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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' RESPONSE
TO TUSD OBJECTION TO SPECIAL
MASTER'S REPORT AND
RECOMMENDATION REGARDING
INCLUSIVE SCHOOL ENVIRONMENTS
[DOCS. 2207, 2195]**

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
al.,

7 Defendants.

Case No. CV 74-204 TUC DCB

9
10 **Introduction**

11 Mendoza Plaintiffs submit the following Response to TUSD’s Objection to the
12 Special Master’s Report and Recommendation (“R&R”) Regarding Inclusive School
13 Environments (“Objection”, Doc. 2207, objecting to Doc. 2195) pursuant to Section V, 4,
14 b of the Order Appointing Special Master (Doc. 1350).

15
16 As the Mendoza Plaintiffs have previously argued, as a consequence of the pending
17 appeals from this Court’s Order of September 6, 2018 (Doc. 2123), this Court has been
18 divested of jurisdiction to consider so much of the Objection as asks it to “declare the
19 District unitary regarding its operations under § V.F.” (Objection at 4:17; *see* Doc. 2186,
20 Mendoza Plaintiffs’ motion for a limited stay.) Mendoza Plaintiffs therefore do not
21 address those portions of the Objection that purport to support the District’s renewed
22 request for a finding of unitary status (that is, Objection at 3:8 to 4:17). Rather, they
23 address the portion of the Objection that relates to this Court’s on-going oversight of the
24 District’s implementation of the USP. They show below not only that the Objection lacks
25 foundation but that the exhibit which the District created and attached to its Objection
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(Doc. 2207-1) fully supports the Special Master's finding that notwithstanding the specific direction in this Court's Order of September 6, 2018 that TUSD collaborate with the Special Master to determine the effectiveness of strategies TUSD previously has used to improve inclusive school environments and to identify any additional strategies to improve inclusiveness (Doc. 2123 at 123:27-124:4), TUSD failed to engage in such collaboration. Accordingly, this Court should sustain the Special Master's R&R in its entirety.

The TUSD Objection Not Only Lacks Support; It Provides Additional Evidentiary Basis for the Special Master's Finding Concerning TUSD's Failure to Collaborate

In his R&R, the Special Master first discussed the section of this Court's Order of September 6, 2018 (Doc. 2123) that concerns inclusive school environments and then stated that "contrary to the Court order, the District did not collaborate with the Special Master in the development of its proposal to receive partial unitary status for inclusiveness." (R&R at 2:18-19.) The District objects to this finding and has provided an exhibit (Doc. 2207-1) that, it asserts, evidences the mandated collaboration. In fact, it does not. To the contrary, it demonstrates both that, as noted by the Special Master in his R&R, the District continues to address only the Special Master's proposed completion plan set forth in his 2016-17 Annual Report and to ignore the express provisions of the Court's subsequent September 6, 2018 Order (as the District did in its December 6, 2018 filing, Doc. 2156), and that the District did not collaborate with the Special Master to determine the effectiveness of existing strategies and identify additional strategies to improve the inclusiveness of school environments.

1 This Court's Order had two prongs: (1) the District was to undertake a study of
2 students' sense of inclusiveness and (2) it was to identify the strategies it has utilized to
3 improve inclusive school environments to determine the effectiveness of such strategies
4 and to identify any additional strategies. Both these prongs were directed to be undertaken
5 by the District "in collaboration with the Special Master." (Doc. 2123 at 123:28-124:4.)
6
7 The District did collaborate with the Special Master in the design of the study of
8 inclusiveness. However, it did not collaborate with the Special Master in assessing the
9 effectiveness of existing strategies and identifying possible additional strategies.

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11 That this is so is established by Exhibit A to the Objection (Doc. 2207-1) (and the
12 District's own Objection¹). A review of that Exhibit reveals that it deals exclusively with
13 the design of the survey and a report of survey results but says nothing about existing
14 strategies, or their efficacy, or any possible new strategies. Indeed, it reveals no
15 communications relating to inclusive school environments between September 6, 2018,
16 when the Court provided its directives and entered its Order, and when the District made
17 its December 6, 2018 filing purportedly in response to that Order. Therefore, the Special
18 Master's finding of no collaboration should be sustained.

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21 The District's also contends that the Special Master erred when he noted that the
22 professional development plan filed by the District fails to state any rationale for choosing
23 schools that are to receive additional support. (Objection at 2:22-26 and R&R, Doc. 2195,
24 at 4:14-15.) However, the Court will search the Professional Learning Plan (Doc. 2156-2)
25 in vain for any statement of how schools to receive additional professional development
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27 ¹ Significantly, the Objection asserts only that the District collaborated with the Special
28 Master "in the design of the study, the analysis of responses, the modification of the study
to include the bullying questions, and more." (Objection at 2:17-21.)

1 relating to inclusiveness are to be selected or indeed what overall strategies the District
 2 plans to implement District-wide to maintain and enhance inclusive school environments.²
 3 Rather, the District represents in its filings with the Court (Notice and Report of
 4 Compliance: Inclusive School Environments and Cultures of Civility, Doc. 2156, at 2:20-
 5 21 and Objection at 2:22-26) that it will review the results of its survey each year and use
 6 that as a basis to focus training and support in the schools. Mendoza Plaintiffs
 7 respectfully suggest that while such a statement in the District's court filings is
 8 commendable, it does not substitute for a District plan that expressly addresses how survey
 9 results are to be used in the future and fails to support its request that the Court reject the
 10 Special Master's finding.³

13 Next, the District objects to the Special Master's finding that the District failed to
 14 make any showing that the strategies it is implementing are evidence-based. (Objection at
 15 3:1-2.) Significantly, rather than point to such evidence and demonstrate that the District
 16 considered that evidence in adopting the strategies it is carrying forward, the District
 17 merely says that it "respectfully submits that the professional learning described in the plan
 18 is research based, and uses curricula and methods in common use by school districts."

22 ² The Mendoza Plaintiffs objected to the District's failure to have identified strategies
 23 beyond professional development to improve inclusiveness and reduce bullying.
 24 (Mendoza Plaintiffs' Supplementary Response to TUSD Notice and Report of
 Compliance: Inclusive School Environments and Cultures of Civility ("Supplementary
 Response"), Doc. 2170, at 2:18-4:6.)

25 ³ In this regard, Mendoza Plaintiffs also invite the Court's attention to the portion of their
 26 Supplementary Response in which they noted that schools that reported relatively high
 27 instances of bullying had *not* been included among the schools whose professional staff
 28 was to receive additional training (Doc. 2170 at 4:7-5:2) and suggest that this omission
 calls into question the adequacy of whatever process the District currently has in place to
 target delivery of professional development initiatives to improve the inclusiveness of
 school environments.

1 (Objection at 3:1-2.) The Mendoza Plaintiffs respectfully suggest that that response is not
2 a sufficient basis on which to reject the Special Master's finding and recommendation.

3 Finally, the District objects to the Special Master's recommendations because he
4 made no findings that the District's experience with respect to inclusiveness and bullying
5 is "somehow more problematic than for the average district" (Objection at 3:3-6) or that
6 "professional learning in inclusiveness or civility is in some way administered
7 differentially by the District in a manner such as to disadvantage teachers of students in the
8 plaintiff classes." (*Id.* at 3:6-9.) These objections would have the Court ignore the
9 existence of the USP and the current status of these proceedings. In the USP, the District
10 expressly agreed to "take steps to build and sustain ...supportive and inclusive school
11 environments" (USP Section V, F, 2) and this Court, as part of its Order directing the
12 District to undertake the actions now before it, expressly found that the proposed
13 completion plan "complies with the USP." (Doc. 2123 at 123:27.) Therefore, the only
14 question currently before the Court is whether the District has complied with the
15 completion plan and the Court's Order. As shown above and in the Mendoza Plaintiffs'
16 Supplementary Response, it has not.
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Conclusion

For the reasons set forth above and in the Mendoza Plaintiffs' Supplementary Response to TUSD Notice and Report of Compliance: Inclusive School Environments and Cultures of Civility, the Court should overrule the District's objections to the Special Master's Report and Recommendation With Respect to Inclusive School Environments.

Dated: March 21, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2019 I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD OBJECTION TO SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING INCLUSIVE SCHOOL ENVIRONMENTS [DOCS. 2207, 2195]** 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: March 21, 2019

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