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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: AASSD AND MASSD
OPERATING PLANS AND OBJECTION
TO REQUEST (DOC. 2151) THAT IT BE
AWARDED UNITARY STATUS WITH
RESPECT TO SECTIONS V, E, 7-8 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: AASSD and MASSD Operating Plans and TUSD’s accompanying request
14 that it be awarded unitary status with respect to Section V, E, 7-8 of the USP.
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16 Mendoza Plaintiffs have no objections to the substantive provisions of the AASSD
17 and MASSD Operating Plans (Docs. 2151-1 and 2151-2). Their objection is to the
18 District’s request that, having filed these plans, it should be awarded unitary status with
19 respect to USP Sections V, E, 7-8.
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21 Mendoza Plaintiffs believe that the request is premature for at least two reasons: (1)
22 there is not yet a showing that the two departments are effectively using EBAS and (2)
23 because the two plans, and particularly the plan for the MASSD, involve significant
24 change (and staffing) from what had been in place in the past, the District should not be
25 relieved of Court supervision over the plans until it has demonstrated its ability to staff
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1 pursuant to the plans and implement what is required by those plans during this 2018-19
2 school year.

3 **The District Must Demonstrate That the Two Departments Are Effectively**
4 **Using EBAS and That It Has Made the Staffing and Other Changes Called for in the**
5 **Plans**

6
7 In the Sept. Order, the Court reviewed the status of the EBAS implementation,
8 noted that it will “take an especially close look at how well EBAS data is used to
9 implement effective strategies for student support services (citing USP Section V, E, 6-7)
10 (Sept. Order, Doc. 2123, at 143:16-17), and reiterated in its discussion of the MASSD and
11 AASSD plans that “student support services are an area where the District...will be held
12 accountable for the effective use of the Evidence-Based Accountability System (EBAS).”
13 (*Id.* at 121: 25-27.) Additionally, the Court wrote: “the Court must consider how well the
14 relevant EBAS data is used to provide support services to African American and Latino
15 students, including ELL students.” (*Id.* at 143:8-10.)

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18 The MASSD plan states that it will “[u]tilize EBAS to regularly review the
19 effectiveness of the MASSD organization, positions, plan, and operations to determine
20 effectiveness and potential revisions to services and plans for individual students and to the
21 overall operation of the MASSD.” (MASSD Operating Plan, Doc. 2151-2, at 16 of 39.)
22 The AASSD plan says that it will “[e]ffectively utilize EBAS to review and suggest
23 revisions to the AASSD Plan to improve the likelihood of African American student
24 success.” (AASSD Operating Plan, Doc. 2151-1, at 5 of 13.) But the District has not yet
25 demonstrated that the EBAS data actually is being used. Mendoza Plaintiffs respectfully
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1 suggest that it must meet that burden before it can be relieved of court supervision in this
2 area.

3 Both the AASSD and the MASSD plans call for changes in staffing and a range of
4 new or reframed activities. (*See, e.g.*, MASSD plan, Doc. 2151-2, at 3 of 39 contrasting
5 2017-18 and 2018-19 staffing. *See also*, AASSD plan, Doc. 2151-1, at n1: “As of the date
6 this Plan is submitted to the Court, not all positions have been filled. As noted above, the
7 District anticipates full implementation starting in SY 2019-20.”)

9 Given the nature of the revised operational plans for both departments and the work
10 that must be done both to fully staff the departments and to implement the multiple
11 strategies in which they are to be engaged¹, Mendoza Plaintiffs respectfully suggest that
12 the District should be required to demonstrate plan compliance before it can be relieved of
13 court supervision of these important support services departments.
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16 **Conclusion**

17 This Court should deny the District’s request for a finding that it has attained
18 unitary status with respect to USP Section V, E, 7-8,² and should require TUSD to (1)
19 demonstrate that both departments are effectively using EBAS and (2) that it has fully
20 staffed and implemented the provisions of each department’s substantially revised
21 operating plan.
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25 _____
26 ¹ The MASSD, for example, is moving to a greater focus on asset-based strategies and
more robust culturally-responsive student support. (Doc. 2151-2 at 3 of 39.)

27 ² 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.

Dated: January 7, 2019

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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: AASSD AND MASSD OPERATING PLANS AND OBJECTION TO REQUEST (DOC. 2151) THAT IT BE AWARDED UNITARY STATUS WITH RESPECT TO SECTIONS V, E, 7-8 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:

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Dated: January 7, 2019