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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’
SUPPLEMENTARY RESPONSE TO
TUSD NOTICE AND REPORT OF
COMPLIANCE: CERTIFICATION AND
SUPPORT FOR FIRST YEAR
TEACHERS AT CERTAIN SCHOOLS
AND OBJECTION TO THE DISTRICT’S
REQUEST (DOC. 222) THAT IT BE
AWARDED PARTIAL UNITARY
STATUS WITH RESPECT TO SECTION
IV, E [SIC] OF THE USP**

25
26
27 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 Pursuant to this Court’s Order of September 6, 2018 (Doc. 2123) (“Sept. Order”),
11 Mendoza Plaintiffs submit this Supplementary Response to TUSD’s Supplemental Notice
12 and Report of Compliance: Certification and Support for First Year Teachers at Certain
13 Schools (Doc. 2220) and the District’s accompanying request that it be awarded unitary
14 status with respect to Section IV, E¹ of the USP.
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16 **Argument**

17 Mendoza Plaintiffs believe that the District has corrected many of the deficiencies
18 in its December filing. They set forth their remaining concerns below. But first they
19 address what continues to be a confounding question. How many teachers has the District
20 been placing in underperforming and racially concentrated schools?
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22 *On-Going Questions About the Number of First Year Teachers in Underperforming*
23 *and Racially Concentrated Schools*
24

25 ¹ Without waiving any of their other objections to the District’s request, the Mendoza
26 Plaintiffs note that the District’s request is in any event overbroad since only subparagraph
27 5 of Section IV, E of the USP relates to the subject of the filing in which it has made this
28 request, the assignment of first year teachers to racially concentrated and underperforming
schools. That TUSD has additional work to do to fully implement other subparagraphs of
Section IV, E is set forth in additional filings that the Mendoza Plaintiffs will be making in
response to other supplemental submissions made by the District on May 22, 2019.

1 The Court will remember that this question was addressed in the parties' and
2 Special Master's filings and its recent Order of April 22, 2019. (Doc. 2217 at 6:9-21.) In
3 its Order, the Court commented that "the District's own numbers reflect that for the current
4 school year (2018-19), it hired 54 first-year teachers and placed them in 29 schools, 23
5 were placed in underperforming schools and ten were placed at racially concentrated
6 schools." (*Id.* at 15-18.) In its most recent filing, the District provides a report on the
7 performance of "First Year Teachers at Underperforming Schools". (Doc. 2222-2 at 12 *et*
8 *seq.*) [There is no indication on the face of the document or in the text referencing that
9 document, Doc. 2222-2 at 4, of whether the report covers the performance of first year
10 teachers at racially concentrated schools that are not "underperforming".] No time frame
11 is provided to help a reader understand the document and no indication is given of whether
12 it aggregates the results for more than one year but what is clear is that it reports **92** first
13 year teachers in underperforming schools. (*See, e.g.*, Doc. 2222-2 at 12 in the box that
14 reports "Totals" under the heading "# of teachers".) Given that the report is offered as
15 support for the Court-ordered Study of Strategies for Supporting First Year Teachers and
16 specifically for the efficacy of its mentor program (*see* Doc. 2222-2 at 4), Mendoza
17 Plaintiffs respectfully request the Court to direct the District to provide further information
18 about what year(s) the report covers and if it includes first year teachers in racially
19 concentrated schools that are not underperforming – that is the entire cohort of teachers
20 covered by the relevant USP provision.
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25 *Deficiencies in the District's Revised Certification and Support Processes*

26 Mendoza Plaintiffs appreciate that the District has now formalized the process
27 through which a determination is made to assign a first year teacher to an underperforming
28

1 or racially concentrated school. However, they are concerned that the certification form
2 that the District now has created (Doc. 2222-1) with its “check the box” format is a step
3 back from the Centralized Process for Hiring Teachers (Doc. 2155-1) that the District filed
4 in December to the extent it apparently has abandoned the requirement in the Centralized
5 Process document that “[w]henver the central HR staff believes that circumstances justify
6 hiring a beginning teacher for a position at a racially concentrated or underperforming
7 school, a written statement of those circumstances...will be prepared”. Mendoza Plaintiffs
8 view this as a step back because they had understood the “written statement of
9 ...circumstances” would include a description of the efforts that had been made to fill the
10 position with a more qualified and/or more experienced candidate. They are concerned
11 that checking the box opposite the line entry “Unavailability of a qualified, more
12 experienced applicant” may not provide the assurance that diligent efforts were made to
13 fill the position before the first year teacher was proposed to be hired that an individualized
14 written statement of the circumstances that central HR staff believes justifies the hiring
15 would. They therefore request that the form be revised to include a statement of the
16 efforts made to fill the position before the hiring of a first year teacher was proposed.

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21 Further, the certification form tendered by the District fails to comply with express
22 terms of this Court’s April 22, 2019 Order. In that Order, the Court not only clarified
23 that, with respect to the certification process, it “envisioned a check list of acceptable
24 certification criteria which when applied reflect that the appointment is appropriate or
25 not.”(Doc. 2217 at 7:13-20.) It also expressly stated: “To be clear, one certification criteria
26 must be an individualized mitigation plan for the placement.” (*Id.* at 19-20.) Mendoza
27 Plaintiffs object to the District’s proposed certification form to the extent it omits the
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1 creation of an “individualized mitigation plan for the placement” and suggests that a
2 determination of whether to certify the assignment can be made without putting any forms
3 of mitigation in place. Indeed, as written, the District’s proposed certification form
4 provides three “check the box” options under which a first year teacher “may serve at the
5 racially concentrated or underperforming school... .”, none of which are the existence of
6 an individualized mitigation plan.(Doc. 2222-1.) After reciting that the first year teacher
7 subject to the certification will receive the same training and mentorship provided to all
8 first year teachers at racially concentrated and underperforming schools (as distinct from
9 an individualized plan) , it then references “possible” mitigation criteria discussed among
10 school leadership and included as an alternative that “none” will be applied.

13 Mendoza Plaintiffs therefore request that the District remove the language
14 suggesting that a first year teacher “may serve at [a] racially concentrated or
15 underperforming school” where the three listed non-mitigation criteria alone apply (and, as
16 described above, revise these to include an express statement of the efforts made to fill the
17 position before the hiring of a first year teacher was proposed). They further request that
18 the form be revised to include the creation of an individualized mitigation plan as
19 previously directed by this Court.

22 This Court has repeatedly commented on the “interconnectedness and
23 interrelationships between the sections of the USP.” (*See* Doc. 2213 at 2:13-14, citing
24 Doc. 2123 at 8.) The Mendoza Plaintiffs therefore also are concerned that the District has
25 put before the Court a document that shows significant numbers of first year teachers who
26 at the end of the school year have ratings of unsatisfactory in the areas of lesson planning
27 (7), classroom management (6), student engagement (12), and questioning & discussion
28

1 techniques (6) (Doc. 2222-2 at 12, 14, 15) without suggesting that these apparently
2 underperforming teachers are to receive additional support and assistance notwithstanding
3 the requirement of USP Section IV, B, 3, f that it develop and implement a support
4 program for underperforming and/or struggling teachers².

5
6 **Conclusion**

7 For the reasons set forth above, the District should be directed to clarify the data
8 relating to the 92 first year teachers assigned to underperforming schools reported on
9 Document 2222-2 and further revise its certification and support processes for the
10 assignment of first year teachers to underperforming and racially concentrated schools to
11 address the deficiencies identified above. Given those deficiencies, there is no need for
12 this Court to consider the District's request that it be granted partial unitary status with
13 respect to Section IV, E [*sic*; at most, this should be a reference to Section IV,E, 5] of the
14 USP.³ However, in an excess of caution, Mendoza Plaintiffs respectfully invite the
15 Court's attention to their earlier objections to such requests by the District and to their
16 Motion to Stay (Doc. 2186), expressly incorporate herein the arguments set forth in those
17 pleadings, and also note this Court's statement when it denied that Motion that it will not
18 again reach the question of unitary status until after the District's December 2019
19 Executive Summary filing and the proceedings relating thereto. Further, Mendoza
20 Plaintiffs believe that consideration of partial unitary status with respect to Section IV, E, 5
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² Mendoza Plaintiffs understand that pursuant to the USP the District has developed a plan
25 to assist underperforming teachers. The issue here is the apparent gap between that plan
26 and the plan the District has developed to support first year teachers.

27 ³ In expressly addressing the District's recent submission with respect to a portion of
28 Section IV of the USP, Mendoza Plaintiffs do not intend to waive, and hereby retain, their
claim that the District has not yet attained unitary status with respect to any portion of the
USP.

1 of the USP also merits deferral given how slow the District has been to develop and
2 implement a process to certify the assignment of first year teachers to underperforming and
3 racially concentrated schools and to put in place a set of strategies to support those first
4 year teachers who are assigned to such schools.
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7 Dated: June 5, 2019
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' SUPPLEMENTARY RESPONSE TO TUSD NOTICE AND REPORT OF COMPLIANCE: CERTIFICATION AND SUPPORT FOR FIRST YEAR TEACHERS AT CERTAIN SCHOOLS AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2222) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION IV, E [SIC] OF THE USP** 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: June 5, 2019