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13 **UNITED STATES DISTRICT COURT**  
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' RESPONSE  
TO TUSD OBJECTION TO SPECIAL  
MASTER'S REPORT AND  
RECOMMENDATION REGARDING  
PROFESSIONAL LEARNING FOR  
TECHNOLOGY (DOCS. 2206 AND 2193)**

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 Response to TUSD’s Objection to the  
12 Special Master’s Report and Recommendation (“R&R”) Regarding Professional Learning  
13 for Technology (“Objection”, Doc. 2206, objecting to Doc. 2193) pursuant to Section V, 4,  
14 b of the Order Appointing Special Master (Doc. 1350).

15  
16 With the exception of one footnote (Objection at 4, n. 4), the District does not  
17 purport to challenge any of the findings and recommendations contained in the Special  
18 Master’s R&R. Rather, it submits what has now become its rote objection to on-going  
19 efforts by the Special Master and this Court to oversee implementation of the USP,  
20 ignoring the express requirements of the USP and instead contending both that it never  
21 should have been subject to court supervision in the particular area of activity now before  
22 the Court (the provisions of the USP to the contrary notwithstanding) and that it already  
23 has attained unitary status regardless of what this Court directed in its Order of September  
24 6, 2018 (Doc. 2123) or the Special Master’s specific findings in his R&R. (*Compare*  
25 *Objection*, Doc. 2206 at 2:12 – 4:4 *with* Doc. 2207 at 3:3-4:17.)  
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1 The Mendoza Plaintiffs previously have argued that as a consequence of the  
2 pending appeals from this Court’s Order of September 6, 2018 (Doc. 2123), this Court has  
3 been divested of jurisdiction to consider so much of the Objection as asks it to “declare the  
4 District unitary regarding its operations under § IX.B.1.iv and B.4”. (Objection at 4:3-4;  
5 *see* Doc. 2186, Mendoza Plaintiffs’ motion for a limited stay.) They therefore will not  
6 repeat that argument here but, rather, invite the Court’s attention to their motion for a  
7 limited stay, Doc. 2186. They show below why, on its merits, the Special Master’s R&R  
8 should be sustained.  
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11 **This Court’s Order of September 6, 2018 and the R&R Both Address Actions**  
12 **Required of the District to Effectively Implement the USP**

13 The USP requires the District to assess “teacher proficiency in facilitating student  
14 learning with technology” and that it include in its “professional development for all  
15 classroom personnel...training to support the use of computers, smart boards and  
16 educational software in the classroom setting.” (USP §§ IX, B, 1, iv and B, 4.) Consistent  
17 with these requirements, this Court ordered the District to develop a “Professional  
18 Learning Plan for teacher proficiency in using technology to facilitate student learning....”  
19 (Doc. 2123 at 151:17-19). This Court additionally addressed professional development  
20 relating to technology when it considered the District’s overall obligations for professional  
21 development under the USP and, having noted that it is a “massive undertaking to  
22 implement professional development programs at each school for each USP program and  
23 strategy” (*id.* at 145:8-9), adopted the Special Master’s suggestion that the focus be on four  
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1 USP programs, one of which was to be “enhancing teacher and administrator proficiency  
2 in using technology for student learning.” (*Id.* at 145:16-17.)<sup>1</sup>

3 Therefore the Special Master in his R&R is not making “his recommendation solely  
4 on the basis that he thinks the District can do a better job in administering and assessing  
5 professional learning in the use of technology for instruction”, as the District asserts in its  
6 Objection (Doc. 2206 at 2:2:20-22). To the contrary, the Special Master assessed the  
7 District’s plan against the requirements of the USP and this Court’s September 6, 2018  
8 Order and found it wanting. In the R&R, the Special Master specifically identifies seven  
9 inadequacies in the District’s proposed strategies to improve technology use by teachers to  
10 facilitate student learning (R&R at 2:27-4:3; *see also* Mendoza Plaintiffs’ Supplementary  
11 Response to TUSD Notice and Report of Compliance: Professional Learning Plan for  
12 Teacher Proficiency in Using Technology (Doc. 2172) at 2:1-5:10.) He then provides five  
13 specific steps to address those inadequacies. (R&R at 4:7-21.)

14 As noted above, the District does not specifically object to any of the Special  
15 Master’s findings of inadequacy or his recommendations to correct those inadequacies.  
16 Instead, it takes issue with the Special Master’s statement that the District uses the results  
17 of teacher self-evaluations “to identify schools (not individuals) where additional  
18 technology professional development is needed.” (R&R at 2:12-14.) *See* Objection at 4, n.  
19 4. It does not appear that any of the Special Master’s recommendations turn on this  
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25 <sup>1</sup> Significantly, given the other TUSD R&R Objection now pending before this Court  
26 (Doc. 2207), another of the four areas of focus was “creating inclusive school  
27 environments, i.e., cultures of civility....” (Doc. 2123 at 145:15-16.) The problems with  
28 the professional development plan the District filed relating to this area of its operations  
are separately addressed in the Mendoza Plaintiffs’ Supplementary Response on that topic  
(Doc. 2170) and the Special Master’s R&R (Doc. 2195).

1 observation by him; however, it should be noted that the Exhibit the District attached to its  
2 Professional Learning Plan: Instructional Technology as an “example of the document  
3 used to assess relative performance individually and by school” (Doc. 2152-1 at 3)  
4 provides only aggregated data of “Teacher Technology Proficiency by School.” *See* Doc.  
5 2152-1, Exhibit 3 (at page 14 of the filing).  
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7 **Conclusion**

8 For the reasons set forth above and in the Mendoza Plaintiffs’ Supplementary  
9 Response to TUSD Notice and Report of Compliance: Professional Learning Plan for  
10 Teacher Proficiency in Using Technology, the Court should overrule the District’s  
11 Objection to the Special Master’s Report and Recommendation Regarding Professional  
12 Learning for Technology.  
13

14 Dated: March 25, 2019

15  
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24 /s/ Lois D. Thompson  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2019 I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD OBJECTION TO SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING PROFESSIONAL LEARNING FOR TECHNOLOGY (DOCS. 2206 AND 2193)** 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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