

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

Attorneys for Mendoza Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
United States of America,
Plaintiff-Intervenors,
v.
Anita Lohr, et al.,
Defendants,
Sidney L. Sutton, et al.,
Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS'
SUPPLEMENTARY RESPONSE TO
TUSD RESPONSE TO ORDER TO
SHOW CAUSE RE MIDDLE SCHOOL
COURSES FOR HIGH SCHOOL
CREDIT (DOC. 2157)**

Hon. David C. Bury

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 the District’s Response to
13 Order to Show Cause Re: Middle School Courses for High School Credit (Doc. 2157)
14 (“Notice”) because they believe that clarification is warranted. They also object to so
15 much of the District’s filing as proposes to offer high school courses to middle school
16 students through the District’s AGAVE distance learning program when there are not
17 sufficient students to support an entire class at a particular K-8 or middle school until it has
18 made a showing to the satisfaction of the Special Master and the plaintiffs that this
19 alternative mode of instruction is appropriate and effective.
20
21

22 **Needed Clarification**

23 The Notice states that the District has provided (as Exhibit 1 to the Notice) a list of
24 courses for high school credit “**actually provided at** each middle or K-8 school during the
25 2018-19 school year...” (Notice, Doc. 2157, at 2:7-8; emphasis added.) However, a
26 review of the TUSD course listings available on its website suggests that a significant
27
28

1 number of the courses listed on Exhibit 1 to the Notice are not actually provided at the
2 enumerated schools (although Mendoza Plaintiffs understand they may offered to the
3 students at a different location). Attached as Exhibit A and B are screen shots of the
4 TUSD 2018-19 course catalogue for Algebra 1 and Spanish 1, 2. They indicate that
5 notwithstanding the entries on Notice, Exhibit 1, algebra 1 is not offered at C.E. Rose,
6 Hollinger, Lawrence, Morgan Maxwell, or Pueblo Gardens. And Spanish 1, 2 is not
7 offered at Vail, McCorkle, Pistor, or Secrist. (Mendoza Plaintiffs were unable to identify
8 the “health” course referenced on Notice, Exhibit 1 in the course catalogue.)
9

10 For the sake of clarity and to permit a more informed analysis of enrollments (and
11 why they might be higher or lower at particular schools), Mendoza Plaintiffs ask that the
12 District be directed to revise Exhibit 1 to indicate at which of the K-8 and middle schools
13 the middle school courses for high school credit actually are provided on site and to
14 indicate where the courses actually are being provided if they are not in fact being offered
15 at the home school. Additionally, they request that the District explain how students at
16 schools in which the courses are not offered on site at the home school are informed of the
17 opportunity to take those courses and whether transportation is provided. Further, they
18 ask that the District be directed to provide enrollment data by home school (broken down
19 by race and ethnicity) for each middle school course offered for high school credit during
20 the 2018-19 school year.
21

22 **Issues Relating to the Proposal to Offer High School Courses to Middle School**
23 **Students Through the AGAVE Distance Learning Program**
24

25 Mendoza Plaintiffs understand that TUSD and other school districts increasingly
26 turn to online and distance learning to supplement (or substitute for) the more typical
27
28

1 classroom learning experience. They also understand that such courses can provide the
2 opportunity to work at one's own pace and can be programmed to provide further
3 instruction and student exercises/program sets where the student's online performance
4 reveals the need for additional learning in an area (and that certain students could well find
5 on online course preferable to riding a bus to another school to take such a course).
6
7 However, they also are aware of criticism of such approaches and have seen no data that
8 demonstrates the efficacy of the AGAVE program for middle school students using its
9 high school curriculum. They also have questions about whether the AGAVE distance
10 learning format is adequate to provide the sort of Advanced Learning Experience that the
11 USP contemplated when it defined those experiences to include middle school courses for
12 high school credit. They therefore request that the District be directed to provide more
13 information to the Special Master and the plaintiffs to address the aforementioned concerns
14 before it opts to provide high school courses to middle school students via the AGAVE
15 distance learning program when there are not sufficient students to support an entire class
16 at a particular K-8 or middle school.
17
18

19 **Conclusion**

20
21 Mendoza Plaintiffs respectfully request that the District be directed to provide the
22 needed clarification concerning the sites at which middle school classes for high school
23 credit actually are being held, how students are informed of such classes if the classes are
24 not offered at their home schools, and enrollment for 2018-19 in such courses broken
25 down by home school as well as student race/ethnicity, and provide information sufficient
26 to satisfy the Special Master and the plaintiffs that the purposes of the USP provisions on
27
28

1 ALEs can effectively be achieved through offering high school classes to middle school
2 students on line via the AGAVE distance learning program.

3 Dated: January 7, 2019
4

5 MALDEF
6 JUAN RODRIGUEZ
7 THOMAS A. SAENZ

8 /s/ Juan Rodriguez
9 Attorney for Mendoza Plaintiffs

10 PROSKAUER ROSE LLP
11 LOIS D. THOMPSON
12 JENNIFER L. ROCHE

13 /s/ Lois D. Thompson
14 Attorney for Mendoza Plaintiffs
15
16
17
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 RESPONSE TO ORDER TO SHOW CAUSE RE MIDDLE SCHOOL COURSES FOR HIGH SCHOOL CREDIT (DOC. 2157)** 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