

EXHIBIT A

MENDOZA PLAINTIFFS' REQUEST THAT THE SPECIAL MASTER WITHDRAW SO MUCH OF HIS 6/12/18 RESPONSE TO OBJECTIONS TO 2016-17 ANNUAL REPORT (DOC. 2111) AS RELATES TO FINDINGS BASED ON AND/OR RELATING TO WHAT HE REFERS TO AS A "25% PLUS OR MINUS MEASURE" TO "DEFINE" INTEGRATION AND TABLE II-I THERETO

June 18, 2018

Mendoza Plaintiffs have reviewed the Special Master's most recent filing, an apparent refiling of the 5/10/18 "Special Master's Response to Objections to 2016-17 Annual Report" (Doc. 2109) ("May Filing") which they gather from that refiling (Doc. 2111) is intended in part to "make corrections clarifying the analysis and proposals in the 2016-17 SMAR." (6/12/18 "Special Master's Response to Objections to 2016-17 Annual Report" ("June Filing") at 2:18-19.)

The June Filing contains findings and conclusions not set forth in the May Filing relating to what the June Filing refers to as "highly diverse" schools based on application of what the June Filing finds "the more conventional definition of integration [than that mandated by the USP] ...a 25% plus or minus measure" (June Filing at 10:6), and then attaches Table II-I to identify the schools that the June Filing finds to be "highly diverse". Further, having adopted the "25% plus or minus measure", the Special Master abandons the terminology of "highly diverse" schools and makes the finding that "more than half of the District's students have the benefit of an integrated education." (June Filing at 10:6-7.)¹

¹ A quick comparison of Table II-I to TUSD 40th day enrollment data reveals that the Special Master's application of the "25% plus or minus measure" has led him to label as "highly diverse" schools in which students have the "benefit of an integrated education" Johnson Elementary School and Lawrence 3-8. The combined Latino and Native American enrollment of Johnson exceeded 90% of the school's total enrollment in 2016-17. The school apparently fit within the Special Master's measure of "highly diverse" because in addition to the 182 Latino and Native American students at Johnson, there also were three African American and eight white students. Similarly, the combined Latino and Native American enrollment of Lawrence exceeded 90% of the school's enrollment in 2016-17. The school apparently fit within the Special Master's definition of "highly diverse" because in addition to the 304 Latino and Native American students at Lawrence, there also were 8 African American and ten white students. Notably, TUSD 40th day enrollment data for 2017-18 reveals that the total number of white and African American students at each of Johnson and Lawrence dropped even lower in the following school year (2017-18) from 11 students to eight and from 18 students to 15, respectively.

Mendoza Plaintiffs request that all findings and discussion based on and/or relating to a “25% plus or minus measure” to “define” integration in the June Filing and Table II-I be withdrawn on the grounds that no such findings and discussion are supported by the record in this case, that there is nothing in the record in this case to support application or use of a “25% plus or minus measure” to “define” integration, and that the record in this case in fact establishes that the “25% plus or minus measure” is not “the more conventional definition of integration”, notwithstanding the assertion in the June Filing.

To the extent there has been discussion in this case of the standard to use to assess integration, it does not appear that any party ever contemplated a plus/minus 25% standard. Rather, the debate centered on whether to use 20% plus/minus or 15% plus/minus. See, for example, Judge Bury’s discussion of student assignment issues in his opinion of April 24, 2008 (Doc. 1270) at 15-20.

Of greater significance given the findings in the June Filing are the following:

- (1) In her review of the relevant cases, Christine H. Rossell, an expert known to the Special Master, found that while the plus/minus 20% standard had been used in some cases, “the most common standard” adopted by the courts was the plus/minus 15% standard. See Dr. Christine H. Rossell, The Carrot or the Stick, Temple University Press, 1990, at 30.
- (2) In 1995, TUSD commissioned an external study of TUSD’s use of special local funds for desegregation and programs related to the Office of Civil Rights requirements. (TUSD OCR Audit, December 12, 1995.) The report applied the plus/minus 15% standard, noting that was the standard most “commonly used by the courts.” (TUSD OCR Audit at 2.) One of the authors of that study was Maree Sneed, whose work is known to the Special Master and who was counsel to the District at the time the USP, including its definitions and standards to determine “integration”, was being negotiated.
- (3) The plus/minus 15% standard was used by the federal court in the mid-1990s when Topeka, Kansas, the school district that had been the focus of the Supreme Court’s decision in *Brown v. Board of Education*, finally desegregated.
- (4) The plus/minus 15% standard was used in Cleveland, a majority African American school district, in *Reed v Rhodes*, when Dr. Leonard Stevens who has served both as an expert in this case and as an advisor to the Special Master was the court monitor in that case.

Mendoza Plaintiffs have never agreed to a definition of integration other than that set forth in the USP and the Court has not adopted a different definition. There is no evidence in the record in this proceeding to support a finding that a “25% plus or

minus “ standard should be applied in this case much less that it is “more conventional” than the 15% standard mandated by the USP. Mendoza Plaintiffs therefore request that the Special Master withdraw all findings and discussion based on and/or relating to the use of a “25% plus or minus” standard to “define” integration or to identify “highly diverse” schools in the June Filing and that he withdraw as well Table II-I thereto.

EXHIBIT B

From: Thompson, Lois D. <lthompson@proskauer.com>
Sent: Wednesday, June 20, 2018 6:05 PM
To: Willis D. Hawley
Cc: Juan Rodriguez; rsjr3@aol.com; bconverse@steptoe.com; Brown, Samuel (Samuel.Brown@tUSD1.org); Timothy Overton (toverton@steptoe.com); Eichner, James (CRT) (James.Eichner@usdoj.gov); peter.beauchamp@usdoj.gov; Chanock, Alexander (CRT) (Alexander.Chanock@usdoj.gov); shaheena.simons@usdoj.gov
Subject: RE: Special Master 6/12/2018 Court Filing

Unfortunately, we seem to be talking past each other.

We believe that as Special Master you are required to assess District progress toward integration as integration is defined by the USP. That (compounded by the fact that you were applying a standard that is outside the record) is why we asked you to withdraw the discussion of the “25% plus/minus standard” and Table II-I. A new analysis by you, again based on a different definition from that in the USP, would in our view also be objectionable. The parties devoted significant time to negotiating the definition in the USP. It may not be optimal in your opinion. It may not be optimal in our view or that of the District. It is, however, the definition we all agreed to and therefore the one we must all apply.

Lois D. Thompson
Partner

[Proskauer](#)
2049 Century Park East
Suite 3200
Los Angeles, CA 90067-3206
d 310.284.5614
f 310.557.2193
lthompson@proskauer.com

greenspaces
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From: Willis D. Hawley <wdh@umd.edu>
Sent: Wednesday, June 20, 2018 8:16 AM
To: Thompson, Lois D. <lthompson@proskauer.com>
Cc: Juan Rodriguez <jrodriguez@maldef.org>; rsjr3@aol.com; bconverse@steptoe.com; Brown, Samuel (Samuel.Brown@tUSD1.org) <Samuel.Brown@tUSD1.org>; Timothy Overton (toverton@steptoe.com) <toverton@steptoe.com>; Eichner, James (CRT) (James.Eichner@usdoj.gov) <James.Eichner@usdoj.gov>; peter.beauchamp@usdoj.gov; Chanock, Alexander (CRT) (Alexander.Chanock@usdoj.gov) <Alexander.Chanock@usdoj.gov>; shaheena.simons@usdoj.gov
Subject: Re: Special Master 6/12/2018 Court Filing

Lois,

I don't feel that I should withdraw my comments with respect to integration. If you want to submit your concerns to the Court, I will clarify that my intent was not to suggest that there be a another major of integration at this point. And I will, given your concerns about what the conventional conceptions of integration are, show how many students would be going to integrated schools in TUSD if the measure were 15% plus or minus without the 70% cap. I know of no integration goals that would allow schools in which 70% of students were of a single race to be counted as integrated. The benefits of integration derive in significant part from the opportunity to learn with and from students of a different race.

Bill

On Tue, Jun 19, 2018 at 2:42 PM, Thompson, Lois D. <lthompson@proskauer.com> wrote:

Dr. Hawley,

Yes, we are asking you to withdraw your discussion and application of a "25% plus/minus" standard. What we are asking for is application of the USP, as negotiated by the parties and approved by the court.

Lois

From: Willis D. Hawley <wdh@umd.edu>

Sent: Monday, June 18, 2018 4:32 PM

To: Thompson, Lois D. <lthompson@proskauer.com>

Cc: Juan Rodriguez <jrodriguez@maldef.org>; rsjr3@aol.com; bconverse@steptoe.com; Brown, Samuel (Samuel.Brown@tusd1.org) <Samuel.Brown@tusd1.org>; Timothy Overton (toverton@steptoe.com) <toverton@steptoe.com>; Eichner, James (CRT) (James.Eichner@usdoj.gov) <James.Eichner@usdoj.gov>; peter.beauchamp@usdoj.gov; Chanock, Alexander (CRT) (Alexander.Chanock@usdoj.gov) <Alexander.Chanock@usdoj.gov>; shaheena.simons@usdoj.gov

Subject: Re: Special Master 6/12/2018 Court Filing

Are you asking that I withdraw my comments that you object to as a way of unburdening the court? Perhaps we should agreed on using the 15% plus or minus period. What is unconventional about the USP measure is the 70% rule. If we had a 15% plus or minus rule which you suggest is conventional we would have a very large number of students attending "integrated schools" many of which are racially concentrated.

On Mon, Jun 18, 2018 at 6:31 PM, Thompson, Lois D. <lthompson@proskauer.com> wrote:

Dear Dr. Hawley,

Please see the attached which we are submitting to you in an effort to avoid burdening the court.

Lois

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Willis D. Hawley

Professor Emeritus of Education and Public Policy

University of Maryland, College Park

Senior Adviser, Southern Poverty Law Center

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