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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
United States of America,
Plaintiff-Intervenors,
v.
Anita Lohr, et al.,
Defendants,
Sidney L. Sutton, et al.,
Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS' OBJECTION
TO THE SPECIAL MASTER'S REPORT
ON REQUEST FOR FINDING OF
NONCOMPLIANCE BY TUSD
REGARDING THE
IMPLEMENTATION OF
CULTURALLY RELEVANT COURSES**

ACTION REQUIRED

Hon. David C. Bury

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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10 **INTRODUCTION**

11 To obviate the need for Court intervention on Mendoza Plaintiffs' request that the
12 Special Master bring TUSD's noncompliance with USP requirements regarding Culturally
13 Relevant Courses ("CRCs") to the attention of this Court, TUSD entered into a stipulated
14 agreement with the Mendoza Plaintiffs to implement CRC intervention plans for Spring
15 2015 and the 2015-16 school year on January 30, 2015. (*See* Stipulation re:
16 Implementation of USP Section V, E, 6, a, ii (Culturally Relevant Courses) (Doc. 1761) at
17 1-2.) In July 2015, the Mendoza Plaintiffs requested that the Special Master bring the
18 District's noncompliance with the intervention plans to the Court's attention. Because
19 Spring 2015 already had passed, the Mendoza Plaintiffs agreed that the District's
20 noncompliance with the Spring 2015 implementation plan would be addressed in the
21 Special Master's Annual Report but that the issue of noncompliance for the then current
22 2015-16 school year would be the subject of a Special Master report to the Court. The
23 Special Master filed that report ("CRC Report") on April 20, 2016. Mendoza Plaintiffs
24 now object to the CRC Report under Federal Rule of Civil Procedure 53(f)(2).
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1 In his CRC Report, the Special Master first states that the District budgeted for
2 only six of the 12 itinerant CRC teachers to which it had committed in the CRC
3 intervention plan for the 2015-16 school year (Doc. 1761, Exhibit 2) (hereinafter “CRC
4 Intervention Plan”) and then finds that the District filled only five of them (while also
5 relying on “two half-time people to fill another of the other five positions”). (CRC Report
6 at 4.) He nonetheless concludes that “it appears that a cadre of six itinerant teachers is
7 adequate” “[g]iven that enrollment of students is what it is.” (CRC Report at 4.) However,
8 that assessment apparently took a narrow view of itinerant teachers’ roles as mentors
9 without giving sufficient weight to the other significant roles itinerant teachers were to
10 play (for example, in the areas of student and teacher recruitment, program evaluation, and
11 other professional development) under the comprehensive scheme to expand and improve
12 CRCs in the 2015-16 school year as reflected in the CRC Intervention Plan. Indeed, by
13 foreclosing the possibility of recruiting all 12 of the agreed-upon itinerant teachers through
14 its decision to budget for only half of those positions before the 2015-16 semester even
15 began, the District materially limited the potential enrichment and expansion of the CRC
16 program through the “itinerant teacher” “capacity building model” that was contemplated
17 in the CRC Intervention Plan.

18 In his CRC Report, the Special Master focused on the areas of CRC Intervention
19 Plan implementation to which Mendoza Plaintiffs called his attention in July 2015.
20 However, at that time, Mendoza Plaintiffs had a very limited amount of information and
21 did not understand that the several inadequacies they identified were significantly rooted in
22 the District’s decision to reduce by half the number of itinerant teachers to which it
23 committed in the CRC Intervention Plan. By virtue of the passage of time between when
24

1 Mendoza Plaintiffs made their request to the Special Master to issue his report and when
2 that report actually was forthcoming, more information has become available and the
3 consequences of the District's failure to keep its commitment have become evident.

4 Mendoza Plaintiffs therefore believe the CRC Report should be supplemented to take a
5 more comprehensive look at how the District's failure to budget and hire the 12 required
6 itinerant teachers has impacted the District's ability to improve and expand the CRC
7 program as contemplated in the CRC Intervention Plan.
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9 Indeed, Mendoza Plaintiffs have now grown even further concerned that the District
10 has materially failed to implement the CRC Intervention Plan. In a District budget report
11 provided on May 2, 2016, the District reports that as of the end of the third fiscal quarter, it
12 has actually expended a mere 36% of the funds allocated to CRC-related budget activities
13 (which the District had *already* reduced by a third from the amount required under the
14 CRC Intervention Plan through the budget development process). Notably, this
15 information was not available until after the Special Master filed the CRC Report,
16 highlighting the need for further monitoring and reporting to the Court.
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19 The Mendoza Plaintiffs therefore respectfully request that this Court direct the
20 Special Master to supplement his CRC Report to more comprehensively detail the impact
21 that the District's elimination of half (indeed, more than half, given its failure to hire and
22 adequately staff even the budgeted positions) of the required itinerant teachers had on CRC
23 Intervention Plan implementation, and that assesses the reasons the District has been
24 failing to expend a significant amount of CRC-related funds to further specify the extent to
25 which the District is out of compliance with the CRC Intervention Plan.
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1 **ARGUMENT**

2 *The Special Master’s Finding that the Five (Out Of Twelve Required) Itinerant*
 3 *Teacher Positions the District Budgeted For and Hired “Appears” “Adequate” is*
 4 *Apparently Based Only On Mentoring at Monthly Professional Development Sessions,*
 5 *With No Consideration Given to Their Many Other Required Duties as Reflected By the*
 6 *CRC Intervention Plan’s Itinerant Teacher Capacity Building Model*

8 The CRC Report statement that “it appears that a cadre of six itinerant teachers is
 9 adequate” “[g]iven that enrollment of students is what it is” (CRC Report at 4) does not
 10 sufficiently take into account the itinerant teacher capacity building model on which the
 11 CRC Implementation plan relies to support program improvement and expansion. “**The**
 12 **Itinerant Teacher Model is a capacity building model** ... to ensure that [TUSD]
 13 develop[s] CR Teachers at every site.” (CRC Intervention Plan at 18 (emphasis added).)

16 Indeed, beyond their important roles as CRC teachers,¹ the CRC Intervention Plan
 17 provides significant “non-instructional duties,” stating that “IT [or itinerant teachers] will”:
 18 (1) engage in student recruitment (*id.* at 18, 12 (CRPI Program Coordinators and CR
 19 teachers are to “prepare and distribute recruitment fliers or pamphlets to all high schools
 20 and shall visit English and social studies classes to encourage student participation...
 21 documenting in a ‘student interest sheet’ the names of students expressing interest”)), (2)
 22 engage in teacher recruitment (*id.* at 18), (3) participate in parent engagement and
 24 community outreach (*id.* at 18, 21-22 (“site-based teacher or IT to coordinate” evening
 25

26 _____
 27 ¹ The CRC Intervention Plan requires that each of the twelve required itinerant teachers
 28 “teach 3 [CRCs] at two high or middle school sites.” (CRC Intervention Plan at 18.)
 Thus, half of itinerant teachers’ workday, exclusive of any preparation involved, is taken
 up providing regular school instruction.

1 event at each CR site at least once per semester or hold several smaller events)), (4)
2 present model instruction at monthly professional development sessions (*id.* at 18, 5), (5)
3 develop curriculum units to be used for CRC and non-CRC courses (*id.* at 6-7, 18),
4 including presentation of the units at professional development sessions (*id.* at 5), (6)
5 develop CRC “lessons throughout the year” “within their content area” “for
6 implementation by new and continuing CR teachers” (*id.* at 7, 18), (7) provide “new CR
7 teachers or CR teachers with limited experience in teaching a CR course” mentoring
8 “once a week” (*id.* at 17, 18), (8) conduct professional development-related classroom
9 observation and feedback of new and limited experience CRC teachers “at least every two
10 weeks” (*id.* at 17, 18), and (9) conduct quarterly program evaluation observations of CRC
11 classrooms with walk-through teams (*id.* at 17, 18).

14 Plainly, the itinerant teacher capacity building model was designed to build a
15 sustainable and dynamic program in the 2015-16 school year that would provide a solid
16 foundation upon which further expansion of CRC courses throughout the District,
17 including at all or many TUSD schools at each grade level (*id.* at 8-10, 18), could occur in
18 later years. That itinerant teachers were to be fully engaged in these capacity-building
19 efforts in the 2015-16 school year is further reflected by the fact that under the CRC
20 Intervention Plan, the “number of teachers needed as itinerant staff [would] be reduced
21 over time” as the District developed CRC “teachers at every site over the next two years
22 and move[d] away from having itinerant staff at this level” (*id.* at 18).²

26 ² Mendoza Plaintiffs respectfully submit that the Special Master’s incomplete
27 understanding of the role to have been played by itinerant teachers in 2015-16 is reflected
28 by his statement that the small number of itinerant teachers “will not be the case in the
future when the District estimates that the number of students enrolled in these courses
could double.” (CRC Report at 4.) In fact, the Special Master has it backwards when he

1 It is apparent that the decision to significantly reduce the number of itinerant
2 teachers materially limited the progress in the development and expansion of the CRC
3 program as required by the CRC Implementation Plan. For example, as noted above but
4 not addressed in the CRC Report, “new CR Teachers or CR teachers with limited
5 experience in teaching a CR course” were to be assigned to itinerant teachers for
6 mentoring “once a week” (CRC Intervention Plan at 17) and to be provided biweekly
7 observation and feedback (*id.*).³ Given that “[a]lmost all of the teachers teaching CR
8 courses are doing so for the first time” (CRC Report at 5) and within the context of the
9 itinerant teachers’ many duties, including time-consuming instruction, it is substantially
10 likely that the mentoring, and observation and feedback was negatively impacted by the
11 District’s use of less than half the number of itinerant teachers required under the CRC
12 Plan. The importance of such training is highlighted by the fact that fewer than half of the
13 23 High School CRC teachers, and even fewer of the Middle School CRC teachers,
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19 suggests that in light of the enrollment in the CRC courses, the lower number than
20 promised of itinerant teachers is acceptable. (*Id.*) It is clear from the listing of their duties,
21 that itinerant teachers were to have been central to the recruitment of both students and
22 teachers. Had they been hired in the numbers required and engaged fully in their
23 enumerated duties, one can only conclude that the numbers of teachers and students
24 participating in the CRC courses in 2015-16 would have been greater. In this regard it
25 also is noteworthy that when he discusses teacher and student recruitment in the CRC
26 Report, the Special Master fails to reference any activity by the itinerant teachers in these
27 areas. This further indicates his failure to appreciate the extent of their role and also
28 suggests that the District may well have failed to use the itinerant teachers as required in
the CRC Implementation Plan.

³ Mendoza Plaintiffs note that the Special Master’s conclusion that the “District offered the professional development it committed to” with respect to itinerant teachers appears to be based exclusively on itinerant teachers’ mentoring during formal central administration-driven monthly professional development sessions (*see* CRC Report at 6), the only type of professional development discussed in the CRC Report, but does not consider less formal training that was to have been provided by itinerant teachers, such as weekly mentoring and bi-weekly classroom observation and feedback.

1 received a “substantial amount of the [required] professional development at the beginning
2 of the school year” (*id.* at 5-6).

3 Moreover, the CRC Report details that the District experienced difficulty in
4 recruiting CRC teachers and states that the “fact that more than 70 percent of the sections
5 are offered in three of the 10 high schools suggests that principals in the other high schools
6 need to make a greater effort in recruiting teachers.” (CRC Report at 5.) Had the District
7 budgeted for and hired the 12 required itinerant teachers, the seven additional itinerant
8 teachers presumably could have significantly boosted teacher recruitment efforts at these
9 sites, and helped the District comply with its obligation under the CRC Intervention Plan
10 to make “greater effort[s]” to recruit such teachers (*id.* at 18). Indeed, the additional seven
11 itinerant teachers could have themselves been assigned to teach at these sites as part of
12 their required instructional duties (*see id.*), thereby countering the weak efforts of
13 principals at these schools.
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17 The same can be said of the District’s student recruitment efforts (detailed in pages
18 6-7 of the CRC Report): had the District hired the 12 required itinerant teachers, greater
19 student recruitment efforts could have been employed which could have resulted in a
20 greater number of students enrolled in CRCs and CRC sections. Given that itinerant
21 teachers were to teach three CRCs at two high or middle schools (CRC Intervention Plan
22 at 18), the District’s full compliance with regard to itinerant teachers could have resulted in
23 such expansion as the additional itinerant teachers’ student recruitment efforts could have
24 been targeted at the schools at which those itinerant teachers would have provided CRCs.
25
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27 Moreover, beyond the areas of professional development and teacher and student
28 recruitment discussed in the CRC Report and above, these seven additional itinerant

1 teachers could also have improved implementation efforts in other vital areas not
2 addressed in the CRC Report: family engagement and community outreach, and CRC
3 program evaluation observations.

4 Mendoza Plaintiffs therefore respectfully request that the Court direct the Special
5 Master to supplement his CRC Report to include a more comprehensive report on the
6 extent to which the District's failure to budget for and hire the required 12 itinerant
7 teachers resulted in noncompliance with the CRC Intervention Plan.
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9
10 *Further Monitoring and Reporting is Required to Determine the Extent to Which*
11 *the District's Recent Post-CRC Report Statement that it has Used Only 36% of the Funds*
12 *Budgeted for CRC (Which the District Already Had Reduced by One-Third From the CRC*
13 *Intervention Plan Stipulated Amount) as of the End of the Third Fiscal Quarter Reflects*
14 *Noncompliance with the CRC Intervention Plan*
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17 The CRC Intervention Plan contemplated only increases in the budget required to
18 implement the plan. ((See CRC Intervention Plan at 21) (Under the “**BUDGET**
19 **MODIFICATION**” heading: “Budget modifications may be made to account for any
20 *unforeseen expenses related to expansion efforts detailed in this plan*”).) Notwithstanding
21 the express statement in the CRC Intervention Plan, the District reduced the total budget
22 amount detailed in the CRC Intervention Plan by one-third from \$1,267,124.51 to
23 \$850,129.40, including through the elimination of half of the required itinerant teachers.
24 (See attachment to M. Taylor September 17, 2015 email to the Special Master, attached
25 hereto as Exhibit 1). Notably, the District asserted that the one-third reduction of the CRC
26 Intervention Plan budget was the result of “many costs [having been] originally
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28

1 overestimated. As we went through the budget process, we were able to use more accurate
2 costing which is reflected in the budget.” (See Exhibit 1.) Plainly, however, the removal
3 of half of the itinerant teachers from the budget was not the result of costs associated with
4 the position having been “originally overestimated” but was instead a substantive
5 departure from the CRC Intervention Plan.
6

7 Putting aside the issue of the District’s significant reductions to the budget in the
8 CRC Intervention Plan and its elimination of half of the required itinerant teachers,
9 Mendoza Plaintiffs’ concern that the District is materially failing to implement the CRC
10 Intervention Plan has been heightened by its apparent failure to expend the purportedly
11 “more accurate” adjusted budget funds it allocated for CRC Intervention Plan
12 implementation. As of the end of the third quarter of the fiscal year (and *with less than a*
13 *month* left in the 2015-16 school year), the District’s year-to-date actual expenditures
14 relating to CRCs total a mere 36% of the total adjusted budget as reduced by the District
15 from the CRC Intervention Plan and reflected in its Desegregation FY 2015-16 Quarter 3
16 Report (“Quarter 3 Report”).⁴ (See Quarter 3 Report, provided to the parties and Special
17 Master on May 2, 2016, attached hereto as Exhibit B.) Moreover, TUSD expects that at
18 the end of the 2015-16 school year, it will have a total remaining unspent balance of
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22 \$444,343 or 38% of the total budget allocations relating to CRC activities. (See *id.*) (This

23 ⁴ Mendoza Plaintiffs used the “CRC and Student Engagement PD” and “Culturally
24 Relevant Courses” activities in the Quarter 3 Report in making their calculations. They do
25 note that the District’s reduced adjusted budget for the CRC Intervention Plan is greater
26 than the budget allocation for each of these activities as reflected in the Quarter 3 Report
27 but is smaller than the sum of the budget allocations. (Compare Exhibit 1 with Quarter 3
28 Report.) Mendoza Plaintiffs therefore understand that funds allocated to these activities
include some funds beyond the District’s reduced budget to implement the CRC
Intervention Plan, presumably related to “Student Engagement PD,” which covers areas of
USP compliance broader than its CRC provisions.

1 figure takes into account year-to-date expenditures, year-to-date-encumbrances, and
2 projections for future 2015-16 school year expenditures.)

3 Thus, the District expects that it will spend significantly less on implementation of
4 the CRC Intervention Plan than the stipulated budget amount as reduced by the District by
5 a third to reflect purportedly “more accurate” costs associated with implementation. Such
6 significant underspending highlights the need for further monitoring and reporting to this
7 Court. (Mendoza Plaintiffs additionally note that the CRC Report could not have included
8 any analysis of the reasons for the District’s significant underspending as reported in the
9 Quarter 3 Report as that report was provided 13 days after the filing of the CRC Report.)
10

11
12 Mendoza Plaintiffs therefore request that this Court Order the Special Master to
13 supplement his CRC Report with a report detailing the reasons for the District’s failure to
14 spend significant funds to implement the CRC Intervention Plan and to assess whether
15 such spending reflects noncompliance with the CRC Intervention Plan.
16

17
18 **CONCLUSION**

19 For the reasons stated above, the Mendoza Plaintiffs respectfully request that this
20 Court direct the Special Master to supplement his CRC Report to more comprehensively
21 detail the impact that the District’s elimination of more than half of the required itinerant
22 teachers had on CRC Intervention Plan implementation, and to assess the reasons the
23 District has been failing to expend a significant amount of CRC-related funds to determine
24 whether the District is out of compliance with the CRC Intervention Plan.
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Dated: May 11, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2016, I electronically submitted the foregoing Mendoza Plaintiffs' Objection to the Special Master's Report on Request for Finding of Noncompliance by TUSD Regarding the Implementation of Culturally Relevant Courses 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:

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