

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
3 PROSKAUER ROSE LLP
2029 Century Park East, 24th Floor
4 Los Angeles, California 90067-3010
Telephone: (310) 557-2900
5 Facsimile: (310) 557-2193

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
8 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
9 634 S. Spring St.
11th Floor
10 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs
12

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS’
SUPPLEMENTARY RESPONSE TO
TUSD NOTICE AND REPORT OF
COMPLIANCE WITH UPDATE TO
THE FACE ACTION PLAN AND
OBJECTION TO THE DISTRICT’S
REQUEST (DOC. 2154) THAT IT BE
AWARDED UNITARY STATUS WITH
RESPECT TO SECTION VII OF THE
USP (FAMILY AND COMMUNITY
ENGAGEMENT)**

Hon. David C. Bury

25
26
27
28

1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et
7 al.,
8 Defendants.

Case No. CV 74-204 TUC DCB

9
10 **Introduction**

11 Pursuant to this Court’s Order of September 6, 2018 (Doc. 2123) (“Sept. Order”),
12 Mendoza Plaintiffs submit this Supplementary Response to TUSD Notice and Report of
13 Compliance with Update to the FACE Action Plan (“TUSD FACE Update”) and its
14 accompanying request that it be awarded unitary status with respect to Section VII of the
15 USP (Family and Community Engagement).
16

17 TUSD’s request must be rejected on two grounds: (1) its update to the FACE
18 Action Plan fails to fully comply with the Court’s Sept. Order and (2) its own records
19 demonstrate both that it has failed to adequately implement the provisions that are included
20 in its update and that its oversight of family engagement activities at the school site level
21 remains woefully inadequate.
22

23 **The Updated FACE Action Plan Does Not Comply with the Sept. Order**

24 *There is Not Yet a Data Gathering and Tracking Program*

25
26 In its Sept. Order, the Court directed the District to develop data tracking
27 capabilities. (Sept. Order at 150:25; *see also*, Sept. Order at 136:19-137:2.) No such
28

1 capabilities yet exist. Rather, the TUSD FACE Update states that the District anticipates
2 purchase of a system in January 2019 and that even if the purchase goes forward in
3 January, TUSD will not have the ability to “test data capture and analysis until April and
4 May” 2019. (TUSD FACE Update, Doc. 2154-1, at 4.) Further, “full operational
5 capability” will not occur until “the beginning of the 19-20 school year.” (*Id.*)
6

7 The District should not be relieved of Court oversight until it has demonstrated to
8 the satisfaction of the Special Master and the plaintiffs that it actually has purchased (or
9 developed) a data tracking system that in fact provides the sort of information that permits
10 meaningful reporting and oversight of its school site based family engagement activities¹.
11 In this regard, Mendoza Plaintiffs also note that the Court was explicit in saying that data
12 reporting must track and permit assessment of those sorts of activities that “facilitate
13 student learning or be training of family leaders for schools” (Doc. 2123 at 134, n. 54) as
14 distinct from the sorts of school activities that are simply “attended by parents, like a
15 student concert or play.” (Doc. 2123 at 134: 11-12.) The District should not be relieved of
16 court supervision until it can demonstrate that the required reporting is in fact taking place
17 – or, at the very least, that the system it is implementing has the mandated capacities.
18
19
20
21

22 ¹ In the TUSD FACE Update, the District seeks to place responsibility for the delay in
23 acquiring a data tracking system on the plaintiffs and the Special Master. (TUSD FACE
24 Update, Doc. 2154-1 at 4.) What the Update fails to state is that the plaintiffs and the
25 Special Master opposed the District’s proposal because the system the District then wanted
26 to purchase was designed primarily to enhance site security, not monitor effective family
27 engagement. Mendoza Plaintiffs have requested but have not yet received information
28 concerning the specifications of the system that the District now intends to purchase.
Given the issues that were unexpectedly presented the last time the District proposed to
purchase a data tracking system, Mendoza Plaintiffs believe it is particularly necessary that
the Court defer consideration of partial unitary status in this area until the District has
demonstrated that it is purchasing (or developing) a system that truly tracks family
engagement as defined by the Court and the FACE Plan.

1 **The Updated FACE Action Plan Does Not Adequately Cross-Reference the**
2 **Revised MASSD Operating Plan and Thereby Raises the Concern that Essential**
3 **Family Engagement Activity is Not Being Coordinated Across the District and Not**
4 **Being Incorporated into What is Occurring at School Sites**

5
6 For years, a particular concern of the Mendoza Plaintiffs has been that families are
7 not being provided the information and training they require to be active participants in
8 their children’s education and in the various forums (like school site councils) that
9 interface with school administrations and advocate for the needs of families and students.
10 Such training and empowerment of parents receives little attention in the Guidelines for
11 Family Engagement at School Sites that the District has implemented. (Doc. 2154-1,
12 Exhibit 1.) That omission makes the work of the Mexican American Student Services
13 Department (“MASSD”) as set forth in its revised Operating Plan (Doc. 2151-2) that much
14 more essential. Yet, notably absent from the areas of collaboration with Mexican
15 American Student Services enumerated in the TUSD FACE Update (Doc. 2154-1 at 5) are
16 all of the following (quoted from the MASSD Operating Plan):

17 “Recruit for and facilitate the Mexican American Parent Advisory Council to
18 improve inclusion in the District’s decision-making process;

19 Develop bilingual (Spanish/English) empowerment trainings with FACE staff for
20 Mexican American/Latino parents to participate in site councils, PTAs, SCPC, and
21 Governing Board meetings²;

22
23
24
25
26 ² Mendoza Plaintiffs are troubled by the statement in the TUSD FACE Update that “FACE
27 does not rely on ...Mexican American Student Services Department to provide parent
28 education” (Doc. 2154-1 at 4) because it reveals a failure to recognize – and build on -- the
essential role that the MASSD in fact has assumed in providing parents with the tools they
need to be meaningful participants at the school level and with respect to their students’

1 Liaison to Language Acquisition Department to encourage equitable
2 implementation of parental rights and consent for students identified as ELL...

3 Support sites in developing and implementing parent outreach to develop equitable
4 access for Mexican/Latino parents district-wide.”

5 MASSD Operating Plan, Doc. 2151-2, at 8.

6
7 The Mendoza Plaintiffs raise this point not to have the District go back and cut and
8 paste the omitted sections of the MASSD Operating Plan into the updated FACE Plan.
9 Rather, they ask that the District be directed both to document that the referenced MASSD
10 activities are occurring and to ensure that the collaboration with family engagement
11 personnel at the District and site level that is contemplated by the MASSD Operating Plan
12 in fact is going forward.

13
14 **The District Has Not Followed the Court’s Direction with Respect to the**
15 **Special Master’s Specific Concerns Relating to Academic Parent-Teacher Teams**
16 **(“APTT”) and Supportive and Inclusive Learning (“SAIL”)**

17
18 In his SMAR for 2016-17, the Special Master wrote the following:

19 “FACE also says that the District bases its family and community engagement
20 efforts on a model strategy called Academic Parent-Teacher Teams (APTT). However, the
21 APTT model does not involve two-way family-teacher information sharing.

22
23 “The District says that training for certified and administrative staff with respect to
24 two-way engagement is embodied in the training for Supportive and Inclusive Learning
25 environments (SAIL)...There is no solid evidence in the DAR about the amount or

26
27
28 educations -- and the absence of the very sort of coordination that the District asserts is
occurring.

1 effectiveness of SAIL training as it relates to family and community engagement.”

2 (Special Master’s 2016-17 Annual Report (“SMAR”), Doc. 2096, at 68:6-15.)

3 Referencing the Special Master’s concerns, the Court “direct[ed] that the expert
4 [retained by the District] consider the Special Master’s concern that the Academic Parent-
5 Teacher Teams (APTT) is not a two-way family-teacher information sharing strategy and
6 that Supportive and Inclusive Learning (SAIL) is an effective strategy for schools, no
7 Family Centers.” (Sept. Order, Doc. 2123 at 136, n. 57; citation to SMAR omitted.)

8
9 In the TUSD FACE Update, the District says only: “The Department will continue
10 to work with Dr. Epstein to address any specific concerns related to Academic Parent
11 Teacher Teams and Supportive and Inclusive Learning (SAIL) in schools and in the
12 Family Resource Centers.” (Doc. 2154-1 at 3.) Mendoza Plaintiffs respectfully suggest
13 that this statement does not adequately respond to the Court’s directive and request that the
14 District again be directed to elicit (and report) Dr. Epstein’s opinions and advice with
15 respect to the issues raised by the Special Master and posed by the Court as well as to
16 further revise the TUSD FACE Update, if appropriate, based on Dr. Epstein’s opinions and
17 advice.
18
19

20
21 **TUSD Has Not Adequately Implemented and is Not Adequately Monitoring**
22 **the Guidelines for Family Engagement at School Sites**

23 In the TUSD FACE Update, the District reports that it has adopted and is
24 implementing Guidelines for Family Engagement at School Sites and that a system is in
25 place to monitor those engagement efforts. (TUSD FACE Update at 3 and Exhibit 1.) The
26 District’s own records indicate that this is not so.
27
28

1 The Guidelines (Doc. 2154-1, Exhibit 1, at 16 of 36) set forth “Family Engagement
2 Activity Requirements for all School Sites”. There are multiple requirements including
3 that there be a monthly (August – May) parent/guardian newsletter “available to families
4 in hard copy, via email, online” and that each school is to have a school site council
5 election and meeting in Q1 and meetings of that site council in each subsequent quarter.
6 (*Id.* at 16 and 17 of 36.)
7

8 While the Mendoza Plaintiffs cannot determine the extent to which schools are
9 implementing all of the family engagement activity requirements set forth in the
10 Guidelines, it was possible for them to assess compliance with the requirements for
11 monthly newsletters and active school site councils by accessing school websites. They
12 arbitrarily selected four schools that have not figured prominently in the litigation and
13 discovered that the levels of compliance with the specific guidelines relating to newsletter
14 and school site councils appear to range from not at all to satisfactory (notwithstanding
15 that central to the Special Master’s recommendation concerning the development of
16 guidelines was his finding that the “scope of family and community engagement efforts
17 vary across schools” (SMAR, Doc. 2096, at 68:24-25))³. That range reveals both that
18 certain principals are not yet implementing the guidelines and that District oversight of
19 implementation is inadequate since it should not be for the Mendoza Plaintiffs to report the
20 following:
21
22
23

24 Collier Elementary School: When Mendoza Plaintiffs visited its website on
25 December 17, 2018, they found no newsletters; a link to the school site council that said its
26

27 ³ See also the Court’s admonition: “[I]mplementation of many successful strategies varies
28 from good to nil, school to school. The District must attain unitary status district-wide.”
(Sept. Order, Doc. 2123 at 145-46, n.58.)

1 next meeting would be August 11, 2016, and a listing of PTA members for the 2016-17
2 school year.

3 Oyama Elementary School: When Mendoza Plaintiffs visited its website on
4 December 17, 2018, they found no newsletters, a Parent Involvement Policy dated 2016
5 (with dates of meetings of the School Community Partnership Council “TBD”), and a
6 message from the principal posted last May, wishing everyone a good summer. (The
7 Guidelines also say (Doc. 2154-1 at 19 of 36) that there shall be a welcome letter for
8 families in the first week of the school year.)
9

10 Doolen Middle School: Similar, no newsletters and the only letter from the
11 principal was dated June 29, 2015, seeking donations to the school in the face of financial
12 cuts.
13

14 Maldonado: By contrast, the school’s website includes a section labeled
15 “Newsletters” on the home page “masthead” as well as information about its PTO on the
16 homepage. The newsletters are posted in English and in Spanish, and the November 2018
17 newsletter includes links (in English and Spanish) to a family engagement survey.
18

19 That a school can in fact follow the Guidelines is heartening but until all schools do
20 so and the District evidences far more effective oversight of their family engagement
21 efforts, unitary status should be withheld.
22

23 **Conclusion**

24 This Court should deny the District’s request for a finding that it has attained
25 unitary status with respect to family and community engagement⁴ and should require
26

27 ⁴ In making this request, Mendoza Plaintiffs do not intend to waive, and hereby retain,
28 their claim that the District has not yet attained unitary status with respect to any portion of
the USP.

1 TUSD to fully comply with so much of its Order of Sept. 6 as related to family and
2 community engagement, as more fully explained above.

3
4
5 Dated: January 7, 2019
6

7
8 MALDEF
9 JUAN RODRIGUEZ
10 THOMAS A. SAENZ

11 /s/ Juan Rodriguez
12 Attorney for Mendoza Plaintiffs

13 PROSKAUER ROSE LLP
14 LOIS D. THOMPSON
15 JENNIFER L. ROCHE

16 /s/ Lois D. Thompson
17 Attorney for Mendoza Plaintiffs
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' SUPPLEMENTARY RESPONSE TO TUSD NOTICE AND REPORT OF COMPLIANCE WITH UPDATE TO THE FACE ACTION PLAN AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2154) THAT IT BE AWARDED UNITARY STATUS WITH RESPECT TO SECTION VII OF THE USP (FAMILY AND COMMUNITY ENGAGEMENT)** 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:

P. Bruce Converse
bconverse@steptoe.com

Paul K. Charlton
pcharlton@steptoe.com

Timothy W. Overton
toverton@steptoe.com

Samuel Brown
samuel.brown@tusd1.org

Robert S. Ross
Robert.Ross@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

Dated: January 7, 2019

/s/ Mariana Esquer
Mariana Esquer