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13 UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

<p>15 Roy and Josie Fisher, et al., 16 Plaintiffs, 17 vs. 18 Tucson Unified School District No. 1, et al., 19 Defendants.</p>	<p>4:74-cv-00090-DCB (Lead Case)</p>
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<p>20 Maria Mendoza, et al., 21 Plaintiffs, 22 vs. 23 Tucson Unified School District No. 1, et al. 24 Defendants.</p>	<p>CV 74-204 TUC DCB (Consolidated Case)</p>
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26 **DISTRICT REPLY TO OBJECTIONS TO ITS**
27 **NOTICE AND REPORT OF COMPLIANCE:**
28 **AASSD and MASSD OPERATING PLANS**

1 In its September 6, 2018 Order granting partial unitary status, the Court ordered
2 the District to “develop a Post-unitary Status Plan for AASS and MASS” “for the post-
3 unitary status delivery of student support services to African-American and Latino
4 students.” [ECF 2123 at 121.] The Court stated that

5 The District shall file the Post-unitary Status Plan for AASS
6 and MASS, which shall trigger reconsideration of unitary
7 status in respect to student support services for African-
8 American and Latino students.

9 [Id. at 122.] The District complied by filing operating plans for these departments on
10 December 6, 2018. [ECF 2151.] The Mendoza Plaintiffs filed a Supplemental
11 Response on January 7, 2019, indicating that they “have no objections to the substantive
12 provisions of the AASSD and MASSD Operating Plans.” [ECF 2168 at 2.] Based on
13 the Court’s Order, the District’s filing triggered reconsideration of unitary status in
14 respect to student support services for African American and Latino students.

15 Nevertheless, and even though the Mendoza Plaintiffs have no objections to the
16 District’s plans, they object to an award of unitary status based on the filing of these
17 plans. [Id.] The Mendoza Plaintiffs now argue that the District should be required to
18 demonstrate over an extended period of time that AASSD and MASSD are effectively
19 using EBAS and that the District can staff and implement the Post-unitary Status Plans
20 into the future. [Id. at 2-3.]

21 Such an argument completely ignores the Court’s instruction to formulate *post-*
22 *unitary* plans for AASSD and MASSD. This instruction clearly anticipates a plan for
23 operating these departments after unitary status has been awarded in this area, not a plan
24 required to be implemented for years in order to obtain unitary status.

25 Following the Mendoza Plaintiffs’ rationale, the Court-ordered plans for AASSD
26 and MASSD would actually serve as a new USP, with new requirements that must be
27 met to attain unitary status, rather than a plan for continuing progress in these
28 departments that have already shown that they are unitary.

1 Similarly, based on the Mendoza Plaintiffs' arguments, there can be no
2 declaration of partial unitary status in any area of the USP because the Court has ordered
3 the District to utilize EBAS in nearly every area of USP compliance. This flies in the
4 face of the Supreme Court's and this Court's numerous prior declarations allowing for
5 partial unitary status. As discussed by the Special Master previously:

6 If [the Court were required to retain jurisdiction over unitary
7 areas because they were related to other areas], it would not
8 be possible to award unitary status to almost any element of
9 the USP because almost all actions are affected in some way
10 or another by other actions. For example, professional
development is required by almost all sections of the USP.
And, multiple sections of the USP require evidence-based
decision-making including disciplinary actions, PLCs,
MTSS and program evaluation.

11 Withholding unitary status from provisions of the USP that
12 the District has satisfied would negatively affect family and
13 public confidence in the District falsely implying a lack of
commitment and capability on the part of the TUSD
Governing Board and staff.

14 Freeing the District from Court supervision when evidence
15 indicates particular goals have been met will allow the
16 District to focus on work yet to be completed. And, by
17 clarifying what specifically the District needs to do to
achieve unitary status with respect to specific requirements
of the USP will give direction to the District and provide
clarity to monitoring efforts.

18 [ECF 2096 at 6.]

19 The District has done exactly what the Court instructed it to do. The Mendoza
20 Plaintiffs have no objections to the plan the District was required to prepare and file.
21 Instead, they argue that the District should have to comply with that Post-unitary Plan in
22 order to be declared unitary in the area of AASSD and MASSD operations. This is
23 contrary to the Court's orders. The District respectfully submits that it has complied
24 with the Court's order, and requests that the Court grant partial unitary status in this area
25 of District operations (USP § V.E.7-8).

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RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

STEPTOE & JOHNSON LLP

By /s/ P. Bruce Converse
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**TUCSON UNIFIED SCHOOL DISTRICT
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No. 1

CERTIFICATE OF SERVICE

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The foregoing document was filed with the Court electronically through the CM/ECF system this 22nd day of January, 2019, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ Diane Linn
Employee of Steptoe & Johnson LLP