

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,
25

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

**MENDOZA PLAINTIFFS’
SUPPLEMENTARY RESPONSE TO
TUSD NOTICE AND REPORT OF
COMPLIANCE: CENTRALIZED
HIRING PROCESS AND
CERTIFICATION FOR PLACING NEW
TEACHERS AT CERTAIN SCHOOLS
AND OBJECTION TO REQUEST (DOC.
2155) THAT IT BE AWARDED
UNITARY STATUS WITH RESPECT
TO SECTION IV, E OF THE USP**

Hon. David C. Bury

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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 the 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: Centralized Hiring Process and Certification for Placing New Teachers at
14 Certain Schools and TUSD’s accompanying request that it be awarded unitary status with
15 respect to Section IV, E¹ of the USP (“Notice and Report”).
16

17 This Court should not award the District unitary status as to USP Section IV, E, 5
18 because it has failed to comply with this Court’s Sept. Order requirement that it conduct a
19 study to identify effective strategies regarding placement of beginning teachers and
20 mitigation strategies (in the event proscribed placements cannot be avoided), as well as its
21 failure to implement the strategies that were to have been identified through that study
22 during the current school year. Further, to the extent the Court is inclined to accept the
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26 ¹ While the District broadly references Section IV, E of the USP in its filing, the USP
27 section to which that filing specifically relates plainly is the narrower USP Section IV, E, 5
28 (*see* USP Section IV, E, 5; Sept. Order at 42:13-23). Mendoza Plaintiffs oppose the
District’s request that it be awarded unitary status as to USP Section IV, E, 5 (as well as
USP Section IV, E broadly).

1 District’s proposal concerning “high achieving” school exceptions to the requirements of
2 USP Section IV, E, 5, such exceptions should be further limited to only those schools in
3 which students at *all grade levels* within the school perform above the District average on
4 the AzMERIT for math and ELA, and only for so long as those schools maintain such
5 academic performance.
6

7 Moreover, for the reasons detailed below, this Court should require TUSD to (1)
8 explain its failure to conduct the study of effective strategies concerning placement of
9 beginning teachers (including mitigation strategies) under the Sept. Order, (2) conduct the
10 study this Court mandated in the Sept. Order, (3) explain what strategies to avoid
11 proscribed placements (including mitigation strategies) the District currently is
12 implementing and why, and (4) explain what the current process for granting exceptions to
13 proscribed placements is and why.
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16 **The District Has Failed to Comply With the Court’s Sept. Order as it Relates**
17 **to the Mandated Study Concerning a Centralized Hiring Process and Certification**
18 **for Placing New Teachers at Certain Schools, and Other Mandates Dependent on**
19 **Such Study**
20

21 In the Sept. Order, the Court reviewed the status of the District’s effort to
22 implement its USP obligation to reduce the number of beginning teachers hired to teach in
23 racially concentrated schools or schools in which students are “underachieving
24 academically” under USP Section IV, E, 5. (Sept. Order at 42:13-45:21.) Noting that the
25 District’s practice of assigning beginning teachers to these schools (in conflict with the
26 USP) “has previously been brought to this Court’s attention” (*id.* at 42:26-28), the Court
27 adopted the Special Master’s and Mendoza Plaintiffs’ recommendation that the “District []
28

1 undertake a study to identify effective strategies, if any, for reducing the number of [such]
2 appointments of beginning teachers... or, where a beginning teacher appointment cannot
3 be avoided, the study shall identify mitigating strategies which must be in place at a school
4 for such an appointment to be approved.” (*Id.* at 45:6-17.) The District has failed to
5 comply with this requirement as well as with other mandates that flow from the required
6 study.
7

8 First, notwithstanding the Court’s clear directive, nowhere in the District’s Notice
9 and Report or its attachments to it does the District discuss or make any reference to its
10 having conducted the mandated study. Indeed, tellingly, beyond describing its centralized
11 process for hiring teachers in 2018-19 (*see* Notice and Report, Exhibit A), the District does
12 not identify **ANY** effective strategies to reduce the proscribed appointments or **ANY**
13 mitigating strategies where such appointments cannot be avoided. Instead, the District
14 simply asserts that “As much as possible, the hiring decision by central HR staff is made []
15 to avoid hiring a beginning teacher for positions at underperforming or racially
16 concentrated schools... .” (*See id.*)²
17

18
19 Second, beyond the District’s failure to conduct the study required by this Court in
20 its Sept. Order, the District has plainly failed to comply with the Court’s order that “[o]ver
21 the current school year [2018-19], the District shall implement any strategies identified by
22 the study...” (Sept. Order at 45:14-17) as the District has not conducted the mandated
23 study and therefore has not identified any strategies under the Sept. Order.
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² In this regard, Mendoza Plaintiffs note that the District’s Notice and Report also does not
make reference to any District intent to conduct the Court mandated study in the future.

1 Third, under USP Section IV, E, 5, which provides for Superintendent exceptions to
2 the proscribed placements, this Court ordered that the mitigating strategies that were to
3 have been identified by the mandated study “*shall* inform on a case by case basis the
4 Superintendent’s certification of each exceptional placement, with the certification
5 *expressly identifying the mitigation strategy* or strategies being employed in the school
6 where the beginning teacher is being appointed” and that such certification practices be
7 implemented “[o]ver the current school year... .” (Sept. Order at 45:11-17.) Again,
8 because the District failed to conduct the mandated study which was to have identified
9 effective mitigation strategies, it also has failed to implement the Superintendent
10 certification mandates of this Court.
11
12

13 Because the District is out of compliance with the Court’s Sept. Order requirement
14 (and related requirements) to conduct the study to identify effective strategies to avoid the
15 placements proscribed by the USP and effective mitigation strategies, this Court should
16 require the District to explain its noncompliance and should reaffirm that the District must
17 conduct the study this Court mandated. Further, given the great deal of vagueness in the
18 District explanation of the centralized process for hiring teachers (Notice and Report,
19 Exhibit A), including what appear to be descriptions of processes reflecting a mix of
20 current and future actions, the Mendoza Plaintiffs request that this Court order the District
21 to clarify the following: 1) what strategies to avoid proscribed placements (including
22 mitigation strategies) the District currently is implementing and why, and 2) what the
23 current process for granting exceptions is and why (given that what currently is described
24 is what the District “will” implement).
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1 **Schools Excepted From the Proscribed Placements Under the District’s**
2 **Proposal Should Be Limited to Those in Which Students at All Grade Levels Within**
3 **the School Perform Above the District Average on Math and ELA, and Only for so**
4 **Long as Those Schools Maintain Such Academic Performance**

5 Under the Sept. Order, with regard to teacher placements that are to be avoided
6 under USP Section IV, E, 5, the Court directed that the “District may, however, provide
7 student achievement data for Racially Concentrated schools that are ‘high achieving’ to
8 exempt them as a group or grant exemptions on a case by case basis” and noted that “high-
9 achieving” is not defined but “must be clearly defined” (Sept. Order at 43:13-15, n.20.)
10

11 The District “proposes an exemption from certification for a racially concentrated
12 schools (sic) with with (sic) at least 3 years of above District average AzMERIT scores in
13 ELA and Math.” While Mendoza Plaintiffs believe that “above District average” cannot
14 properly define the term “high-achieving,” they would do not object to the District’s
15 proposal so long as it is supplemented with needed clarification. Specifically, Mendoza
16 Plaintiffs would not object to the District’s proposal so long as the three-year “above
17 average” performance in Math and ELA measure requires such student performance at
18 *each grade level* of the school and excepted status would apply only for so long as such
19 performance is maintained.
20
21

22 **This Court Should Give no Weight to What is in Effect a District Request That**
23 **it Ignore its Obligations Under USP Section IV, E, 5**

24 In the District’s Notice and Report, under the guise of clarifying a potential
25 “misperception,” the District attempts to shift focus away from its USP Section IV, E, 5
26 obligations which *exclusively* address placement of *beginner-teachers*, and would have the
27
28

1 Court instead focus on the number of beginning teachers as that number relates to *all*
2 teachers at school sites to suggest “that it has complied with the Court’s order...” (*see*
3 TUSD Notice and Report at 2-4). Significantly, the District does not dispute the Special
4 Master’s assertion that, under the express language of USP Section IV, E, 5, about 75% of
5 beginning teachers were assigned to racially concentrated or “under-achieving” schools (or
6 Mendoza Plaintiffs’ calculation of 77.5 or 78.7%) (*see* Mendoza Plaintiffs’ Objections to
7 the Special Master’s 2016-17 Annual Report (Doc. 2101) at 19:1-11 (data chart concerning
8 beginning teacher placement based on TUSD responses to information requests); Sept.
9 Order at 43:18-21).³ Plainly, nothing about placing three-quarters (or above) of beginning
10 teachers hired by the District in 2018-19 in a manner that conflicts with the mandates of
11 the USP suggests the District has “complied” with this Court’s Sept. Order -- or the USP.
12

13 Accordingly, Mendoza Plaintiffs request that the Court give no weight to the
14 District’s argument directed at entirely avoiding its obligations under USP Section IV, E,
15 5.
16

17 Conclusion

18 This Court should deny the District’s request for a finding that it has attained
19 unitary status with respect to USP Section IV, E, 5 (or Section IV, E in its entirety)⁴ and
20
21

22 ³ Mendoza Plaintiffs do not understand why the District believes that the Court
23 misperceives the focus of USP Section IV, E, 5 to be on the proportion of beginning
24 teachers within schools (rather than the *placement* of beginning teachers) where it cites
25 beginning teacher placement data (*see* Notice and Report at 2:8-13) when the Court makes
26 heavy reference to the “placement” or “hiring” of beginning teachers and discusses
27 Superintendent certifications of “beginning teacher appointments” where it discusses that
28 USP section (Sept. Order 42-45). They do observe that what the District describes as a
potential misperception allows it to shift discussion away from the beginning teacher
placements that are the subject of USP Section IV, E, 5.

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

1 should require TUSD to (1) explain its failure to conduct the study of effective strategies
2 concerning placement of beginning teachers (including mitigation strategies) under the
3 Sept. Order, (2) conduct the study this Court mandated in the Sept. Order, (3) explain
4 what strategies to avoid proscribed placements (including mitigation strategies) the District
5 currently is implementing and why, and (4) explain what the current process for granting
6 exceptions to proscribed placements is and why. Further, to the extent the Court is
7 inclined to accept the District's proposal concerning schools excepted from the
8 requirements of USP Section IV, E, 5, such exceptions should be further limited to those
9 schools in which students at *all grade levels* within the school perform above the District
10 average on math and ELA, and only for so long as those schools maintain such academic
11 performance.
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14 Dated: January 7, 2019
15

16 MALDEF
17 JUAN RODRIGUEZ
18 THOMAS A. SAENZ

19 /s/ Juan Rodriguez
20 Attorney for Mendoza Plaintiffs

21 PROSKAUER ROSE LLP
22 LOIS D. THOMPSON
23 JENNIFER L. ROCHE

24 /s/ Lois D. Thompson
25 Attorney for Mendoza Plaintiffs
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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: CENTRALIZED HIRING PROCESS AND CERTIFICATION FOR PLACING NEW TEACHERS AT CERTAIN SCHOOLS AND OBJECTION TO REQUEST (DOC. 2155) THAT IT BE AWARDED UNITARY STATUS WITH RESPECT TO SECTION IV, E OF THE USP** 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