

# **EXHIBIT 1**

MENDOZA PLAINTIFFS' COMMENTS REGARDING THE SPECIAL MASTER'S MEMO RE: REPORT ON  
TEACHER DIVERSITY PLAN AND INFORMATION REQUEST

August 22, 2016

Mendoza Plaintiffs have now had the opportunity to review the Special Master's August 15, 2016 memo re: Report on Teacher Diversity Plan ("TDP Report") and his August 19, 2016 memo re: Clarification of Teacher Diversity Situation ("Clarification") together with the District's teacher diversity data report #4 dated August 12, 2016 ("TUSD's Data") provided by the Special Master on August 15. Mendoza Plaintiffs were surprised to learn that the District asserts that it has achieved teacher diversity at 17<sup>1</sup> of the 26 target schools under its Teacher Diversity Plan ("TDP") by "look[ing] only at the proportions of African American and Latino[] teachers". (TDP Report at 1.) (Mendoza Plaintiffs refer to the District's assessment of the data as the "TUSD Analysis" below.)

When the Special Master recommended that the Court order the District to develop and implement a teacher diversity plan he first noted the following: "Given the small numbers of African American teachers in TUSD, ensuring that African American teachers are distributed evenly throughout the District does not seem wise and there are no examples of concentrations of African American teachers in any particular school." (Special Master's Report and Recommendation Regarding Racial Disparities Among Faculty in TUSD Schools, Doc. 1913 at 2.) His focus therefore was on the disparities between the White and Latino teaching staffs and the very high proportion of White teachers in many District schools (for example, per report #4, 100% at Collier; 91% at Dunham; 88% at Dietz). At the time the Special Master made his proposal, 37 District schools failed to comply with a strict application of the USP standard. (Clarification at 1.) Using a number of criteria to identify specific schools for immediate focus, the Special Master then asked that the parties stipulate to guidelines for achieving site teacher diversity that would apply the +/-15% standard to Latino and White teaching staff to achieve meaningful diversity within those schools. The District "adopted th[e Special Master's] proposal" (TDP at 1.) Its TDP therefore focused on the 26 "Group 1" schools that the Special Master had identified as having "significant disparities." (*Id.*) The District now attempts to abandon the guidelines to assess disparity that underpin both the Special Master's Report and Recommendation to the Court and the TDP and adopt instead a literal reading of the USP to increase the number of schools at which it says it achieved

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<sup>1</sup> The Special Master refers to a TUSD diversity data report #3 in his TDP Report and states in his Clarification that as a consequence of a correction in the included schools between data report #3 and data report #4, under the TUSD Analysis, "the district's claim that it had 'integrated' 17 of 26 schools should have been that 16 schools were now 'integrated'."

Mendoza Plaintiffs have not been provided a copy of data report #3 (or any other data report except #4) so they cannot comment on the issue of omitted and corrected schools. However, they do note that there are 17 schools on data report #4 that the District asserts are 'integrated' and they therefore address 17 schools in their comments herein.

an “acceptable range” under the TDP to 17 (instead of what the Special Master states is 11 and what Mendoza Plaintiffs believe may be less, as discussed more fully below). (See TDP Report; TUSD’s Data).

The District therefore is trying to have the best of two worlds: to have a reduced number of schools on which to focus its attention (as a consequence of the agreement on how disparity would be assessed for the purpose of determining that number) and then claiming success by using the assessment of disparity that, if applied to all TUSD schools, would require it to be focusing on a much larger number of schools.

That the District’s current approach to assessment of disparity is improper and outside the scope of the TDP is confirmed by the fact that there are a number of schools that are in TDP “Group 1” that were within the +/- 15 standard as to Latino and African American teachers to begin with, **but were not within that standard with respect to White teachers**, which is the reason they were identified for express attention by the Special Master and included in TUSD’s TDP list of 26 “Group 1” schools. It therefore is illogical, and demonstrative of a lack of good faith, that the District now claims to have achieved diversity in 17 of 26 “Group 1” target schools (see TDP Report at 1).

On March 25, 2016, the Court issued its Order requiring TUSD to “act immediately to address the racial disparities among faculty at TUSD schools” given that it had failed to implement the USP Section requiring diversification of school site teaching staff. On May 17, 2016, the Special Master provided the parties with his memo re: **Request for Agreement Among the Parties Regarding Guidelines for Achieving School Site Teacher Diversity** (“TDP Agreement Memo”) which detailed guidelines that he had been discussing with the District to guide the District’s remedial efforts. The email transmitting that memo clarified that the guidelines were the same as those detailed in a May 9 memo that he previously had circulated, but that he “amended and defined [them] as a stipulation among the parties.” On May 11, 2016, Mendoza Plaintiffs agreed to the guidelines indicating that they had no objections to them. The District “adopted [the Special Master’s] proposal” in the June 1, 2016 “final” draft of the TDP circulated to the parties and that was to go before its Governing Board for action. The Mendoza Plaintiffs’ June 8, 2016 comments to the Governing Board raised concerns they believed the Board should be made aware of but did not contain any objections to the “final” TDP adopting the Special Master’s proposal.<sup>2</sup>

In the TDP Agreement Memo, the Special Master expressly stated that the guidelines would “achieve the objectives of the USP more productively than would rigid adherence to the 15% rule. I

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<sup>2</sup> Although the District had solicited Plaintiff “final thoughts” so the Governing Board would be “fully informed as to the parties’ positions” (TUSD June 1, 2016 email), a purpose to which Mendoza Plaintiffs’ June 8 comments were directed, the District did not provide those comments to its Governing Board because “District staff felt that the absence of any real substantive objection... to the existing elements of the [TDP] coupled with approval of the plan by the Special Master” made presentment of Mendoza Plaintiffs’ comment to the Governing Board “unnecessary” (TUSD’s June 22, 2016 email). (A more complete discussion of the ongoing issues implicated in the District’s failure to provide Mendoza Plaintiffs’ TDP comments to its Governing Board is detailed in Mendoza Plaintiffs’ June 24, 2016 email.)

ask[] for your approval of these guidelines.” Further, the TDP Agreement Memo unambiguously stated that the guidelines for achieving and measuring teacher diversity “consider only the numbers and percentages of Anglo and Latino teachers.” (TDP Agreement Memo at 2-3.) It further detailed that the target group of schools under the TDP would include 26 schools that “had significant differences in the numbers of *Anglo and Latino teachers. Changes shall be made in these faculties so they, at minimum, will be in compliance with the provisions of the USP.*” (TDP Agreement Memo at 2-3 (emphasis added).) The Special Master referred to these 26 schools as “Group 1” schools. (*Id.* at 3.) “Group 2” schools included “nine schools that have reasonably diverse faculties even though they do not meet the 15% rule” (*id.*) and that therefore “shall not be required to alter the current number of *Anglo and Latino teachers* (*id.* at 5 (emphasis added).) Thus, the guidelines for achieving diversity required that the +/- 15% standard for measuring achievement of diversity would apply only to White and Latino teachers.

Noting in its cover email that the District “worked closely” with the Special Master in developing the TDP, the District provided the Governing Board-approved TDP to the Plaintiffs and Special Master on June 15, 2016. That TDP states that the “**District has adopted [the Special Master’s] proposal**” to target the 26 schools, as had its June 1 “final” TDP, and lists all schools that are “Group 1” schools, adopting the Special Master’s designated term for this group of schools. (*Id.* at 1.) It further references a second set of schools “identified by the Special Master as having faculty that are racially diverse” notwithstanding that they do not meet the +/-15% standard in stating that per the Special Master’s guidelines, they are “not included in the list of target schools.” (*Id.*) The District then lists those schools, adopting the Special Master’s designation of those schools as “Group 2” schools. The District plainly adopted the guidelines detailed in the TDP Agreement Memo and premised its TDP on the Special Master’s analysis that “consider[ed] only the numbers and percentages of Anglo and Latino teachers.”

Indeed TUSD’s Data confirms that the District agreed to and adopted the guidelines for achieving and measuring school site diversity detailed in the TDP Agreement Memo. Under the assessment that the District currently is using, there would have been no reason to include schools like Myers/Ganouong, Sam Hughes, and Miles in Group 1 to begin with. Per report #4, they had Latino and African American teaching staffs within the +/- range when they first were included in Group 1. (TUSD’s Data.)<sup>3</sup> The only reason they were included is that their number of White teachers was outside that range. (*Id.*) Further demonstrating the illogical nature of the District’s current attempt to abandon the guidelines it agreed to is the case of UHS. Of the target schools listed in the TDP Agreement Memo (and adopted in the District’s TDP) at 3-4, only UHS contained a parenthetical explanation for its inclusion on the list, that is, that although UHS did not have a material deviation from the +/- 15% standard for White teachers, “[i]t is important to have non-white faculty in a school where the District is working to integrate its student body. Having strong Latino and African American role models is very important to

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<sup>3</sup> Vail may also fit within this subset but it is impossible to tell because the data TUSD presents for that school is patently inaccurate. The first set of data shows that 37 of 34 teachers are White. Therefore one cannot rely on the column showing that Vail then had a teaching staff that was 88% White. The Current Count says that the teaching staff for Vail has grown from that 34 number to 45, which seems unlikely. (It also is difficult to reconcile the data for resignations and transfers for Vail since the totals plainly for each category are clearly inconsistent with the entries by race and ethnicity.) (TUSD’s Data.)

counter stereotype threat among African American and Latino students and to provide cultural perspectives to Anglo teachers, when needed.” (TDP Agreement Memo at 3-4.) Rather than recruit African American and Latino teachers at UHS, the District hired seven White teachers, a single Latino teacher (to replace two Latino teachers who resigned) and zero African American teachers at UHS, in effect maintaining the same percentages of teaching staff by race at UHS as was the case last year. (See TUSD’s Data.) Significantly, notwithstanding that one of the purposes for encouraging transfers was to encourage movements that reduce racial disparity, the two transfers to UHS were White. (TUSD’s Data.) Therefore, with a net increase of 2 teachers, and a loss of two of its five Latino teachers, UHS reports having started this year with a greater absolute number of White teachers (46 v. 43) and a lower number of Latino teachers (4 v. 5). (TUSD’s Data.) Yet, notwithstanding this step backwards, the District apparently considers itself to have achieved an “acceptable range” at UHS as well.

Based on their understanding of the TDP, Mendoza Plaintiffs believe that all of the following schools on the TUSD list of schools in the “acceptable range” in fact remain out of compliance with the TDP: Henry, Hudlow, Kellond, Lineweaver, Sam Hughes, Steele, Whitmore. As noted above, the data is so inaccurate for Vail that one cannot now determine where it fits. And, as noted above, UHS has taken a step backwards from where it began.

For the reasons detailed above, Mendoza Plaintiffs do not believe the District now can seek to abandon the standard to which it plainly agreed for how site diversity is to be measured (so as to achieve meaningful diversity and further USP purposes). Indeed, the Mendoza Plaintiffs fully agree with the Special Master that apparently, “When it made less progress than it had hoped, the District revisited [the] USP and unilaterally redefined the goals of the TDP[.]” (TDP Report at 4.) They further believe that the District’s unilateral decision to abandon the standard by which site diversity is measured reflects a lack of good faith, and therefore request that the Special Master take such actions as he deems appropriate to bring the District’s actions to the attention of the Court.

#### *Request for information*

The TUSD Data appears to include a sheet that details the “race and certification of the actual appointments in” the schools listed in footnote 4 of the TDP. (See TDP at 3, n.4) Mendoza Plaintiffs request confirmation that this is the complete list of all appointments made at the schools listed in footnote 4 of the TDP since the time the District’s Governing Board adopted the TDP. If it is not, Mendoza Plaintiffs ask how recent this data is, and request that they be provided with any updated data on teaching appointments at the schools listed in the TDP at footnote 4.

Further, for these schools, Mendoza Plaintiffs request data comparable to that provided for the target 26 “Group 1” schools as part of TUSD’s Data. (In that regard, Mendoza Plaintiffs note that it appears the District did not provide the data required by the TDP to be presented to the Special Master

twice monthly with respect to the schools listed in footnote 4 as the Special Master notes that this data was “not reported” (Clarification).<sup>4</sup>)

In addition, Mendoza Plaintiffs request that the District provide a revised report that includes accurate information for Vail. (There also is an obvious error in the entry for White percentage for Roberts-Naylor but the absolute numbers do not indicate that it is wrongly categorized.)

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<sup>4</sup> The TDP further indicates that with regard to “Group 2” schools, which comprise part of the list of schools in footnote 4 of the TDP, the District “will report to the Special Master on any proposed additions to the faculty that alter the current racial/ethnic percentages in teaching staff at the school.” (TDP at 1.)

# **EXHIBIT 2**

May 17, 2016

To: Parties

From: Bill Hawley

Re: Request for Agreement Among the Parties Regarding Guidelines for Achieving School Site Teacher Diversity

### Explanation

On May 9, 2016, I sent a memo to you asking for comments on a proposal related to implementation of the USP provisions dealing with site level teacher diversity. I receive one comment from the Mendoza plaintiffs and have amended the original proposal in response to those comments. The changes are identified below in *italics*. As I indicated, the implementation is a matter of considerable concern to teachers and principals in the District so clarifying the process and the schools involved is very important. I understand that the District is now implementing the provisions of the USP in 26 schools listed below.

I am preparing to submit the amended summary of recommendations from the May 9 memo to the Court as a stipulation that has the agreement of the parties. If here is any objection to this, please let me know immediately.

### Introduction

Forty-five TUSD schools do not meet the USP criteria for a racially diverse faculty (15 % =/- the faculty average by race for each school level).

However, applying this 15% criteria without considering the situation in many schools may not be productive. The 15% rule is commonly used but has its roots in cases where all white and all black schools were being integrated.

Among the reasons for having a diverse faculty in schools are:



1. Having students learn from teachers from different races undermine stereotyping and fosters confidence among students and their ability to relate to people of other races.
2. Providing students with teachers of the same race might help other teachers understand the experiences and dispositions diverse students bring to the school.
3. Teachers serve as role models and their professionalism may give students confidence that they too can achieve in these and comparable roles.
4. A diverse faculty is likely to arrive at more nuanced and sophisticated decisions than the faculty that is predominantly of a single race, especially in schools with diverse student population.
5. Having colleagues of different races with whom one collaborates may break down racial stereotypes among teachers.
6. Teachers of different races and backgrounds can facilitate communication with diverse families and communities.

These purposes of a diverse faculty at each school can be achieved in schools with a significant number of teachers from different races-- in this case, Anglo and Latino--interacting with students on a regular basis. Some schools that meet the 15% criterion are less "racially balanced" than schools that do not. For example, Dodge Middle School has 16 Anglo teachers, one African American teacher and two Latino teachers. Palos Verde High School has 38 Anglo teachers, two African American teachers and six Latino teachers. Both of these schools, as well as others with very small numbers of Latino teachers, meet the USP guidelines.

In this memo, I make several recommendations to guide the process of bringing the faculties of the District schools in the compliance with respect to racial diversity as defined by the USP in ways that will achieve the objectives of the USP more productively than would rigid adherence to the 15% rule. I asked your approval of these guidelines.

### Analysis

In the analysis below, I consider only the numbers and percentages of Anglo and Latino teachers. Teachers of other races are so small in number that applying the 15% rule makes no sense. For example, there

are fewer African American teachers serving the District than there are schools in the District.

The 45 TUSD schools that do not meet the USP criterion for diversity can usefully be divided into three groups. The first group includes 26 schools that do not meet the criteria and also have significant differences in the numbers of Anglo and Latino teachers. Changes shall be made in these faculties so they, at minimum, will be in compliance with the provisions of the USP. The second group includes nine schools that have reasonably diverse faculties even though they do not meet the 15% rule. The third group of schools are dual language schools that typically have more Latino teachers than the criteria would allow. However, as I indicated in an earlier memo to the parties, the difficulty of recruiting and retaining Anglo or African American bilingual teachers is substantial and I believe that these schools, while they shall not be exempted from the effort to increase diversity, shall not be considered as being in noncompliance with the USP.

Group 1

Bloom

Collier

Dunham

Fruchthendler

Gale

Henry

Holladay

Howell

Hudlow

Kellond

Lineweaver

Marshall

Miles

Miller

Myer-Ganoung

Hughs

Roberts-Naylor

Soleng-Tom

Steele

Tolson

Whitmore

Booth-Fickett

Dietz

Safford

Vail

UHS (UHS is only One percentage point off on Anglos but because there are so few non-Anglo teachers. It is important to have non-white faculty in a school where the District is working to integrate its student body. Having strong Latino and African American role models is very important to counter stereotype threat among African American and Latino students and to provide cultural perspectives to Anglo teachers, when needed.

## Group 2

I believe that the schools in Group 2 shall be exempted from the requirement that their faculties be meet the 15% rule because their faculties are reasonably “racially balanced”. The number of Anglo and Latino teachers in each of these schools now seems sufficient to perform the roles outlined above that racially diverse faculties serve for their students, teachers and families.

School	Teachers					
	Total	Anglo N	Latino N	AA N	Anglo %	Latino %
Banks	16	7	6	2	44	38
Borton	28	13	12	-	46	43
Carillo	18	9	8	-	50	44
Cavett	16	6	9	1	38	56
Manzo	16	6	9	-	38	56
Ochoa	9	5	4	-	44	56
Warren	16	7	7	-	44	44
C.E. Rose	33	14	16	1	47	48
Morgan Maxwell	27	11	15	1	41	56

As indicated above, replacing teachers in schools without looking at the specific situation and possible consequences seems unwise. Effective instruction and a civil learning environments are facilitated when teachers know students in a school faculty cohesion is important to the coherent implementation of policies, curricula and instructional practices.

Professional Learning Communities work best where faculties are relatively stable. About 120 teachers would have to move if the 15 percent rule were applied to all schools in Groups 1 and 2. If moving faculty causes good teachers to leave the District, that would have negative consequences for students. The downside of sticking with the 15 percent rule without looking at each school is illustrated by the Ochoa situation. To meet the USP guidelines for faculty diversity, an Anglo teacher would have to replace a Latino teacher so that there was five Anglo teachers and four Latino teachers in a school in which Latinos comprise about 82 percent of the student body and that has a unique approach to learning.

Of course, new people can invigorate a school but when that strategy is applied, it shall be done intentionally with specific people and goals in mind.

Stipulation

1. Schools that meet the standards for diversity spelled out in the USP are not subject to requirements for change in faculty racial composition. However, the District shall:
  - a. be proactive in diversifying schools that meet the criteria but are predominantly one race (such as Dodge Erickson and Palo Verde).
  - b. place new teachers in schools and deal with transfers so that a school does not become noncompliant with respect to racial diversity.
  
2. Schools in Group 1 above shall meet the diversity standards in the USP over the next two school years with at least half of the schools being compliant at the start of the 2016-17 school year. *These schools are:*  
*to be listed*
  
3. Schools in Group 2 shall not be required to alter the current number of Anglo and Latino teachers. Shall the size of the faculties in the schools increase or decrease, *or shall any new appointments to existing positions be made*, the District shall seek to maintain a “racially balanced” faculty. *Proposed additions to the faculty in Group 2 schools that alter the number of Latino and Anglo teachers shall be submitted to the Special Master prior to the appointment.*  
  
*Group 2 schools will be listed here.*
  
4. Dual language schools would be exempted from the USP requirement with respect to the 15% rule but the District shall continue efforts to recruit and retain Anglo and African American bilingual teachers in dual language schools.
  
5. Hard to staff teaching positions-- defined now has math, science, *bilingual* and special education-- may be filled by persons who negatively affect or fail to remedy the faculty diversity compliance status of Group 1 and Group 2 schools if a person who would diversify

the faculty cannot be identified. The Special Master shall monitor all such appointments.

6. *The District shall submit a report to the Special Master every two weeks relating to appointments made in each of the three groups of schools. These reports shall identify the race and certification field(s) of the appointees. The Special Master will share these reports with the plaintiffs, with his comments.*

# **EXHIBIT 3**

August 19, 2016

To: Parties

From: Bill Hawley

Re: Clarification of Teacher Diversity Situation

As the Mendoza plaintiffs pointed out in response to my report on implementation of the teacher diversity plan, my report was based on the third report but I sent you the raw data from the fourth report from the district. The reason for this is that the schools listed in the fourth report were correct and the third report included a school that should not have been listed and omitted one that should have been. This difference between the third and fourth report does not affect the overall story except that the district's claim that it had "integrated" 17 of the 26 schools should have been that 16 schools were now "integrated".

You will recall, however, that the District did not use the Teacher Diversity Plan (TDP) as the basis for determining whether a school faculty was racially balanced or sufficiently diverse and instead used a literal interpretation of the USP. I went over these issues in my previous report and will not repeat that discussion here except to say that had the district used the criteria in its own TDP, it would have successfully integrated ten of the 26 schools targeted.

If we were to use the USP definition of an integrated faculty, 37 schools (not counting the dual language magnets) rather than 26 would be involved. Since current data on the racial composition of the additional 11 schools were not reported, I cannot tell you whether the district met the criteria set forth by the court.

Eight schools of the 26 schools targeted by the district pursuant to TDP that remain problematic (considering only Latino faculty) are: Collier, Dunham, Fruchthendler, Holladay, Howell Tolson, Booth-Fickett, and Dietz.

As noted in my earlier report, number of hires substantially outnumbered the teachers transferred with many of the new hires ending up in C and D schools. Thus, the hope that the TDP could be used to reallocate highly effective teachers seems not to have been realized (though the columns here do not add up).



I am not sure how to handle this. I will be visiting the district in late September so we can discuss the direction the district wants to take—TDP or USP. I will then report to the plaintiffs. If this is not satisfactory, please let me know.

# **EXHIBIT 4**

**From:** Willis D. Hawley <wdh@umd.edu>  
**Sent:** Tuesday, September 06, 2016 4:51 PM  
**To:** Rubin Salter Jr.; Thompson, Lois D. (lthompson@proskauer.com); Juan Rodriguez; Eichner, James (CRT); Chanock, Alexander (CRT) (Alexander.Chanock@usdoj.gov); shaheena simons; Desegregation; Converse, Bruce; Charlton, Paul  
**Cc:** Becky Montano; Vicki Balentine; John Robertson  
**Subject:** Report to the Court on TDP  
**Attachments:** TDP Report to the Court.docx

**Please see attached. I will file tomorrow. Plaintiffs will note that the District has agreed to use the TDP as it was approved by the plaintiffs. Bill**

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Willis D. Hawley  
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University of Maryland, College Park  
Senior Adviser, Southern Poverty Law Center

# **EXHIBIT 5**

