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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' OBJECTION
TO SPECIAL MASTER'S REPORT AND
RECOMMENDATION REGARDING
STUDENT SUPPORT DEPARTMENTS
(DOC. 2185)**

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 Mendoza Plaintiffs submit the following objection to the Special Master’s Report
12 and Recommendations Regarding Student Support Departments (Doc. 2185) (“SSD
13 R&R”). They specifically address the plan for the Mexican American Student Support
14 Department (“MASSD Plan”) but much of what they say applies equally to the plan for the
15 African American Student Support Department.
16

17 At the outset it is perhaps most important to note that to the best of the Mendoza
18 Plaintiffs’ knowledge, the District and the Mendoza Plaintiffs share the view that the
19 Special Master is in error when he states that the two departments “are wasteful of scarce
20 resources and are educationally unsound in some important ways.” (SSD R&R at 2:27-28.)
21 Similarly, Mendoza Plaintiffs believe that both the Mendoza Plaintiffs and the District
22 believe that the Special Master has misunderstood the purpose and import of the SSD plans
23 when he asserts that “[i]n reading these plans, it would be easy to conclude that their
24 fundamental rationale is that the District lacks a commitment to the effective education of
25 Mexican American and African American students.” (*Id.* at 3, n.1.) As the Court is aware,
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1 the Mendoza Plaintiffs and the District continue to disagree about whether the District has
2 demonstrated sufficient commitment to Latino and African American student achievement
3 to warrant a finding that it has attained unitary status under the USP. However, Mendoza
4 Plaintiffs believe that they and the District do agree that the MASSD plan is explicitly
5 intended to institutionalize and give substance to such a commitment by ensuring that in all
6 of its interactions with its Mexican American/Latino students the District meaningfully
7 embraces asset-based approaches that are “integrated with culturally responsive practices
8 for growth and advocacy”. (MASSD Plan, Doc. 2151-2, at 2 of 39.)

9
10 **Regrettably, the Special Master Has Misjudged the MASSD Plan**

11 The Special Master suggests that “[t]he care with which [the SSD Plans] were
12 designed is called into question by the fact that the number of Latino students is seven
13 times greater than the number of African American students in TUSD, but the budget for
14 the African American support department is 75% greater than the budget for the Mexican
15 American Student Support Department (which is intended to serve all Latino students not
16 just Mexican Americans).” (SSD R&R at 4:12-17.)

17 As an initial matter, Mendoza Plaintiffs note that they are unable to determine the
18 basis for the Special Master’s statement that the budget for the African American support
19 department is 75% greater than the budget for the Mexican American student support
20 department. There is no single line item in the 910(G) budget for either department;
21 however Mendoza Plaintiffs’ review of what they understand to be relevant budget lines
22 indicates that as of the TUSD 2018-19 2Q budget report, the District had budgeted
23 approximately \$800,000 to the personnel and activities of the Mexican American Student
24 Support Department and approximately \$516,000 to those of the African American
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1 Student Support Department, with an additional \$774,000 budgeted for implementing the
2 recommendations of the African American Student Achievement Task Force.¹

3 More importantly, the Special Master has failed to recognize the major differences
4 between the African American Student Support and Mexican American Student Support
5 Departments and, hence, their plans. Given that, lamentably and with some notable
6 exceptions, disproportionately low academic achievement and disproportionately high
7 disciplinary actions continue to be reported for African American students in the District,
8 much of the focus of the African American Student Support Department is on remediating
9 these outcomes. By contrast, while gaps persist between the academic achievements (and
10 other relevant outcomes) of the District's Latino students and its white (non-Hispanic)
11 students, but also because the District now is "majority minority", the focus of the
12 Mexican American Student Support Department is less on remediation and direct
13 intervention and more on institutionalizing the processes and approaches through which
14 the District will maximize Latino student success.²

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18 *The MASSD Plan Was Developed with a Great Deal of Care*

19 The Special Master's comment to the contrary notwithstanding, the MASSD Plan
20 was designed with a great deal of care. The process engaged many people, including the
21 District's Senior Director for Desegregation and its Director for Mexican American
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23 ¹ Mendoza Plaintiffs therefore are looking at total expenditures of about \$2.1 million rather
24 than the \$2.4 million referenced by the Special Master (SSD R&R at 4:3); however, they
do understand that \$2.1 million is a significant sum of money.

25 ² Mendoza Plaintiffs therefore believe that the Special Master simply is in error as to the
26 MASSD Plan when he suggests that the plan is intended to address instructional and
behavioral "problems." (SDD R&R at 4:24-25.) It may be that part of the difficulty that
27 the Special Master has had in evaluating the MASSD Plan results from the Department's
title. Mendoza Plaintiffs objected to that departmental title at the time it was adopted and
28 suggest that to the extent it connotes a focus on individual services and a deficit model it
contributes to the Special Master's misperception.

1 Student Services, a member of the Implementation Committee, and a representative of the
2 Mendoza Plaintiffs. In addition, the plan drew on substantial academic research inclusive
3 of the materials listed as references in the plan. (Doc. 2151-2 at 39 of 39.) Further,
4 consistent with the Court’s specific admonition (Order dated Sept. 6, 2018, Doc. 2123, at
5 121: 22-25 (“Sept. Order”)), the District engaged an expert panel of four scholars who
6 provided advise as the plan was being developed and who reviewed and commented on
7 the draft plan.
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9 *The MASSD Plan Expressly Follows This Court’s Directions*

10 In the Sept. Order, the Court provided express direction for the preparation of the
11 student success department plans. They were to “identify activities to be performed by
12 staff of the...department[] and demonstrate how these activities are integral to the core
13 functions of the District, and specify the qualifications that members of the department
14 staff[] should have to perform including specific functions and describe how staff with
15 these qualifications can be recruited, trained and retained....” (Sept. Order, Doc. 2123, at
16 121:15-22.) The MASSD Plan says at the outset that it will cover all of these topics – and
17 it does. (*See*, Doc. 2151-2 at 2, 3-15.) In addition, it sets forth carefully articulated
18 anticipated outcomes (*id.* at 15-16) and expressly provides both for periodic monitoring of
19 effectiveness and an annual assessment process to consider improvements and operational
20 changes to the plan. (*Id.* at 16-17.)
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24 *The Roles and Responsibilities Set Out in the Plan Are Reasonable and Not*
25 *Duplicative of the Work of Other TUSD Departments*

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27 Unfortunately, in his critique of the MASSD Plan, the Special Master has conflated
28 coordination and oversight with duplication. In 2017, when he commented on the

1 District's need to redefine the position³ of Student Success Specialist, the Special Master
2 suggested that the District would be well served if it had an office of expert educators who
3 could "serve as consultants and provide oversight with respect to culturally responsive
4 practices whether it be manifest in teaching, curriculum, coaching, administering
5 discipline, working with families, or developing future district policies and procedures."
6 (Doc. 2020-1 at 2.) This describes one of the roles to be performed by the MASSD in the
7 MASSD Plan. *See, e.g.*, the position descriptions for the Department Director, Program
8 Coordinator, and the Program Specialists. (Doc. 2151-2 at 3-5, 7-13.) In fact, the
9 "oversight" role called out by the Special Master is a central component of the MASSD
10 Plan.
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13 The Plan repeatedly references the responsibility of the MASSD to review "district-
14 wide data" to determine if there are particular areas of the District in which Latino students
15 are being negatively impacted so that those areas can be addressed. Thus, for example, the
16 Program Coordinator and the Behavioral Specialist are to "[a]nalyze district-wide data to
17 ensure student academic progress to provide support strategies for parents and sites";
18

19 ³ The Special Master appears to have confused the Mendoza Plaintiffs' objections (not
20 surprisingly given the number of District plans currently before the Court) when he states
21 that the Mendoza Plaintiffs "argue that the District does not identify all of the activities
22 and units the [MASSD] should be collaborating with." (SSD R&R at 2:15-16.) In fact,
23 the Mendoza Plaintiffs pointed out that the District's revised FACE Plan (not the MASSD
24 Plan) was deficient because, this Court's direct order notwithstanding, the FACE Plan
25 failed to cross reference the MASSD Plan. (*See* Sept. 6 Order, Doc. 2123 at 151:1-2 ("the
26 District shall file an update to the FACE Action Plan...cross-referencing the District's
27 ...MASS Plan").) What is pertinent here, and confirms that the MASSD Plan should be
28 accepted by the Court, is that the MASSD Plan explicitly addresses the role of that
Department in furthering family engagement and therefore the need for collaboration
between the MASSD and those administering the FACE Plan. *See, e.g.*, MASSD Plan
(Doc. 2151-2) at 8 with respect to the Program Specialist for Parent Outreach &
Empowerment whose tasks include: "Develop bilingual (Spanish/English) empowerment
trainings with FACE staff for Mexican American/Latino parents to participate in site
councils, PTAs, SCPC, and Governing Board meetings"; "Support sites in developing and
implementing parent outreach to develop equitable access for Mexican/Latino parents
district-wide."

1 “[p]rovide consultations, trainings, and evaluations of social/behavioral interventions and
2 district-wide discipline patterns”; and [s]upport the CRPID [Culturally Responsive
3 Pedagogy & Instruction Department] to facilitate CRP Professional Development (PD)
4 district wide as a member of the CRP PD team.” (*Id.* at 6.)

5
6 In his R&R, the Special Master notes that “coherence in the way students are taught
7 and what they are taught is critically important.” (SSD R&R at 6:16-17.) In fact, as shown
8 above, the MASSD Plan is designed to support and facilitate coherence in all of the
9 District’s interactions with its Latino students.

10 11 Program Specialists

12 This is further demonstrated by the roles of the MASSD Program Specialists whom
13 the Special Master does not discuss except to characterize those in this role as “so-called
14 specialists” with tasks that he does not discuss but that he calls “many and complex.”
15 (SSD R&R at 5:17-22.) (He then drops a footnote to discuss the CRC tutors, not the
16 program specialists. Mendoza Plaintiffs separately discuss the CRC tutor role below.)

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18 In fact, each of the Program Specialists, each of whom is required to have had prior
19 experience in his/her specific subject area, is responsible for a particular area of support:
20 parent outreach and empowerment; college and career readiness; ALE recruitment and
21 retention; CRC collaboration and support; academic empowerment and engagement;
22 community outreach; and social-emotional and behavioral support. Thus, for example,
23 the Program Specialist for Social-Emotional & Behavioral Support is to have, *inter alia*,
24 background in participating in school discipline proceedings and training in Restorative
25 Practices, PBIS, and social and behavioral advocacy as well as a BA and proficiency in
26 both English and Spanish. (MASSD Plan at 14 of 39.) While that person will work in
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1 collaboration with students, parents, teachers, and site administration to develop joint
2 behavioral management strategies when such participation is sought by the site
3 administration, he/she also will provide workshops and resources on bullying and
4 harassment; coordinate professional development in social and behavior advocacy;
5 collaborate with Restorative Practices Facilitators to support site PBIS and restorative
6 practices; etc.⁴ (*Id.*)
7

8 The Special Master expresses skepticism about the departmental plans because, he
9 says, “many of the responsibilities assigned to nonprofessional persons in these
10 departments involve coaching and advising the professional staff... [P]rofessionals [whom
11 he says are the District’s teachers and administrators] are unlikely to feel that they should
12 learn from individuals with no teaching experience.” (SSD R&R at 6:1-9). Here, Mendoza
13 Plaintiffs are constrained to say, the Special Master paints with too broad a brush -- for the
14 purposes of addressing this particular observation it first is necessary to distinguish
15 between the AASD and the MASSD Plans. As to the MASSD Plan: the Program
16 Specialists who have responsibility for “coaching” and “advising” the TUSD teaching staff
17 and site administrators are experienced professionals. Thus, the minimum qualifications
18 for the Program Specialists charged with responsibility for academic empowerment and
19 engagements (inclusive of collaborating with teachers to develop asset-based strategies for
20 in-classroom support; assisting in conducting CRP PDs; and developing and conducting
21 trainings in the Anti-Bias Framework’s Social Justice Standards embedded in TUSD’s
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26 ⁴ It is also worth noting that this involves building capacity that does not now exist in the
27 District. Thus, for example, the District’s plan for creating cultures of civility and
28 promoting inclusiveness (Doc. 2170) had to rely on outside vendors to present anti-
bullying programs and programs to promote inclusivity.

1 Curriculum to build CRP) include a BA, teacher certification, background in MTSS
2 process and asset-based academic mentoring, and training in CRP, professional
3 development and academic interventions. (Doc. 2151-2 at 12-13 of 39.)

4 Further, the MASSD Plan was reviewed by a panel of four experts, one of whom
5 (Dr. Nolan Cabrera), among his other qualifications, led the research on the efficacy of the
6 District's former Mexican American Studies program, and another of whom (Dr.
7 Francesca Lopez) has served as a consultant to the District on culturally responsive
8 pedagogy. Neither of these experts suggested that Program Specialists and other MASSD
9 personnel who had not spent years as classroom teachers would be unable to perform their
10 defined responsibilities effectively or that TUSD teachers and administrators would be
11 unlikely to feel such personnel were competent to provide them with insight and direction.
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14 Mendoza Plaintiffs also believe that the Special Master is in error when he suggests
15 that the MASSD Plan "assum[es] that problems cannot be adequately addressed by the
16 professional educators in the District and instead should be addressed by
17 nonprofessionals". (SSD R&R at 5:9-10.) Aside from the fact that the "professional"/
18 "nonprofessional" distinction the Special Master makes is not applicable to the MASSD
19 Plan, the Special Master's comment fails to take into account that the MASSD Plan does
20 not create situations in which the classroom teachers and other site personnel will
21 somehow be shunted aside or displaced. Rather, the Program Specialists, will, *e.g.*,
22 "collaborate with classroom teachers in developing asset-based approach strategies for in-
23 classroom support" (Doc. 2151-2 at 12 of 39) and "provide individual student support
24 through working in collaboration with the student, parent, teacher, and site administration
25 in developing joint behavioral management strategies." (*Id.* at 14 of 39.)
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CRC Tutors

The Special Master says that the work of the former Mexican American Studies Department has been taken over by the Culturally Responsive Pedagogy and Instruction Department and that as a consequence there no longer is a role for a Mexican American Student Services Department. (SSD R&R at 4:7-11.) That misstates both the work (and the basis for the success of) the former Mexican American Studies Department and the work of the current Culturally Responsive Pedagogy and Instruction Department. It may also have led the Special Master to misunderstand the role of the CRC Tutor.

The Cabrera study,⁵ the research referred to by the Special Master in his discussion (*id.*), noted the all-embracing nature of the experience of students who took Mexican American studies courses prior to the State's intercession and concluded by observing: "[O]ur findings raise questions regarding which elements of the MAS program enhance student achievement. Is it the process of *conscientizacao* (Freire, 2000, 2008)? Is it authentic caring (Valenzuela 1999) and valuing funds of knowledge (Gonzalez et al. 2005)? Or are the creators of the program correct that the individual components of the program cannot be separated and must function holistically to maximize their effectiveness (Cammarota & Romero, 2014)? We do not have the necessary variables in the data ...to explore these questions.... This research has several implications for education research and policy...There are...persistent gaps in educational achievement between Latina/o and

⁵ "Missing the (Student Achievement) Forest for All the (Political) Trees: Empiricism and the Mexican American Studies Controversy in Tucson", Nolan L. Cabrera, Jeffrey F. Milem, Ozan Jaquette and Ronald W. Marx, *Am Educ Res J*, published online 15 October 2014 ("Cabrera Study").

1 White middle-class students...therefore, new approaches to education are required to
2 address this persistent issue....”⁶ (Cabrera Study at 25.)

3 The TUSD CRPID has an important responsibility – to develop and oversee the
4 District’s CRC courses and its culturally responsive pedagogy (*see* USP at Section V, E, 4,
5 c) but it is not responsible for student engagement and support. And it has not undertaken
6 the range of interactions and supports that were infused into the work of the former
7 Mexican American Studies Department. That work is vested in the MASSD ---and the
8 CRC Tutors are an important part of that effort. The Special Master apparently views the
9 CRC Tutors as individuals who come on the scene to assist a student who is struggling
10 academically. (*See* SSD R&R at 5, n2.) But the MASSD Plan makes plain that their role
11 is very different. The ten CRC Tutors are current college students who are to serve as role
12 models for Latino students enrolled in CRC courses. Per the MASSD Plan, the purpose of
13 the position is to “[d]evelop authentic, caring relationships as college role models in
14 designated CRC classrooms to increase Mexican-American/Latino academic
15 achievement.” The tasks that they are to perform, while described by the Special Master
16 as “complex” (*id.*), are in fact tasks that a college student who succeeded in high school
17 and is doing well in college (and all tutors must be in good academic standing), has a
18 background in community partnerships, and an interest in being an encouraging role model
19 (all express requirements for the position (*see* Doc. 2151-2 at 38 of 39)) should be able to
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24 ⁶ This also provides an answer to the Special Master’s suggestion that TUSD should not
25 have student support departments because “no other district in the country has such
26 departments”. (SSD R&R at 4:7.) The issue is not what other districts do (particularly in
27 an area where all experts appear to agree that new approaches are called for to more
28 effectively engage Latino students and support their academic achievement) but what
works – in TUSD. (Mendoza Plaintiffs also have been informed that the Special Master’s
statement may not be accurate but they are not able themselves to point to other districts
that have such departments.)

1 perform. As set forth in the MASSD Plan they: “Empower students to develop academic
2 identities by serving as college role models from the community”; “Facilitate academic
3 strategies (*e.g.* AVID) through in-class support in targeted CRC classrooms”⁷; “Model
4 higher-level thinking and inquiry learning through culturally responsive strategies for
5 students”⁸; “Coordinate opportunities for students to develop cultural identity utilizing
6 college and community partnerships”; “Mentor students through the completion of college
7 eligibility requirements and the enrollment process”; “Utilize knowledge and experience to
8 increase student participation and success in CRC classrooms”; “Assist classroom teachers
9 in creating a collaborative, supportive, and caring learning environment”; and “Build
10 students’ academic and social preparedness...to navigate the college experience.” (Doc.
11 2151-2 at 38 of 39.)
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24 ⁷ The District also has a program in place to use college students as AVID tutors, having
25 recognized the particular role that college students can play in motivating and supporting
26 high school students.

27 ⁸ The Special Master cites this task in particular as a “complex responsibility”. However,
28 it is a capacity that the CRC courses are designed to instill and any CRC Tutor who
successfully completed a TUSD CRC course therefore should be expected to be able to
model that capacity for current CRC course students.

Conclusion

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For the reasons set forth above and in Mendoza Plaintiffs’ Supplemental Response to TUSD Notice and Report of Compliance: AASD and MASSD Operating Plans (Doc. 2168), this Court should overrule and decline to adopt so much of the Special Master’s SSD R&R as asks this Court to reject the MAASD Plan (Doc. 2151-2) and retain continued jurisdiction over the Plan for the reasons set forth in Doc. 2168.

Dated: February 13,2019

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2019 I electronically submitted the foregoing **MENDOZA PLAINTIFFS' OBJECTION TO SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING STUDENT SUPPORT DEPARTMENTS (DOC. 2185)** 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: February 13, 2019

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