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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.,
Defendants,
and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

No. CV-74-00090-TUC-DCB

Maria Mendoza, et al.,
Plaintiffs,
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.
Defendants.

No. CV-74-0204-TUC-DCB

ORDER

December 2018 Benchmark Notices of Compliance: AASSD and MASSD Operating Plans, Face Update, and ELL Plan

1 On September 6, 2018, the Court entered a comprehensive Order finding that TUSD
2 had attained unitary status in part for some Unitary Status Plan (USP) programs. For
3 programs where it denied unitary status, the Court identified what remained to be done to
4 attain unitary status for each program. The Court set two benchmark deadlines for
5 completing the remainder of the work necessary to fully implement operations under the
6 USP: December 6, 2018 and September 1, 2019. The earlier date reflected the Court's
7 conclusion that either little work remained to be done or that preliminary efforts were
8 necessary before the District could move forward operationally.

9 The Court ordered that the December and September filings would trigger
10 reconsideration of unitary status, with the Plaintiffs being afforded 14 days to file
11 Supplemental Responses, the District afforded seven days to Reply, and the Special Master
12 was asked to file a Report and Recommendation (R&R) where there was an objection.

13 The Court has at all times recognized the interconnectedness and interrelationships
14 between the sections of the USP. (Order (Doc. 2123) at 8.) For example, even over
15 programs where the Court found unitary status was attained, it retained jurisdiction over
16 parts of those programs as necessary for reconsidering unitary status subsequent to the
17 December 2018 and September 2019 filings. In sum, this meant that the Court retained
18 jurisdiction over at least some part of every USP program. The Court continued the
19 District's annual reporting requirements as to all parts of the USP to enable the parties
20 and/or the Special Master to bring any compliance issues to the attention of the Court.

21 The District appealed the Court's September 6, 2018, denial of a blanket finding of
22 unitary status,¹ but nevertheless continued to comply with the Court's directives and filed
23 Notices of Compliance by the December 2018 deadline, including requests for unitary
24 status as to those USP programs. The Mendoza Plaintiffs have filed Responses raising
25 substantive program objections and also seek to stay any further granting of unitary status
26 until the pending appeal is resolved. Because this Court will not reach the question of
27 unitary status until after the September 2019 filings are made by the District, the Mendoza

28 ¹The Mendoza Plaintiffs cross-appealed.

1 Plaintiff's Motion to Stay is moot. In the same way that the Court was able to
2 comprehensively look at the progress made under the USP in the Order issued on
3 September 6, 2018. The Court now determines that subsequent to the September 2019
4 benchmark filings and the filing of an Executive Summary, as described herein, the Court
5 will again consider the question of unitary status. The Executive Summary is necessary to
6 comprehensively assess the effectiveness of the USP.

7 The Court now reviews the December 2018 filings for the AASSD and MASSD
8 Operating Plans, the FACE Update, and the ELL Plan to ensure that the District is on track
9 to attain unitary status. The Court will issue another Order addressing specific program
10 objections related to these and other USP programs which are the subject of the December
11 1, 2018, Notices of Compliance.

12 **AASSD and MASSD**

13 In September 2018, the Court noted the Special Master's criticism of the African
14 American Student Support Department (AASSD) and Mexican American Student Support
15 Department (MASSD) as being expensive, costing approximately 1.5 million dollars per
16 year, without any concrete showing of benefit to either African American or Latino
17 students. (Order (Doc. 2123) at 119.) Nevertheless, he reported an unflagging adherence
18 by the Plaintiffs to maintaining these departments. He suggested that the District
19 recognized ineffectiveness with existing strategies. According to the Special Master, it
20 would not be difficult to identify effective strategies for enhancing student achievement
21 and social-emotional student development. The Court noted that neither AASSD nor
22 MASSD was required under the USP. Instead, the USP required the District to provide
23 student support services aimed at promoting academic achievement for both student
24 populations, but pursuant to different strategies. The Court ordered the District, after
25 evaluating efficacy of AASSD and MASSD, to recommend changes if appropriate. The
26 Court noted the similarity in student support services for at risk students and that the
27 District had been operating student support services for several years and was well
28

1 positioned to recommend changes where necessary to avoid confusing operations or
2 wasting resources by duplication of efforts.

3 As suggested by the Special Master, the Court ordered the District to “recommend
4 an organizational and substantive plan for the post-unitary status delivery of student
5 support services to African-American and Latino students, including ELL students, which
6 shall:”

7 identify activities to be performed by staff of the two departments and
8 demonstrate how these activities are integral to the core functions of the
9 District and specify the qualifications that members of the department staffs
10 should have to perform including specific functions and describe how staff
11 with these qualifications can be recruited, trained and retained (e.g., current
12 salary levels will not do it). The District shall develop a Post-unitary Status
13 Plan for AASS and MASS, and may convene a small panel of experts (no
14 more than four people) to advise it regarding effective practices for providing
15 support services to African-American and Latino students. The Court notes
16 that student support services are an area where the District, for reasons
17 explained later in this Order, will be held accountable for the effective use of
18 the Evidence-Based Accountability System (EBAS). The Post-unitary Status
19 Plan for AASS and MASS shall ensure the effective use of EBAS.

20 On December 6, 2018, the District filed a Notice and Report of Compliance:
21 AASSD and MASSD Operating Plans.

22 Neither party filed substantive objections;² the Mendoza Plaintiffs objected to the
23 Court granting unitary status for USP §§ V.E.7-8, Student Support Services (AASSD and
24 MASSD).

25 The Special Master, however, objects to both plans. He continues to believe that
26 “plans for two departments are wasteful of scarce resources and are educationally
27 unsound in some important ways.” (SM R&R (Doc. 2185) at 2.)

28 ² The Special Master asserts that on January 9, 2019, the Fisher counsel and
representatives indicated that they oppose the plan developed by the District for the African
American Student Support Department.” (SM R&R (Doc. 2185) at 3.) Fisher counsel has
been involved in this case since its inception and is an experienced attorney, who has seen
these Plaintiffs through lengthy appeal processes, including appeals to secure attorney fees.
This Court is confident that he understands the importance of submitting comments and
objections to the Court and the consequences of not doing so. Where there is no Response,
the Court may deem such silence to be “a consent to the denial or granting of the motion.”
LRCiv 7.2(i). The Court notes that the Special Master and the Mendoza Plaintiffs consider
all aspects of the USP, including the interests of African American students. The Court
does too. Because this case is a class action law suit, this Court has a duty to ensure that
the Consent Decree, the USP, operates fairly, reasonably, and is adequate to protect all
class plaintiffs. (Fed R. Civ. P. 32(e).

1 First, he reports that the Departments cost too much, \$2,400,000, with the only
2 research-based program that has been shown to make a significant difference in academic
3 performance being carried out by the Culturally Responsive Pedagogy and Instruction
4 (CRPI) Department. Instructional and behavioral problems are the fundamental
5 responsibilities of each school. In other words, there is not really anything for these
6 Departments to do. He reports that there has been no analysis about why the many other
7 organizational units at TUSD are unable to meet the support needs of these students.

8 Second, he believes the continued existence of the Departments will have negative
9 consequences by diverting money and resources away from the professional educators in
10 the District to nonprofessional staff. Third, it is impossible to set resource priorities for
11 the Departments because resources are deployed as requested by teachers and
12 administrators. Fourth, he finds the tasks assigned to the various department specialists to
13 be ill-defined. Fifth, he believes the Departments will employ inexperienced non-
14 professional, non-teachers, who will be in no position to coach and advise professional
15 in-school teaching and administrative staff. Sixth, he envisions that these departments
16 may pull students out of their normal classrooms which might stigmatize them, and he
17 finds no procedures proposed to prevent inappropriate referrals from being made to these
18 Departments. Seventh, he believes introducing additional people from these Departments
19 into a student's instructional team may disrupt coherence in their instruction.

20 The Special Master recommends that the District be required to detail the needs of
21 students that are not being met at the school level and/or by other District units,³ such as
22 the CRPI Department, Exceptional/Special Needs, Academic and Behavioral Supports
23 Coordinator, or Family and Community Outreach (FACE) services. He recommends the
24 goals for AASSD and MASSD be grouped into three categories: academic, behavioral,
25 and family and community outreach. He believes that AASSD and MASSD staff must
26 be highly qualified individuals with particular expertise in whichever area of operation

27
28 ³ The Court uses the term "units" because it does not know whether these are actual
recognized departments, inner-departmental units or something else where a program
operates under a Director.

1 they attend. AASSD and MASSD staff should “engag[e] in job-embedded professional
2 development,” and “report [] directly or through the department leaders [] to the
3 Superintendent to identify needed improvement in district-wide equity policies and
4 practices.” (SM R&R (Doc. 2185) at 8.)

5 The District defends the AASSD and MASSD Operating Plans by arguing that
6 they were both prepared as recommended by the Special Master with input from experts
7 and have been approved by the Plaintiffs. The District asserts its operation of these two
8 programs over extended years, dating back even to years prior to the USP, reflects its
9 strong commitment to eliminating *de jure* discrimination root and branch and satisfies
10 *Green v. County School Board*, 391 U.S. 430 (1968), warranting a finding of unitary
11 status.

12 Before considering the two plans, the Court reviews the USP, Section V, Quality
13 of Education, which requires the District to develop Student Engagement and Support
14 Services for the District’s African American and Mexican American/Latino students,
15 including ELL students by implementing student support service strategies focusing on
16 the following: 1) academic intervention and dropout prevention; 2) socially and culturally
17 relevant curriculum, 3) professional development, and 4) training for administrators and
18 certificated staff to teach socially and culturally relevant curriculum. Student support
19 services should include college mentoring programs and programs supporting parent and
20 community participation to improve the educational outcomes of African American and
21 Mexican American/Latino students. (USP (Doc. 1713) § V.E.b.)

22 The USP provided for an Academic and Behavioral Support Coordinator (ASBC)
23 to review existing student support programs, including those being provided through
24 AASSD and MASSD, to develop a comprehensive program to “provide individualized
25 assistance and mentoring to students with academic or behavioral challenges and to
26 students at risk of dropping out.” (USP (Doc. 1713) at § V.E.2.a.) He was to work with
27 the Director of AASSD, the Director of MASSD, the Director of CRPI, and the Director
28 of Multicultural Curriculum. (USP (Doc. 1713) at § V.E.4.a-d.)

1 The District proposes two very different student support operations, AASSD and
2 MASSD. The AASSD reflects a more traditional remediation and intervention type model
3 “[u]sing the [TUSD] data systems, AASSD identifies which students are struggling
4 academically, behaviorally, or attendance-wise, and provides a cadre of potential solutions
5 to match each student’s specific struggles.” (Notice of Compliance (Doc. 2151-1): AASSD
6 Operating Plan at 10.) MASSD is “a comprehensive asset-based approach to student
7 services integrated with culturally responsive practices for growth and advocacy. . . . at
8 every level of the educational experience to further a commitment to equity and improved
9 academic achievement in TUSD.” (Notice of Compliance (Doc. 2151-2): MASSD
10 Operating Plan at 2.)

11 The differences between AASSD and MASSD are legitimate and stem from the
12 differing needs between the two minority communities. The Mendoza Plaintiffs point out
13 that the Fisher Plaintiffs have historically faced disproportionately low academic
14 achievement and disproportionately high disciplinary actions which continue today and,
15 therefore, AASSD focuses on remediating these outcomes. “By contrast, . . . because the
16 District now is ‘majority minority,’ the focus of the Mexican American Student Support
17 Department is less on remediation and direct intervention and more on institutionalizing
18 the processes and approaches through which the District will maximize Latino student
19 success.” (Objection (Doc. 2197) at 4.)

20 Both Department plans, however, share similarities. They each have a Director, a
21 Program Coordinator, an Administrative Assistant, and a Behavioral Specialist. Both
22 provide for 8 fulltime Program Liaisons/Specialists, with bachelor degrees and program
23 experience. The Program Specialists serve as liaisons to other District units that provide
24 student support services, such as the Advancement Via Individual Determination
25 (AVID), Advanced Learning Experiences (ALE) program recruitment, Social-Emotional
26 & Behavioral Support, Counseling, Culturally Responsive Pedagogy (CRP), and FACE.
27 Both Departments intend for the Program Specialists to provide direct services, and
28

1 additionally intend to hire certified tutors to provide academic support. AASSD plans for
2 five part time employees and MASSD plans to employ seven full time tutors.

3 The AASSD primarily provides direct services and interventions with this
4 professional staff and 8 Success Coaches, having AA degrees, and five part time college
5 student mentors.

6 The MASSD provides direct services but intends to focus more on coordinating
7 services with other TUSD program units, especially the CRP and FACE, and supporting
8 on-site staff, including teachers and principals, who provide direct services to students.
9 (Mendoza Response to SM RR (Doc. 2197) at 4-8.)

10 Beyond identifying a broad array of tasks these proposed employees will perform,
11 the AASSD and MASSD Operating Plans do not identify the various program roles the
12 Departments play in delivering these proposed services. For example, the Court does not
13 know where the Departments have primary program and/or service responsibilities or
14 where the Departments supplement the delivery of student support services from another
15 unit. Likewise, the Departments' operating plans do not indicate how direct services will
16 be, or if they will be, coordinated with appropriate staff at the student's school to ensure
17 cohesion of services and accurate oversight of resource allocation.⁴

18 The Court discusses the deficiencies below.

19 The Court finds that the Departments propose that the majority of their staff have
20 masters and bachelor degrees and generally appropriate experience in programs relevant
21 to working for AASSD and MASSD. It is difficult, however, to assess specific
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23 ⁴ For example, the Court knows that student support services, like academic
24 tutoring, are delivered on-site at the schools. The Court does not know whether each school
25 employs certified tutors or if the on-site teachers provide this service or if certified tutors
26 are employed by a separate department and assigned to the schools. Assumedly, these
27 tutors are available to all students. The Court does not know whether there are student
28 support needs unique to providing academic tutoring to class-plaintiffs that the on-site
tutors are unable to provide and which AASSD and MASSD are providing for each student
receiving academic tutoring at a school or if AASSD and MASSD simply supplement the
schools with certified tutors if a school is short staffed or if AASSD and MASSD are
instead tracking the support services at the school to ensure class-plaintiffs' needs are in
fact being met. Without knowing the role the Departments play, the Court is forced to
consider the AASSD and MASSD Operating Plans in a void.

1 qualifications necessary to perform specific tasks. For example, the Special Master
2 criticizes that professional certified teaching staff will find it difficult to take direction
3 from less qualified Department staff without a more detailed understanding of the roles
4 being played by AASSD and MASSD staff. It may well be true that Success Coaches in
5 AASSD, with associate’s degrees, will find it hard to “monitor the academic progress of
6 African American students with failing grades or substandard performance . . . and work
7 collaboratively with sites on developing student plans that appropriately address
8 academic deficits.” (AASSD (Doc. 2151-1) at 8.)

9 The AASSD assigns Success Coaches tasks which would at least require extensive
10 specialized training. For example, the AASSD wants the Success Coaches to: represent
11 student interests at discipline hearings; revise a personalized plan for each student not
12 making academic progress towards graduation; provide direct academic support to
13 students; monitor academic progress of students with failing grades or substandard
14 performance and work collaboratively with sites on developing student plans to address
15 academic deficits; provide behavioral interventions and help represent parent and student
16 interests; coach reading, writing and math strategies for K-8 grade levels; and at the
17 middle-school level, collaborate with dropout prevention specialist to create regular
18 contact with students to develop four year plans and review progress towards graduation
19 and set up parent conferences to review the student’s middle school and/or achievement
20 levels and develop monitoring plans. (AASSD (Doc. 2151-1) at 8.)

21 On the other hand, the MASSD intends to use CRC tutors, who will be college
22 students, to serve as college role-model mentors in CRC classrooms. (MASSD (Doc.
23 2151-2) at 38.) Similarly, the AASSD intends to use Success Coaches, with associate
24 degrees or who have completed 60 credit hours toward a bachelor’s degree and are
25 progressing toward completing a bachelor-degree, to mentor students for educational
26 success.⁵

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28 ⁵ *Compare*: AASSD description to “mentor students academically, socially, and
behaviorally to increase achievement,” (AASSD (Doc. 2151-2) at 8), with MASSD tasks
for college students placed in CRC classrooms to serve as role models, to model higher-

1 Given what’s before the Court, it cannot assess the adequacy of the proposed
2 qualifications for the AASSD and MASSD staff. Suffice it to say, direct professional
3 services for academic and emotional-behavioral support shall be provided to African
4 American and Mexican American, including ELL students by qualified professionals,
5 meaning certified tutors and counselors. In other words, professional student support
6 services shall not be provided by AASSD or MASSD staff that is any less qualified than
7 their professional peers providing the same services through another unit, including the
8 schools.

9 **FACE Update**

10 Even the Mendoza Plaintiffs’ admit there is a problem “identifying areas of
11 collaboration” in the context of their Supplementary Response to the District’s Notice of
12 Compliance: Update to Family and Community Outreach Engagement (FACE) Action
13 Plan. (Mendoza Supp. Response (FACE) (Doc. 2165) at 4.) In this context, the Mendoza
14 Plaintiffs complain the FACE Update does not reflect it will coordinate with MASSD as
15 follows: 1) “Recruit for and facilitate the Mexican American Parent Advisory Council to
16 improve inclusion in the District’s decision-making process; Develop bilingual
17 (Spanish/English) empowerment trainings with FACE staff for Mexican American/Latino
18 parents to participate in site councils, PTAs, SCPC, and Governing Board meetings. The
19 Mendoza Plaintiffs especially complain that the FACE Update instead expressly states
20 “FACE does not rely on . . . Mexican American Student Services Department to provide
21 parent education.” (Mendoza Supp. Response (FACE) (Doc. 2165) at 4, n. 2 (quoting
22 FACE Update (Doc. 2154-1) at 4). The Mendoza Plaintiffs charge that this reflects a
23 “failure to recognize—and build on—the essential role that the MASSD in fact has
24 assumed in providing parents with the tools they need to be meaningful participants at the
25 school level and with respect to their students’ education—and the absence of the very
26 level thinking and inquiry learning, coordinate opportunities for students utilizing college
27 and community partnerships, mentor completion of college eligibility requirements and
28 enrollment process, increase student participation and success in CRC classrooms, assist
teachers in creating collaborative, supportive, and caring learning environment, build
student’s academic and social preparedness to navigate the college experience, (MASSD
(Doc. 2151-2) at 8).

1 sort of coordination that the District asserts is occurring.” *Id.* (emphasis added). The
2 Court agrees.⁶

3 The FACE Update, also, never mentions ELL students, except perhaps indirectly
4 by calling for newsletters and other materials to be in multiple languages and by
5 referencing strategies for communicating with families who speak languages other than
6 English. (Mendoza Supp. Response (ELL) (Doc. 2169) at 2-3.)

7 **The ELL Plan**

8 In combination with the lack of cross-references in the FACE Update, the
9 Mendoza Plaintiffs note a particular concern with the absence in the ELL Plan of any
10 family engagement strategies directly focused on the parents and guardians of ELL
11 students. Like they did in objecting to the FACE Update, in the objection to the ELL
12 Plan, the Mendoza Plaintiffs argue that the absence of such strategies underscores yet
13 another issue: that the MASSD Operating Plan includes some strategies which should be
14 cross referenced in the FACE Update and the subject of meaningful collaboration
15 between FACE and MASSD. According to the Mendoza Plaintiffs, there are no
16 comparable references in the AASSD Operating Plan. “Therefore, unless the ELL Plan is
17 revised to address the omission, there is no District plan of which the Mendoza Plaintiffs
18 are aware that specifically recognizes the importance of engaged African American ELL
19 families to [support] their students’ success, including reduced absenteeism, reduced
20 dropout rates, and ultimate high school graduation.” (Mendoza Supp. Response (ELL)
21 (Doc. 2169) at 5.)

22 The same can be said about Mexican American/Latino ELL families. The Court
23 has reviewed the MASSD Operating Plan. ELL students are referenced in the MASSD
24 plan three times. The first two references are perfunctory. The first paragraph informs
25 that it is an organizational and substantive plan for the delivery of student support

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27 ⁶ For example, the FACE Update identifies collaborative District-wide family
28 engagement opportunities without clarifying whether the events are initiated, sponsored,
and staffed, by AASSD and MASSD, with cooperation from FACE or vice a versa. (FACE
Update (Doc. 2154-1) at 5.)

1 services to Mexican American students at TUSD, including ELL students. (MASSD
2 (Doc. 2151-2) at 2.) Similarly, the Introduction informs that MASSD goals “include
3 focusing on an asset-based approach support model in developing and executing services
4 aimed at improving the academic and educational outcomes of Mexican American/Latino
5 students, inclusive of students identified as English Language Learners (ELL).” *Id.*

6 Substantively, the MASSD Operating Plan envisions program specialists which do
7 not include the ELL program. Expressly, the MASSD tasks the Parent Outreach &
8 Empowerment Program Specialist to: “[l]iaison to Language Acquisition Department to
9 encourage equitable implementation of parental rights and consent for students identified
10 as ELL.” The ALE Recruitment & Retention Program Specialist is tasked to: “identify,
11 recruit, and monitor for ALE placement to increase the number of and percentage of
12 Mexican American/Latino students, including ELL students, enrolled in ALEs.” These
13 two tasks address only two very specific ELL issues.

14 The Court finds that unless the ELL Plan is revised to address the omission of
15 strategies specifically directed to the families of Mexican American/Latino ELL students,
16 there is no District plan of which it is aware that “specifically recognizes the importance
17 of engaged [] ELL families to [support] their students’ success, including reduced
18 absenteeism, reduced dropout rates, and ultimate high school graduation.” *See supra*
19 p.11.

20 **Conclusion: Remand for Executive Summary**

21 Beyond seeking revision of the ELL Plan, the Mendoza Plaintiffs do not ask for a
22 “cut and paste” of the omitted sections of the MASSD into the FACE Update. The
23 Mendoza Plaintiffs only ask that the District “document that the referenced MASSD
24 activities are occurring and to ensure that the collaboration with family engagement
25 personnel at the District and site level that is contemplated by the MASSD Operating
26 Plan in fact is going forward.” (Mendoza Supp. Response (FACE) (Doc. 2165) at 5.)
27 The District gives this assurance. (TUSD Reply (FACE) (Doc. 2179) at 3.) But this is
28 not enough.

1 The Court returns to its Order issued last September, wherein it noted that FACE
2 is a major component of the USP which stretches across every program, especially the §
3 II, Student Assignment (Magnet School (outreach)); § V, Quality of Education (ALE
4 (outreach)); Student and Family Support (engagement)), and § VI, Discipline
5 (engagement).⁷ “In short, Family and Community Engagement is a multi-provision,
6 multi-departmental program.” (Order (Doc. 2123) at 132.) The Court noted then that “the
7 breadth of the program is both its strength and weakness.” *Id.*

8 The USP required the District to develop and implement the FACE services,
9 including District Family Center Plan, with a Director and Family Engagement
10 Coordinator (FEC), “and to be responsible for reviewing and assessing the District’s
11 existing family and engagement and support programs, resources, and practices, focusing
12 on African-American and Latino students, including ELL students, and families,
13 particularly students struggling, disengaged, and/or at risk of dropping out, to participate
14 in the development and implementation of the outreach and recruitment plan.” *Id.* at 133
15 (citing USP § VII.B.1). The Court noted, “[w]hen the USP was drafted, the District
16 operated two Family Centers and the AASSD and MASSD. The USP called for FACE to
17 reorganize family engagement resources for an effective delivery system by increasing
18 Family Center services to ensure equitable access to its programs and to concentrate the
19 programs at school sites as indicated based on need.” *Id.* (citing USP § VII.C.d).

20 In the September 2018 review, the Special Master emphasized that the most
21 effective strategies for addressing education-related issues ““occur at the school-level
22 where families have a greater incentive to be involved in the pursuit of strategies to
23 enhance the learning opportunities and outcomes of their own children.”” *Id.* at 136
24 (quoting SM Response (Doc. 2111) at 38). The Court found “that the only remaining

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26 ⁷ The Court understands FACE involves 1) outreach and marketing type
27 responsibilities such as those needed to promote Magnet schools and ALEs, and 2)
28 engagement programs A) aimed at students to improve academic and behavioral
performance and B) aimed at families to improve their ability to i) directly support their
student’s academic and behavioral performance and to ii) be involved in district-wide or
school-based decision-making to support their student’s academic and behavioral
performance.

1 question relevant to awarding unitary status for VII, Family and Community
2 Engagement, is the implementation of a districtwide strategy for family and community
3 engagement services at school-sites . . .” *Id.* at 136.

4 In its September 6, 2018 Order, the Court addressed on-site delivery of FACE at
5 the District’s schools. Noting, [t]he FACE Action Plan identified as a problem the
6 District’s heavy reliance on Title 1 and Student Support Services provided by AASSD
7 and MASSD to provide parent education opportunities, without any district-wide
8 coordination or comprehensive strategy,” *id.* at 134 (citing (FACE Action Plan (Doc.
9 2101-2) at 101-102), “[t]he Court [] opened the door for the District to reassess its
10 reliance on AASSD and MASSD and [noted] consequently there may need to be a
11 revision of the District’s reliance on AASSD and MASSD as direct providers of family
12 and community engagement services.” *Id.* at 135. The Court ordered: “Effective
13 coordination of services shall be addressed in the context of any proposed changes from
14 the District in the roles and responsibilities for AASS and MASS under USP § V.E.7 and
15 8.” *Id.* at 135. This has not been done or if it has been done, it is not evident on the
16 record before the Court.

17 Like the FACE Update and the ELL Plan, the AASSD and MASSD Operating
18 Plans are equally devoid of cross-reference reflection. The very provisions contained in
19 the MASSD that the Mendoza Plaintiffs complain are not reflected in the FACE Update,
20 do not reflect coordination with FACE in the MASSD Plan. In the MASSD plan there is
21 only the generalized statement that the MASSD Parent Outreach & Empowerment
22 Program Specialist will “liaison to Family and Community Engagement Director, Family
23 Resource Center staff, and site Community Liaisons/Representatives to increase parent
24 engagement and awareness of opportunities for families.” (MASSD (Doc. 2151-2) at 8.)
25 Nothing in MASSD reflects “the essential role that the MASSD in fact has assumed in
26 providing parents with the tools they need to be meaningful participants at the school
27 level and with respect to their students’ education—and the absence of the very sort of
28 coordination that the District asserts is occurring.” *See supra.* p. 10.

1 But the problem is not just a lack of cross-referencing. The FACE Update, the
2 ELL Plan, and the AASSD and MASSD Operating Plans must all be revised to reflect the
3 interconnectivity and interrelatedness of the USP's various units. Without such revisions,
4 this Court has no basis for assessing the efficacy of USP student support services or
5 FACE services, which are spread across and between these and other USP program units
6 and the District's schools.

7 The Court notes that the Culturally Relevant Curriculum (CRC) Comprehensive
8 Plan, including Culturally Relevant Pedagogy (CRP) and the Notice of Compliance with
9 the Disciplinary Completion Plan are not due to be filed with the Court until September
10 1, 2019. Without these filings the Court has absolutely no basis whatsoever to consider
11 the behavioral support services proposed for AASSD and MASSD in the context of the
12 whole USP. The Court's directives issued below apply equally to the September 1, 2019
13 benchmark fillings.

14 The FACE Update and AASSD and MASSD revisions shall be made by
15 September 1, 2019, too.

16 The parties chose to create interconnected and interrelated USP programs, which
17 require coordination. Ignoring how these programs fit together is not an option. Money
18 spent on USP operations must be spent to eliminate the vestiges of discrimination to
19 extent practicable rather than just being spent.

20 Many changes have occurred since the inception of the USP. Especially with the
21 creation of the Department of CRPI and FACE,⁸ many of the services that once flowed
22 exclusively from AASSD and MASSD are now shared responsibilities. Additionally, the
23 accomplished goal of the USP has been to develop on-site staff to create schools better
24 able to meet the support service needs of African American and Mexican American

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26 ⁸ Exclusion in this Order of discussion about the District's units providing
27 emotional-behavioral student supports should not be seen to have any substantive meaning
28 but simply reflects the Court's ignorance at this time regarding these programs. The Court
gleans from the USP that the District has Restorative and Positive Practices Coordinator
responsible for assisting school-site staff in delivering behavioral student support services.
(USP § VI.C.)

1 students, including ELL students. In other words, if the USP has been successful there
2 should be less for AASSD and MASSD to do and their roles should have markedly
3 changed.

4 The USP requires the District to assume within its normal operations
5 responsibilities for student support services and community outreach once born solely by
6 the Departments. This does not mean that there is no role for AASSD and MASSD. It
7 means, however, that the Departments' roles should have narrowed, especially in the
8 areas of family engagement, Culturally Relevant Curriculum (CRC) and CRP, and
9 individual on-site delivery of academic and behavioral student support.

10 The Court notes that in September 2018, the Special Master criticized AASSD and
11 MASSD as being overly expensive, costing approximately 1.5 million dollars per year,
12 without any concrete showing of benefit to either African American or Latino students.
13 Now he reports the AASSD and MASSD Operating Plans propose costing \$2,400,000,
14 with Culturally Responsive Pedagogy and Instruction being carried out by its own
15 department and FACE having its own Coordinator and Director. While suspect, this
16 growing budget does not necessarily mean an expansion of AASSD and MASSD. It might
17 mean a shift in roles requiring more professional staff, such as certified tutors or behavioral
18 counselors or more experienced or highly trained program staff. Before approving the
19 AASSD and MASSD Operating Plans, the Court must look closely at these Departments.
20 It is the Court's responsibility to assess the District's commitment to operating effective
21 programs under the USP to the maximum extent practicable. There is no room to
22 unnecessarily duplicate and confuse delivery of services, especially when every USP
23 program requires expensive administrative staff including at least one Director, Program
24 Coordinator, and Administrative Assistant. These costs divert millions of dollars away
25 from direct-student services and should not be incurred simply to perpetuate the status quo.
26 To be clear, it is not enough to simply coordinate duplicative efforts.

27 With this in mind, the Court turns to the task of approving the proposed AASSD
28 and MASSD Operating Plans, the FACE Update, the ELL Plan, its anticipated benchmark

1 review in September of the CRPI and Discipline programs, and its ultimate reconsideration
2 of unitary status. The Court is convinced that this is a “Can’t see the forest for the trees”
3 situation. Even with the benefit of the Court’s long history of experience with this case
4 and oversight of the USP from its inception, this Court has been repeatedly frustrated by the
5 presentation of the various plan abstracts which fail to reflect the interconnectivity of and
6 relationship between the USP programs. By looking only at each piece of the USP it is
7 impossible, at least as they have been presented up to now, to understand the interactions
8 between the programs which are essential to the effective operation of the District under
9 the USP. The Court does not necessarily fault the District for the limited presentation of
10 the record. It has been the nature of the unitary status efforts up until now that first created
11 a multi-program USP, which then necessitated plan development for and implementation
12 of each USP program. The Court has long believed that an Executive Summary would be
13 most helpful, but now believes that before determining unitary status it must require an
14 Executive Summary be prepared to focus on program interconnectivity and relationships
15 to ensure the District is operating the USP to eliminate any vestiges of *de jure*
16 discrimination. Without this Executive Summary, the Court cannot assess whether the
17 District has made the necessary analysis to ensure that it is operating the USP programs
18 effectively to the maximum extent practicable versus simply operating programs under the
19 USP without accounting for duplication of efforts and waste of resources, including money.

20 The Court remands to the District the AASSD and MASSD Operational Plans, the
21 FACE Update, and the ELL Plan. Each shall be revised to correspond to the analysis
22 performed to prepare the Executive Summary.⁹ The Court realizes that program-specific
23 objections remain, which the Court must resolve so that the District may continue moving
24 forward to attain unitary status. The Court will forthwith issue an Order addressing
25 program specific objections that have been lodged by Plaintiffs in respect to AASSD and
26 MASSD, the FACE Update, the ELL Plan. The Court will make similar determinations in

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28 ⁹ The District shall use the guidelines set out here in the context of the AASSD and
MASSD revisions for all future filings.

1 respect to the benchmark filings due September 1, 2019. The Court will give the District
2 an additional three months to prepare and file the Executive Summary. The Plaintiffs shall
3 be afforded an opportunity to file objections, the District to reply, and the Special Master
4 shall prepare a R&R addressing the objections before the Court reconsiders the question of
5 whether the District has attained unitary status.

6 To assist the District in preparing the Executive Summary, the Court offers the
7 following directions. Identify whether program units are actual departments or some other
8 type of unit¹⁰ headed by a Director and identify whether a Director reports directly to the
9 Superintendent, Assistant Superintendent, Regional Superintendent, or someone else.
10 Identify the unit/department having primary program responsibility as compared to units
11 having supportive, supplemental or additional responsibilities.

12 For example, under the USP the FACE is responsible for family and community
13 engagement. USP § VII. In this context, the Mendoza Plaintiff's complain that the FACE
14 Update fails to recognize the "essential role MASSD in fact plays" in providing parent
15 engagement. In other words, MASSD's role, whether essential or not, supports or
16 supplements FACE services unless MASSD is otherwise expressly designated to have
17 primary responsibility for performing a task, such as where it provides additional services
18 not otherwise provided by FACE.

19 Understanding responsibility is imperative to assessing substantive objections. For
20 example, the Mendoza Plaintiff's accuse FACE of failing to implement or adequately
21 monitor family engagement at school sites, including every school having posted on its
22 web-site the school's newsletter and site council, PTA, SCPC, and Governing Board
23 meetings. The Mendoza Plaintiffs did a little checking and discovered several schools'
24 websites woefully out of date. (Mendoza Supp. Response (FACE) (Doc. 2165) at 5-8.)
25 Apparently, keeping or assisting schools in keeping their websites up to date is not one of
26 the essential roles MASSD plays in promoting family engagement. The objection, but not
27 the MASSD or the FACE Update suggests FACE is responsible for this important task or,

28 ¹⁰ If not a department, how is the unit identified?

1 alternatively, FACE should be monitoring schools for compliance. This is not the first
2 time it has come to the attention that individual schools have websites that are in various
3 stages of development and/or update. The Court finds there should be clarity in respect to
4 where responsibility lies over this most basic means of family and community outreach.

5 The Special Master grouped AASSD and MASSD goals into three categories:
6 academic, behavioral, and family and community outreach. The Court adds that it is
7 necessary to reflect these are shared goals with other units. Therefore, AASSD and
8 MASSD tasks or roles must also be identified as supportive, supplemental, or additional.
9 Supportive tasks are those that require only a program referral or coordination with another
10 unit, such as when two or more units send participants to an event. Supplemental tasks
11 include providing student support services being offered by another unit and requiring site-
12 level coordination to ensure cohesiveness, like academic tutoring or behavioral counseling.
13 Additional responsibilities are tasks not being performed by other units, needing minimal
14 coordination, such as enrichment workshops, the CRC college-mentor programs, or
15 advocacy.

16 The Court uses the term advocacy in its broadest sense. Advocacy includes
17 individualized direct student tracking to ensure that another unit in fact provided a referred
18 student support service that met that student's needs. Advocacy in its broadest sense
19 reaches district-wide data gathering, analysis, reporting, and making program
20 recommendations as appropriate.¹¹ For example, the Mendoza Plaintiffs in reference to the
21 ELL Plan "note that they have informed the District of programs that specifically work
22 with Latino parents and parents of ELLs including PIQE (Parent Institute for Quality
23 Education), which they understand, has held sessions in Phoenix," (Mendoza Supp.
24 Response (ELL) (Doc. 2169) at 4), and the Mendoza Plaintiffs offer to share this
25 information with FACE. Such information could likewise be shared with MASSD, which
26 could recommend PIQE sessions be employed by FACE or, alternatively, MASSD could

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28 ¹¹ The Special Master recommends that the AASSD and MASSD Directors report directly to the Superintendent, but the Operating Plans have them "collaborating with relevant District departments to foster equity." (MASSD (Doc. 2151-2) at 5.)

1 add a PIQE session to its list of family engagement tasks aimed at ELLs.

2 The Court does not presume to anticipate every variable to include in the Executive
3 Summary or future program filings but offers the above as examples only. The Court
4 approves the District's proposal to continue operation of AASSD and MASSD.

5 **Accordingly,**

6 **IT IS ORDERED** that the AASSD and MASSD Operating Plans, the FACE
7 Update, and the ELL Plan are remanded to the District for revision in accordance with the
8 analysis required for the Executive Summary.

9 **IT IS FURTHER ORDERED** that the District shall file the revised AASSD and
10 MASSD Operating Plans, the FACE Update, and the ELL Plan on September 1, 2019.

11 **IT IS FURTHER ORDERED** that the District shall file the Executive Summary
12 on December 1, 2019.

13 **IT IS FURTHER ORDERED** that the Plaintiff's shall have 14 days to file
14 Responses to the Executive Summary; the District may file a Reply within seven days.
15 Following a Reply, the Special Master shall have 14 days to file a R&R. Thereafter, the
16 Court shall reconsider unitary status.

17 **IT IS FURTHER ORDERED** that the Motion to Stay unitary status proceedings
18 (Doc. 2186) is DENIED AS MOOT.

19 Dated this 10th day of April, 2019.

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Honorable David C. Bury
United States District Judge