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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB  
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB  
(Consolidated Case)

1                   **SPECIAL MASTER’S REPORT AND RECOMMENDATIONS**  
2                   **REGARDING STUDENT SUPPORT DEPARTMENTS**

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4                   **Introduction**

5                   On December 6, 2018, the District submitted plans for the reorganization of the Mexican  
6 American Student Support Department and the African American Student Support Department.  
7 The Mendoza plaintiffs objected in part and focused their attention on the Mexican American  
8 Student Support Department (MASSD). While they did not object to the substance of the  
9 proposal, they asked the Court to withhold unitary status until the District demonstrated that the  
10 department was making effective use of EBAS and further demonstrates that district staff can  
11 implement the plans going forward. There is no reason to believe that the District will not fill he  
12 positions since it is its plan for reorganization. Moreover, the Implementation Committee will be  
13 monitoring the activities of the District until unitary status for the entire district is granted. The  
14 Mendoza plaintiffs also argue that the District does not identify all of the activities and units the  
15 department should be collaborating with. The reorganization plan does, however, identify  
16 numerous organizations within TUSD that the departments should be coordinating with. This  
17 concern of the Mendoza plaintiffs draws attention to the fact that TUSD already has multiple  
18 organizational units doing the work that the departments are to undertake.  
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21                   The District responded to the Mendoza objections arguing that Mendoza plaintiffs ignored  
22 the Court’s instructions to formulate a post-unitary plan for the departments anticipating a plan  
23 for operating these departments after unitary status has been awarded in this area.

24                   The Special Master agrees with the position of the District but does not recommend that  
25 the Court grant the District unitary status for these departments. The Special Master believes that  
26 the plans for the two departments are wasteful of scarce resources and are educationally unsound  
27 in some important ways. The Special Master elaborates on these points below and urges the  
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1 Court to require the District, once again, to draw up plans to support Latino and African  
2 American students in departments whose functions would be substantially different from those in  
3 the current reorganization plans submitted by the District. Should the Court approve the  
4 reorganization plans submitted by the District, the Special Master recommends that the District be  
5 granted partial unitary status for the Mexican American Student Support Department for the  
6 reasons described by the District in the document filed on January 22, 2019 (Doc. 2176).  
7

8 The Fisher plaintiffs did not file objections to the reorganization plans. However, in  
9 discussions with the Special Master on January 9, 2019, the Fisher counsel and representatives  
10 indicated that they oppose the plan developed by the District for the African American Student  
11 Support Department. If the Court is disposed to approve the District's proposals, the Special  
12 Master recommends that the Court withhold partial unitary status for the African American  
13 Student Support Department and provide the Fisher plaintiffs with seven days to file whatever  
14 objections they might have. However, should the Court agree with the Special Master that neither  
15 reorganization plan should be approved, the Court should order the District to resubmit  
16 reorganization plans that deal with the concerns the Special Master has outlined below.  
17

18 While the two reorganization plans are different, their fundamental characteristics are  
19 similar and the Special Master's opposition to the Mexican American Student Support  
20 Department plan discussed below applies as well to the African American Student Support  
21 Department.<sup>1</sup>  
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25 <sup>1</sup> In reading these plans, it would be easy to conclude that their fundamental rationale is  
26 that the District lacks a commitment to the effective education of Mexican American and African  
27 American students. This is a dangerous assumption to institutionalize. Consider this outcome for  
28 the MASSD on page 15 of the plan, "Represent the interests of Mexican-American/Latino  
students and parents in District decision-making."

1 **The Need to Reconsider the Functions of the Student Support Departments**

2 The 2018-19 District budget for the Student Support Departments was approximately  
3 \$2.4 million. If these departments did not exist and the parties were given \$2,400,000 to improve  
4 student learning, it is highly doubtful that they would spend it on these departments. There is no  
5 empirical evidence to support the assumption that these departments will make a substantial  
6 difference. No other district in the country has such departments. In the years prior to the  
7 adoption of the USP, the Mexican-American student support department had radically different  
8 functions. Those functions, which research showed made a significant difference for the students  
9 participating, are now carried out by the Culturally Responsive Pedagogy and Instruction  
10 Department in TUSD.  
11

12 The care with which they were designed is called into question by the fact that the number  
13 of Latino students is seven times greater than the number of African American students in TUSD,  
14 but the budget for the African American student support department is 75% greater than the  
15 budget for the Mexican American Student Support Department (which is intended to serve all  
16 Latino students not just Mexican Americans). This is not to say that funding should be based on  
17 the number of students to be served. It should be based on the need that the students have.  
18 Nowhere in the proposal for these departments are there estimates of the number of students who  
19 need to be served nor the specific problems the students are having that requires that they receive  
20 extra services.  
21  
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23 It is important to recognize that the District has organizational units other than the  
24 departments that are tasked with addressing the issues that would be the responsibility of these  
25 departments. Indeed, most of the instructional and behavioral “problems” that the departments  
26 are to address are the fundamental responsibilities of each school. There is no analysis about why  
27 the many organizational units of TUSD are unable to meet student needs and such an analysis  
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1 would almost certainly result in a decision to improve teaching and the way in which disciplinary  
2 issues are dealt with by well trained professionals. The notion that the needs of students that are  
3 not being solved by trained professionals who number over 3500 can be effectively addressed by  
4 40 full-time and 20 part-time individuals, most of whom would lack professional training, defies  
5 credulity.

### 7 **Would the Departments Have Negative Consequences?**

8 First, the departments divert \$2.4 million away from more promising strategies.

9 Second, by assuming that problems cannot be adequately addressed by the professional  
10 educators in the District and instead should be addressed by nonprofessionals, it is likely that  
11 attention to the reasons students are struggling or could manage more rigorous curricula will be  
12 inadequate.

13 Third, the main process for deploying educational services is requests from teachers and  
14 administrators. This means that there is no systematic way of setting priorities for the allocation  
15 of resources.

16 Fourth, in assigning the tasks for the so-called specialists in the departments, those who  
17 designed the departments were mindful of past criticisms that the department staffs had too many  
18 responsibilities that were ill-defined. Thus, the reorganization gives particular personnel titles  
19 that imply specific functions. But the actual tasks that most of these individuals are assigned are  
20 many and complex.<sup>2</sup>

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24 <sup>2</sup> While “certified academic tutors” must have a teaching credential, CRC Tutors are tasked with  
25 complex responsibilities such as “Model higher-level thinking and inquiry learning through culturally  
26 responsive strategies.” The CRC tutors are also to “Utilize” knowledge and experience to increase student  
27 participation and success in CRC classrooms.” But there is no requirement that they know anything about  
28 teaching much less culturally responsive pedagogy. Throughout these plans, the fit between required  
qualifications and responsibilities is problematic. For some tasks the personnel could be hired if they had  
a Mexican-American Studies major in college or a “related field,” whatever that is. The student could  
major in Mexican-American studies without ever taking a course in education.

1 Fifth, many of the responsibilities assigned to nonprofessional persons in these  
2 departments involve coaching and advising the professional staff. TUSD invests a considerable  
3 amount of money in preparing teachers and administrators in culturally responsive strategies and  
4 these professionals are unlikely to feel that they should learn from individuals with no teaching  
5 experience. No doubt, some of the department personnel have insights worth sharing but  
6 teaching is a technical task requiring considerable expertise. How one goes about being culturally  
7 responsive is important. It is not simply a matter of being sensitive to cultural differences or  
8 being aware of one's own prejudices.

10 Sixth, as is the case for students with disabilities, there is a significant possibility that  
11 students will be inappropriately referred for support from the departments. This will mean  
12 pulling students out of their normal classrooms in some cases and perhaps stigmatizing them.  
13 Elaborate procedures are established in TUSD to avoid this problem with respect to special  
14 education and there are no such safeguards in the departments.

16 Seventh, coherence in the way students are taught and what they are taught is critically  
17 important. When additional people are added to the instructional team, especially those who do  
18 not serve within the school in which the student to be served is enrolled, the chances of coherence  
19 are not great.

### 21 **Recommendations**

22 The Special Master recommends that the Court reject the District's plans for the  
23 reorganization of the support departments and direct the District to revise its reorganization plans  
24 for Student Support Departments. In so doing the District should:

- 25 1. Specify in detail the needs of students that are not being met at the school level and by  
26 other units of the District. Almost all of the activities that the staff of these departments  
27 would carry out are already the responsibility of District personnel.  
28

- 1       2. Describe how many students of each race fall into each exceptional need category other  
2       than students who are referred to special education. Explain why the per-student cost of  
3       providing support to African American students is so much greater than the cost of  
4       supporting Latino students.
- 5       3. Identify the expertise personnel of these departments need to have in order to address the  
6       specific learning and developmental student needs identified in response to question one?  
7       If the needs not being met require instructional interventions or behavior modification, the  
8       District should explain why uncertified staff should be a responsible for or otherwise  
9       involved in solving these problems.
- 10      4. Ensure that support staffs that interact with families and community organizations are not  
11      involved directly in academic interventions but are trained to provide feedback to teachers  
12      with respect to the challenges, interests and experiences of their struggling students.  
13      When uncertified tutors are involved in student support they should be supervised by a  
14      certified teacher.
- 15      5. Provide for a data based system for identifying students with special needs and for  
16      tracking the efficacy of the strategies used to serve the students. This, of course, is the  
17      function to be performed by the MTSS Facilitators and Leads so the District should  
18      explain why additional personnel are needed to carry out this function.

19           Whatever the unmet needs of African American and Latino students are, these needs will  
20           best be met by highly effective TUSD teachers, administrators and supporting staff (e.g.,  
21           counselors). This reality should shape the reorganization plans for the two departments.

22           The goals of the departments can be grouped into three categories: academic, behavioral,  
23           and family and community outreach. With respect to family and community outreach, staff  
24           members so tasked need not have college degrees.

1           But with respect to academic and behavioral needs of students, professional support may  
2 be needed. However, professionals in the student support departments should be working to  
3 improve the effectiveness of TUSD core staff rather than duplicate their activities. These highly  
4 qualified individuals should have particular expertise with respect to culturally responsive  
5 behavior. In addition to engaging in job-embedded professional development, these experts might  
6 also report – directly or through the department leaders – to the Superintendent to identify needed  
7 improvement in district-wide equity policies and practices.  
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10                                   Respectfully submitted,

11  
12   /s/  
13   \_\_\_\_\_  
   Willis D. Hawley  
   Special Master

14 Dated: January 29, 2019  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2019, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

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Andrew H. Marks for  
Dr. Willis D. Hawley,  
Special Master