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School District No. 1*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

Sidney L. Sutton, et al.,

Defendants-Intervenors,

4:74-cv-00090-DCB
(Lead Case)

**RESPONSE TO THE MENDOZA
PLAINTIFFS' OBJECTIONS TO
THE SPECIAL MASTER'S
REPORT REGARDING THE
IMPLEMENTATION OF
CULTURALLY RELEVANT
COURSES**

Hon. David C. Bury

1 Maria Mendoza, et al.

4:74-cv-00204-DCB
(Consolidated Case)

2 Plaintiffs,
3 United States of America,

4 Plaintiff-Intervenor,

5 v.

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

7 Defendants.

8 **Introduction and Summary**

9 The Court should overrule the Mendoza Plaintiffs' objection (ECF 1932) to the
10 Special Master's Report and Recommendation (ECF 1925) (the "Report"). The Report
11 concludes that the District "is in reasonable compliance" with its obligation to provide
12 culturally relevant courses ("CRCs"), "and a finding of noncompliance is therefore not
13 warranted." The Special Master "collected data and other information related to the
14 District's efforts" and correctly found that the District greatly expanded the CRC
15 program during the 2015-16 school year, accomplished significant recruitment and
16 professional development, and "took positive actions to implement the provisions of the
17 agreement for the 2015-16 school year."

18 The Mendoza Plaintiffs complain that the District had spent significantly less
19 than its CRC budget by the end of the third quarter of the current fiscal year, and that
20 this requires a finding of non-compliance. The Court should overrule this objection
21 because a significant portion of the District's spending for the fiscal year will occur in
22 the fourth quarter. The District will spend virtually all budgeted funds by the end of the
23 fiscal year.

24 **I. The Special Master Correctly Found That The District Significantly** 25 **Expanded Its CRC Program In The 2015-16 School Year.**

26 The Special Master accurately noted that "[n]owhere in the USP, any action plan
27 for CRC, or in the stipulated agreement between the District and the Mendoza Plaintiffs

are there specific goals for student enrollment in CR courses.” *Id.*, pp. 7-8. Nevertheless, the Special Master also correctly found that the District expanded enrollment in the CRC program to 1846 students by the Fall 2015 Semester. *Id.*, p. 3.¹ That enrollment number represents a 543% increase over the Fall 2014 Semester enrollment of 340. It represents a 290% increase over the Spring 2015 Semester enrollment of 635. Moreover, the District projects that the CRC program will grow to 3198 students in the 2016-17 school year, and to 4398 students by the 2017-18 school year.

The Special Master also correctly found that the District expanded CRC courses to nine of the District’s ten High Schools by the Fall 2015 Semester (University High School students attend CRCs at Rincon High School). *Id.* That constitutes a significant increase over the three High Schools served during the Fall 2014 Semester and the seven High Schools served during the Spring 2015 Semester. The Special Master also accurately noted that the District expanded the CRC program to its traditional Middle Schools for the first time in the 2015-16 school year. All ten of the District’s traditional Middle Schools now conduct CRCs. *Id.* The District plans to expand the program to its grade schools in the next school year.

Finally, the Special Master correctly found that the District expanded the number of its High School classes to 55 for the 2015-16 school year. *Id.* Each High School conducted at least one CRC, and seven High Schools conducted three or more. The District’s CRCs included American History – Mexican American Viewpoint, American History – African American Viewpoint, Government – Mexican American Viewpoint, Government – African American Viewpoint, English Language Arts (11th Grade) – Mexican American Literature, English Language Arts (11th Grade) – African American Literature, English Language Arts (12th Grade) – Mexican American Literature, and

¹ The District’s final count of 1841 differs only slightly.

1 English Language Arts (12th Grade) – African American Literature. The District also
2 for the first time this past school year offered Middle School CRCs in English Language
3 Arts and Social Studies from both Mexican American and African American
4 viewpoints.

5 The District's commitment to provide a culturally relevant curriculum dates back
6 almost thirty years when it began offering classes as part of its Mexican American
7 Studies Program. In fact, the District pioneered such courses at the high school level in
8 the United States, and offered those classes voluntarily and independent of its
9 desegregation obligations. Unfortunately, the classes generated some local controversy,
10 and the State Legislature banned the program in 2010. In 2013, the Court and the
11 parties reinstituted and expanded the program with the adoption and approval of the
12 Unitary Status Plan (ECF 1448). Recent national studies suggest that such classes
13 positively and significantly impact outcomes for students. The District has observed
14 that positive impact locally on its own students. In any event, the District firmly
15 believes that it should offer CRCs because it is the right thing to do even absent
16 measurable positive impacts on student achievement.

17 **II. The Special Master Correctly Found That The District Conducted Sufficient**
18 **Recruitment and Professional Development.**

19 The District maintained an adequate number of Itinerant Teachers on staff given
20 the 2015-16 level of student enrollment in the CRC program and the corresponding
21 number of CRC teachers, and the Special Master correctly so found. ECF 1925, p. 4. In
22 fact, the District maintained one Itinerant Teacher for every nine regular CRC teachers.
23 The Harvard Graduate School of Education recommends that school districts maintain at
24 least one consulting teacher for every fifteen regular teachers in peer assistance and
25 review programs. *See* <http://www.gse.harvard.edu/~ngt/par/design>. The District's ratio
26 is well within that widely-recognized and used parameter. The District plans to increase
27 the total number of Itinerant Teachers to eight as it expands the CRC program into its

1 grade schools in the 2016-17 school year in order to maintain the ratio of one Itinerant
2 Teacher for every nine CRC teachers. The District plans to increase the number of
3 Itinerant Teachers to twelve for the 2017-18 school year as it further expands the
4 program.

5 The Mendoza Plaintiffs assert that the District could not adequately conduct
6 student/teacher recruitment and professional development with only five Itinerant
7 Teachers. While the Mendoza Plaintiffs accurately point out that the Itinerant Teachers
8 assisted with the recruitment and professional development functions, the Mendoza
9 Plaintiffs completely ignored the fact that many other District personnel assisted with
10 those functions as well, including Administrators and Program Developers in the
11 Culturally Relevant Pedagogy and Instruction (“CRPI”) Department, the more
12 experienced regular CRC teachers, CRPI college helpers, and administrators and
13 personnel from the Communications and Media Department. The District also
14 contracted with outside vendors to conduct professional development seminars. In
15 addition, the District recruited enough CRC teachers to substantially limit the teaching
16 burden on the Itinerant Teachers so they could devote more time to recruitment and
17 professional development. Contrary to the Mendoza Plaintiffs’ insinuations, the Special
18 Master thoroughly reviewed the District’s CRC program and well understood the
19 recruitment and professional development roles played by all members of the CRC staff,
20 including the Itinerant Teachers.

21 In the final analysis, the proof that the District adequately performed the
22 recruitment and professional development functions is, so to speak, “in the pudding.”
23 As explained above, student enrollment in the CRC program for the 2015-16 school year
24 was up more than five-fold from the previous Fall Semester. Further and importantly,
25 CRC classes averaged only 25 students, so the classes were not overcrowded. In
26 addition, the District did not cancel a single class for lack of a qualified teacher.

1 Specifically, with regard to student recruitment, the Special Master accurately
2 determined that the District undertook the following activities: (1) revised the course
3 catalog to provide students and parents with meaningful CRC course titles and course
4 descriptions; (2) prepared and distributed brochures and fliers describing the CRC
5 program and the courses offered; (3) lowered the minimum student threshold for CRCs
6 to ten students to allow more class options; (4) monitored CRC enrollment numbers and
7 conducted additional recruitment to fill under-enrolled classes; and (5) placed Middle
8 School students in CRCs with a choice to opt out (very few did). *Id.*, pp. 6-7. District
9 personnel also visited English and social studies classes to encourage student
10 participation in the CRC program, documented and followed up with students that
11 expressed interest, and conducted CRC student exit surveys at the end of the Semester to
12 respond to feedback and improve the quality of the classes.

13 In addition, the Special Master correctly found that to recruit CRC teachers, the
14 District: (1) made clear the Administration's strong support of the CRC program to
15 existing faculty; (2) informed existing faculty that the District needed teachers to teach
16 CR courses; (3) provided extra pay to those willing to train as CRC teachers; and (4)
17 arranged for CRC staff to participate in interviews for new teachers. *Id.*, pp. 4-5. The
18 CRPI staff, working with the District Human Resources Department, also placed
19 advertisements looking for CRC teachers in appropriate publications, networked with
20 various community organizations to recruit CRC teachers, and engaged in personal
21 outreach to potential CRC teachers. The Special Master accurately noted that the
22 District hired six new CRC teachers as a result of its recruitment efforts. *Id.*, p. 5.

23 Further, the Special Master accurately found that "the District offered the
24 professional development it committed to" and "CRPI staff, including itinerant teachers,
25 act[ed] as coaches and mentors on an ongoing basis." *Id.*, p. 6. More specifically, the
26 District held a three-day CRPI orientation training for teachers in July, 2015. The
27 District conducted a Saturday workshop each month to present strategies for successful
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1 instruction within the CRC classroom. The District also provided Tier 2 workshops to
2 more experienced CRC teachers. The CRC coaches and mentors provided input and
3 advice on effective CRC instruction to less experienced CRC teachers. The CRPI
4 Director conducted regular walkthroughs of CRC classrooms to observe teachers and
5 provide feedback. In the Winter of 2015-16, the CRPI Director and the District's
6 Professional Development Department provided professional development on
7 "Characteristics of Culturally Responsive Teaching and Learning." The Special Master
8 concluded that "[t]his level of support is unusual in other districts implementing a
9 difficult to teach curriculum." *Id.* Finally, the District will conduct a Summer Institute
10 for Culturally Responsive Education this summer.

11 **III. The District Will Spend Virtually All Budgeted Funds By The End Of The**
12 **Fiscal Year.**

13 As of May 31, 2016, the District has spent approximately 80% of its budgeted
14 funds for the fiscal year. The District anticipates that it will have spent virtually all of
15 those budgeted funds by the end of the fiscal year on June 30, 2016. Much of the
16 spending on the CRC program occurs in the fourth quarter as the District prepares for
17 the next school year. Specifically, the District will spend much of the remaining money
18 for Itinerant Teachers to engage in programmatic review, lesson planning, and
19 collaboration. Also, CRC teachers will engage in curriculum development and
20 curriculum map revision. Some of the money will fund the Summer Institute for
21 Culturally Responsive Education.

22 **Conclusion**

23 For the foregoing reasons, the District requests that the Court overrule the
24 Mendoza Plaintiffs' objection, and adopt and approve the Special Master's Report.
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1 DATED this 2nd day of June, 2016.

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13 **CERTIFICATE OF SERVICE**

14 The foregoing document was filed with the Court via the CM/ECF Electronic
15 Notification System this 2nd day of June, 2016, with an electronic copy sent via the
16 eFiling system to counsel registered therein.
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18 s/Diane Hodges
19 Employee of Steptoe & Johnson LLP
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