

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
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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: INCLUSIVE SCHOOL
ENVIRONMENTS AND CULTURES OF
CIVILITY AND OBJECTION TO THE
DISTRICT’S REQUEST (DOC. 2156)
THAT IT BE AWARDED UNITARY
STATUS WITH RESPECT TO SECTION
V, F OF THE USP**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.

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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: Inclusive School Environments and Cultures of Civility and TUSD's
14 accompanying request that it be awarded unitary status with respect to Section V, F of the
15 USP.
16

17 Mendoza Plaintiffs believe that the District has complied with the Special Master's
18 proposed completion plan (Special Master's 2016-17 Annual Report ("SMAR"), Doc.
19 2096, at 55) and the Court's Order as they relate to a District report on the inclusiveness of
20 school environments based on an analysis of student surveys ("Inclusiveness Study").
21 Their concern -- and objections -- relate to the strategies the District has put forth to
22 address the findings in its study because they involve only professional development
23 initiatives and, even as to those professional development initiatives, fail to include
24 initiatives directed at certain of the findings of the Inclusiveness Study. Further, as to
25 those initiatives, there is no showing that the Special Master was involved in identifying
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1 the particular initiatives or strategies being put in place notwithstanding the Court’s
2 directive that the District “identify the strategies [it] has utilized to improve inclusive
3 school environments, which shall be studied by the District in collaboration with the
4 Special Master...to determine the effectiveness of such strategies...and to identify any
5 additional strategies to improve inclusiveness.” (Sept. Order, Doc. 2123, at 123:28-124:4.)
6 Perhaps as a consequence of the failure to have engaged in that directed collaboration, the
7 Professional Learning Plan: Inclusive School Environments and Cultures of Civility
8 (“Inclusiveness PLP”) (Doc. 2156-2) fails to meet a number of the essential criteria for a
9 PLP expressly set forth in the Court’s Sept. Order. (Doc. 2123 at 143-45.) Accordingly,
10 the District should be ordered (a) to identify and implement strategies in addition to
11 professional learning to improve school inclusiveness and (b) to revise the Inclusiveness
12 PLP both to conform to the mandated requirements and to include additional initiatives
13 directed to problems identified in the Inclusiveness Study that are not now part of the
14 Inclusiveness PLP.
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18 **The District Should Be Directed to Identify and Implement Strategies Beyond**
19 **Professional Development to Improve School Inclusiveness and Reduce Bullying**

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21 In its Sept. Order, the Court found that the Special Master’s proposed Completion
22 Plan on Inclusive School Environments (SMAR, Doc. 2096, at 55) “complies with the
23 USP” (Sept. Order, Doc. 2123, at 123:27) and directed that the District implement that
24 Plan, including “planned strategies for maintaining and/or improving inclusiveness.” (*Id.* at
25 124: 5-6.) It then added that as part of its consideration of the District’s professional
26 development obligations under the USP, discussed more fully later in that Order, it also
27 would consider whether the District had implemented a Professional Learning Plan
28

1 relating to strategies to create cultures of civility. (*Id.* at 124: 6-8.) It then ordered the
2 District to file a Notice and Report of Compliance with the Completion Plan for
3 Maintaining Inclusive School Environment *and* Professional Learning Plan. (*Id.* at 150:
4 16-18; emphasis added.)

5
6 The Special Master’s Completion Plan states in relevant part: “If the data suggests
7 the levels of inclusiveness need to be improved and/or these perceptions vary by race, the
8 District shall (a) identify strategies for increasing inclusiveness and (b) put in place a plan
9 to implement evidence-based strategies during the 2018-19 school year.” (SMAR at 55:7-
10 9.)

11
12 As noted above, the only strategies the District has identified and that it plans to put
13 in place relate to professional development. (*See*, Doc. 2156-2.) Mendoza Plaintiffs
14 suggest that this reflects a misreading of the Completion Plan and the Court’s Order. More
15 importantly, the District’s approach consequently fails to include other important strategies
16 to increase inclusiveness and reduce bullying. In this regard, Mendoza Plaintiffs note that
17 the Inclusiveness PLP itself illustrates this point and the significance of the omission.

18
19 One of the seven “professional development components” (Inclusiveness PLP, Doc.
20 2156-2, at 2 of 9) to be implemented by the District is “Anti-Bullying” to be provided at
21 six “selected” middle schools. (*Id.* at 3 and 6 of 9.) The description of that “component”
22 says that an outside provider will provide both professional development for staff and
23 “bullying-prevention assemblies for students....Student assemblies will address kindness,
24 respect, and the painful effects of bullying on the victim and the entire school community.”
25 (*Id.* at 3 of 9.) Notably, and as discussed further in the next subsection, the six “selected”
26 middle schools are not the schools identified in the District’s analysis of student surveys as
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1 schools in which students report a relatively high instance of bullying. The issue this
2 raises, among others¹, is that the District plainly recognizes that activities like student
3 assemblies should be part of an overall effort to reduce bullying and increase civility on its
4 campuses. Yet, but for this one instance at only five schools, it has not included this or
5 any other non professional development initiative in its plan to increase inclusiveness.
6

7 **The District Should Be Required to Revise the Inclusiveness PLP (or Whatever**
8 **Broader Plan It Develops to Include Strategies Beyond Professional Development) to**
9 **Reach Schools Whose Students Report Relatively High Instances of Bullying But**
10 **That Are Not Expressly Addressed in the Existing Inclusiveness PLP.**
11

12 The Inclusiveness Study (Doc. 2156-1) identifies schools in which students reported
13 relatively more instances of bullying than the District averages. There may well be
14 reasons to provide anti-bullying professional development and student assemblies at the
15 six middle schools selected for that initiative in the Inclusiveness PLP (Dodge, Gridley,
16 Magee, Mansfeld, Pistor, Vail) (Doc. 2156-2 at 6 of 9) -- and Mendoza Plaintiffs do not
17 suggest that the planned initiative be abandoned -- however, what is of concern to them
18 and what they believe must be addressed is that while these six schools are not identified in
19 the Inclusiveness Study as schools whose students report relatively high instances of
20 bullying, other schools that are identified in the Study have not been “selected” for
21 remedial action. Mendoza Plaintiffs particularly note in this regard Blenman and Cragin
22 Elementary and Dietz K-8 whose students also report lower degrees of school
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26 _____
27 ¹ As is also discussed at greater length below, the Inclusiveness PLP relies heavily on
28 outside vendors. What therefore appears to be missing from the Inclusiveness PLP is a
component in which District personnel are trained to be able to provide professional
learning relating to the topics included in the Inclusiveness PLP on an ongoing basis.

1 inclusiveness than the District’s averages². (Inclusiveness Study, Doc. 2156-1, at Tables 8,
2 9 on 9 of 15.)

3 **The District Should Be Required to Revise the Inclusiveness PLP to Conform**
4 **to the Requirements for a Professional Learning Plan Set Out in the Sept. Order**

5 The Special Master’s Inclusive School Environments Completion Plan is clear that
6 the District is to implement “evidence-based” strategies (SMAR at 55:8) and the Court
7 reiterated this when it noted that the “Special Master proposed that the District with his
8 assistance³ develop a comprehensive research-based plan for how professional
9 development is provided to teachers and administrators, which shall be implemented
10 especially in the context of seeking reconsideration for unitary status related to...creating
11 cultures of civility in schools....” (Sept. Order, Doc. 2123, at 144:12-16.)

12 Notwithstanding the forgoing, the Inclusiveness PLP includes a number of
13 components that are not shown to be evidence or research based. It recites that a
14 “consultant group” named Restorative Solutions was recommended by the Western
15 Educational Equity Assistance Center and will be providing its services in a “pilot
16 program” at five schools (Booth-Fickett, Valencia, Pistor, Doolen, and Secrist) that have
17 disparities in their discipline data (Doc. 2156-2 at 2 and 6 of 9), that CRPI staff will be
18 using “SPARKS” to train all schools on the six elements of culturally responsive pedagogy
19
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23 _____
24 ² They do recognize that Cavett and Holladay Elementary and Catalina and Santa Rita
25 High Schools, all of which also report relatively high instances of bullying, are the subject
26 of a separate initiative (“SPARKS” described at Doc. 2156-2 page 3 of 9) and infer that the
27 District believes that this initiative will reduce instances of bullying on these campuses
28 notwithstanding that bullying is not addressed in its discussion of this particular effort.

³ That the District failed to enlist the Special Master’s assistance in developing the
Inclusiveness PLP appears to be confirmed by the District’s failure to reference any
Special Master assistance even as it reports that the Special Master “reviewed” the design
of the Inclusiveness Study. (Doc. 2156 at 7-8.)

1 (*id.* at 3 of 9), that Dr. Da’Mond Holt will provide professional development for staff and
2 anti-bullying assemblies for students (*id.*), that Dr. Macheo Payne who is CEO of Youth
3 Rising, an organization targeting at-risk students in Oakland, California, will provide
4 workshops on culturally responsive trauma-informed practices (*id.* at 4 of 9), and that there
5 will be a “learning opportunity” at Booth-Fickett and Lawrence that will “facilitate the
6 development of an anti-bullying culture and climate that promotes civility” but that the
7 developer of this program is “TBD,”⁴ as is the provider. (*Id.* at 3 of 9 and 6 of 9.)⁵

9 In his discussion of professional learning, the Special Master stressed that such
10 learning should “[m]ake use of systematic analyses of educators’ strengths and weaknesses
11 especially regular evaluation of actual performance” and “[b]e continuous and ongoing,
12 involving follow-up evaluation and improvement and support for further learning.”
13 (SMAR, Doc. 2096, at 83.) The Court echoed this in its statement that the “best way to
14 look at professional development is to determine whether a USP program or strategy is in
15 fact being used by teachers and administrators.” (Sept. Order, Doc. 2123, at 145:3-4.) Yet,
16 with the exception of the targeted restorative practices training to be provided at five
17 middle schools, no observation or feedback is included in the Inclusiveness PLP. The
18 section on Process for Evaluating PD Effectiveness references the PD Rubric which
19 explicitly calls for “Practice, Formative Feedback, Reflection and Further Support as
20 Needed” (Doc. 2156-2, Exhibit 2, at 8 of 9) but it appears from the accompanying

24 ⁴ That in December of the 2018-19 school year, the District does not yet have a plan in
25 place to address the serious problems at Booth-Fickett that have, unfortunately, been well
26 known to District administration for a substantial time suggests a host of other issues that
are outside the scope of this particular submission.

27 ⁵ This list further demonstrates that the District continues to rely heavily on outside
28 vendors and has not yet created a plan to develop essential training capacities in house.

1 discussion (Doc. 2156-2 at 4 of 9) that participants are expected to complete the rubric at
2 the time of the professional development sessions and that no observation and feedback
3 has been factored into the process (except to the limited extent noted above).

4 **Conclusion**

5 This Court should deny the District's request for a finding that it has attained
6 unitary status with respect to USP Section V, F⁶ and should require TUSD to (1) identify
7 and implement strategies in addition to professional learning to improve school
8 inclusiveness and reduce the incidence of bullying at its schools and (2) revise the
9 Inclusiveness PLP to conform to the mandated requirements for professional learning
10 plans set forth in the Sept. Order and include further initiatives directed to problems
11 revealed in the Inclusiveness Study that are not now part of the Inclusiveness PLP.
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27 ⁶ 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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MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

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: INCLUSIVE SCHOOL ENVIRONMENTS AND CULTURES OF CIVILITY AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2156) THAT IT BE AWARDED UNITARY STATUS WITH RESPECT TO SECTION V, F 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

/s/ Mariana Esquer

Dated: January 7, 2019

Mariana Esquer