to revise. This legal axiom is one with which the Special Master, as a desegregation expert, must be familiar. However, it is an issue outside the purview of the Special Master to resolve and thus will not be briefed here.

(b) The factual foundation given for the objection is incorrect

The non-operative Draft H stated: "only 3.38 [percent of all teachers] were considered 'Developing' or 'Ineffective'," that the cut score data "called into question the validity of the Teacher Evaluation Instrument," and that "[n]o teacher scored below 39 on the Danielson observation last year (2013-14)." (See Attachment A, Draft H – 5.29.15). Although the District removed the language indicating that 3.38 percent of teachers were "Developing" or "Ineffective," the TEP still includes a chart indicating that 3.38 percent of teachers fell into one of these two categories. (See Attachment B, Draft K – 7.20.15, "Figure 5. Distribution of Teacher Effectiveness"). Mendoza Plaintiffs argue it is "inconceivable that the District does not have a single teacher whose level of performance does not warrant improvement through targeted professional development." The District agrees. In 2013-14, 3.38 percent of teachers, representing approximately 106 teachers, were identified as "Developing" or "Ineffective," as indicated in Figure 5.

Mendoza Plaintiffs, having never raised the issue of principal evaluators, assert that one basis for their objection is "comments and research provided by the Special Master." Special Master Hawley presented the Parties with his comments on the use of principal evaluators on June 29, 2015 – more than two months after the first draft of the TEP was presented to the Parties, and less than two weeks before the final version of the TEP was scheduled for a Governing Board vote. The extent of "research" provided to the Mendoza Plaintiffs was a one-page, edited version of an article on teacher evaluation suggesting that principals are non-objective in evaluating teachers.

Mendoza Plaintiffs then misapplied Dr. Hawley's "comments and research" to the District's data and asserted that District principals are non-objective in their evaluation of teachers because no teachers scored below a 39 on the Danielson observation in 2013-14, so no teachers were deemed ineffective. It does not follow that because "[n]o teacher scored below 39 on the Danielson observation" in 2013-14, that no teachers were deemed ineffective. A teacher's score on the Danielson rubric does not correlate to a teacher's final classification, which includes scoring in multiple domains.

Notwithstanding that the evidence from a more recent school year (2014-15) would be more instructive and relevant on this point moving forward (and will be reported in the Annual Report), the District's allegedly "non-objective" principals evaluated 14 teachers as "Ineffective" and 92 teachers as "Developing" in 2013-14. In 2013-14, principals in the District did not "score all their teachers well" and, the statement that principals and assistant principals found "no teachers [to be] 'ineffective'" simply is incorrect. (See Attachment B, Figure 5).

The District knows of no Arizona school district or charter school with an evaluation system that does not rely on site administrators and the primary evaluators for teachers assigned to their buildings. Mendoza Plaintiffs have provided no evidence of

such a practice. The use of principals and assistant principals is the overwhelming standard of practice nationally, and this is neither the time nor place to commence an experiment in teacher evaluation – particularly where the USP in no way contemplates such a policy change. (See Attachment E, Leading via Teacher Evaluation, p.351, "Is teacher evaluation a good candidate to power school improvement? The evidence that we reviewed from multiple perspectives leads us to suggest caution in this area. Relatedly, it merits notice that teacher evaluation has been reinvented numerous times across the last century.")

3. Weight of Student Surveys in Teacher and Principal Evaluations

Mendoza Plaintiffs seek a commitment from the District "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 TEI" (Teacher Evaluation Instrument). Of course, the adoption of the TEP is the culmination of a collaborative effort between the District, Dr. Hawley, and the plaintiffs to evaluate and revise the teacher evaluation process, one which the District cannot commit to redoing on a specific timeline. In the absence of such commitment, the Mendoza Plaintiffs request that Dr. Hawley "address the issue of student survey's inadequate weight," without further specification or suggestion of a weight they would deem adequate. Dr. Hawley has agreed to use the 10% weight for the 2015-16 school year, and supports the District's plan to conduct an evaluation in the spring of 2016 to determine whether the 10% weight is adequate. A ruling or recommendation to change this weight now based on an unsubstantiated claim that it is "inadequate" is premature. Moreover, the Mendoza Plaintiffs provide no specific data-driven or legal reason to support their claim that the 10% weight is "inadequate."

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

The Mendozas next object that the District has failed to provide an adequate response to inquiries about USP §§ IV(J)(3)(c) and (J)(4), and that Court intervention is required "if full effect is to be given to these USP provisions." There are two fundamental flaws in this objection. First, the Mendozas essentially seek a non-compliance finding, remedied by a recommendation, on two USP obligations that are neither specific to, nor included in, the TEP and PEP. The District can comply fully with these USP obligations independently of whether the TEP and/or PEP include a specific process for the referral of additional supports (outlined in the Teacher Support Plan), or include details related to evaluator training.

Second, the obligations to which the Mendoza Plaintiffs refer are nowhere specified in the USP; instead, Mendoza counsel believes they are implied by the consent decree. Mendoza Plaintiffs cite Section IV(J)(4)'s requirement that certain staff are to be

referred to support programs (including additional training) based on evaluation outcomes. The language of section IV(J)(4) ("…targeted professional development designed to enhance the expertise of these personnel in the identified area(s) of need") refers to training for an identified deficiency – not proactively training staff on how to conduct evaluations. The "Teacher Support Plan" has been developed, litigated, and – pursuant to the USP – provides a mechanism and process for providing targeted training for teachers related to their identified deficiencies.

In addition to the "Teacher Support Plan," under which teachers can be provided additional support and professional development upon request or referral, there is a formal mechanism under which teachers may be placed on Plans for Improvement as part of the evaluation process. The parameters under which teachers may be placed on a Plan for Improvement, like other aspects of the nuts-and-bolts operation of the evaluation system, are set forth in Article 13 of the Consensus Agreement entered into between the District and the teachers' union. (See Attachment F, 2015-16 TEA Consensus Agreement, Article 13).

They further cite Section IV(J)(3)(c) for the proposition that the phrase "[a]ny other training contemplated herein…includes the training necessary for teacher and principal evaluators to conduct evaluations." Nowhere does the USP state, or even imply, that it "contemplates" training necessary so that evaluators may conduct evaluations. If the Parties had intended to require training regarding evaluation processes and instruments (beyond changes), such language would have been inserted into Section IV(J)(3)(b) which includes a detailed list of specific training requirements. Section IV(J)(3)(b)(ii) specifically requires the District to provide training regarding "*changes* to professional evaluations." Nothing in Section IV(H)(1), or any other USP section, requires the District to develop and implement training "necessary for evaluators to conduct evaluations."

Although these training components are not required by the USP, the District provides training to evaluators pursuant to Arizona Revised Statute § 15-537(A) which requires school districts to use "qualified evaluators" to evaluate teachers. Every new administrator who conducts evaluations of certified staff receives qualified evaluator training when they assume their administrative position. Throughout the year, every year, they continue to receive ongoing training covering different aspects of observation and evaluation. It is in the district's best interests to ensure that its administrators are well-versed in both summative and formative teacher evaluations so the evaluation process can improve instruction. There is no support in the record, nor do the Mendozas provide any supporting evidence, to believe that proper training is not occurring. The Special Master should reject outright this untenable demand for court-ordered micromanagement.

5. 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 the "use of classroom and school-level data to improve student outcomes, target interventions, and perform self-monitoring." Mendoza Plaintiffs' objection is that they feel the TEP does not give adequate weight to the "mandated assessment," and that they have seen nothing "to suggest the District has seriously incorporated this mandated assessment into its TEP."

USP section IV(H)(1) requires the District to "review, *amend as appropriate*, and adopt teacher and principal evaluation instruments to ensure that such evaluations, *in addition to requirements of State law and other measures the District deems appropriate*, give adequate weight to (i) an assessment of (ii) teacher and principal use of classroom and school-level data to improve student outcomes, target interventions, and perform self-monitoring." As appropriate, the District must (and by the USP is authorized to) consider State law and other considerations.

Arizona Revised Statute § 15-203(38)(A) requires that a district's teacher evaluation system allocate between 33 and 50 percent of the scoring weight to quantitative data on student academic progress ("academic growth") based on classroom-level data. The Arizona State Board of Education's "Arizona Framework for Measuring Educator Effectiveness," sets a minimum allocation of 50 percent for teaching performance: "[t]he 'Teaching Performance and Professional Practice' component of the evaluation shall account for between 50% and 67% of the total evaluation outcomes."). *See* note 2, *supra* at 7-13.

The District already allocates the minimum scoring weight allowed for academic growth – 33%, and close to the minimum scoring weight allowed for teacher performance – 56%. (See Attachment B, Figure 4). Even if the District allocated the minimum scoring weights in both instances, a total of 83% (just 6% less than currently allocated), only 17% of the total scoring weight would remain to be "available" to use under the category of "School-Level Data." And, under that category, the District has already allocated ten percent of the "available" scoring weight to student surveys – a scoring weight the Mendoza Plaintiffs also deem inadequate.

6. Academic Growth Component: PEP

Mendoza Plaintiffs request an R&R on "the issue" but provide no other guidance or suggestion as to the outcome they seek, and do not describe their objection with specificity. Without an understanding of the objection, the District is not in a position to

respond. However, the Mendoza Plaintiffs welcomed clarification so the District provides explanations below.

The Mendoza Plaintiffs state that the description of how the District will measure academic progress in conducting principal evaluations "makes little sense." They point out: "the measure appears to exclude consideration of math/ELA teachers' student growth scores, which would not involve pre- and post-assessments." The Mendoza Plaintiffs appear to misunderstand the measure because it in fact does not exclude consideration of math/ELA teachers' student growth scores as determined by pre-post assessments. The PEP states, in relevant part: "Grades 3 – 5 and math and ELA teachers in grades 6 – 10 will use the quarterly assessments as their pre-post assessment," and "[p]rincipals will receive the aggregate school total for *all* teachers in the school." (See Attachment D – PEP Explanation 7.20.15)

They also state that "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." The 'aggregate' total of student academic growth will be attributable to the principal: low, medium, or high growth. *Id.* The number of students in a particular school is irrelevant to calculating the growth measure.

7. Academic Growth Component: TEP (Sample Size of Students)

Earlier in the collaborative process, the Mendoza Plaintiffs commented that a sample size of 30 students may be problematic. In response, on June 9th, the District agreed to sample two classes for grades 6-12 to ensure a minimum of matched pre-post assessments of 30 students. Mendoza Plaintiffs request that the June 9th commitment to sample two class sizes for grades 6-12 be expressly included in the TEP, implying that because the District has a target class size ratio of 1:27 it might be difficult to guarantee a sample size of 30 students. The District has committed in writing to sampling two classes. (See Attachment C, "…for grades 6-12, we can sample 2 classes to ensure a minimum of matched pre-posts of 30 students). This is a non-issue.

Conclusion

When an R&R is requested, the Stipulated Process calls for the Special Master to "[explain] the disagreement between the parties and [provide] his recommendation for resolution" (see ECF 1510 at 8:11-12; and see ECF 1581 at 4). The Stipulated Process also provides that the District may "have an opportunity to respond to the *objections* of the plaintiffs that served as the bases for their requests for an R&R." *Id.* The District respectfully requests that Dr. Hawley limit any recommendations he makes to objections previously raised by the Mendoza Plaintiffs and to which the District had an opportunity to respond. If the foundation for the Mendoza Plaintiffs' objection is incorrect, and the conclusions stated in the objection are incorrect, then the request that flows from the

objection cannot be sustained and must be rejected by the Special Master. Likewise, the Plaintiffs are authorized by the USP to comment on action plans, but their judgment should not be substituted for the judgment of District leadership on programmatic matters not implicated by the USP, the Constitution, or the Court's orders (such as sample size strategy, and details of training for qualified evaluators).