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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'
SUPPLEMENTARY RESPONSE TO
TUSD SUPPLEMENTAL NOTICE AND
REPORT OF COMPLIANCE: STUDY OF
STRATEGIES FOR FOSTERING
INCLUSIVENESS AND CULTURES OF
CIVILITY AND OBJECTION TO THE
DISTRICT'S REQUEST (DOC. 2232)
THAT IT BE AWARDED PARTIAL
UNITARY STATUS WITH RESPECT TO
SECTION V, F OF THE USP**

Hon. David C. Bury

Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson United School District No. One, et al.,

Defendants.

Pursuant to this Court's Order of September 6, 2018 (Doc. 2123), Mendoza Plaintiffs submit this Supplementary Response to TUSD's Supplemental Notice and Report of Compliance: Study of Strategies for Fostering Inclusiveness and Cultures of Civility (Doc. 2232) ("Inclusiveness Study") and the District's accompanying request that it be awarded unitary status with respect to Section V, F¹ of the USP.

Introduction

Unfortunately, it appears that the District misunderstood the Court's directive and, rather than prepare an assessment of the effectiveness of the particular strategies it was proposing to implement in the Professional Learning Plan: Inclusive School Environments and Cultures of Civility ("Inclusiveness PLP") that it filed with the Court in December 2018 (Doc. 2156-2), it has prepared a research report on the success in other school districts of the general practices that the USP requires it to implement: Restorative

¹ Without waiving any of their other objections to the District's request, Mendoza Plaintiffs note that the District's request is overbroad since only subparagraph 2 of Section V, F of the USP relates to the subject of the filing in which it has made this request, that is, building and sustaining supportive and inclusive school environments.

Practices (USP Section VI, B, 1, a, i), Positive Behavior Intervention and Supports (USP Section VI, b, 1, a, ii), Culturally Responsive Pedagogy (USP Section V, E, 1, a; V, E, 4, c), and Culturally Relevant Courses (USP Section V, E, 6, a, ii)². The issue, which the District has failed to address, is not the effectiveness of these general practices but, rather, whether the particular strategies TUSD elected to include in its Inclusiveness PLP (for example, workshops on “culturally responsive trauma-informed practices” delivered by the CEO of Youth Uprising, “an organization targeting at-risk youth in the Oakland, CA area” [Inclusiveness PLP, Doc. 2156-2, at 4]) can be or have been shown to be effective (or, alternatively, given the nature of the District’s recent submission, whether it is in fact implementing a general methodology like Restorative Practices, which its study notes has been implemented in “one or another forms” (Inclusiveness Study at 3; *see also id.* at 4: “implementation of restorative programming varies widely across schools”) in a manner that will build and sustain supportive and inclusive school environments, and whether it is providing the requisite professional development to ensure that outcome). Because the District has failed to undertake the study that is necessary to assess the effectiveness of the implementation strategies contained in its Inclusiveness PLP, it has failed to comply with this Court’s Orders of September 6, 2018 (Doc. 2123 at 122-24 and 150:16-18) and April 22, 2019 (Doc. 2217 at 14:8-28 and 15:9-14).

Additionally, TUSD has failed to comply with so much of this Court’s April 22 Order as required it to revise the Inclusiveness PLP based on the results of the ordered study. (“The District shall comply with the directives issued by this Court on September 6,

² *See*, Inclusiveness Study (Doc. 2231-1) at 3-6 (Restorative Practices), 7-13 (Positive Behavior Intervention and Supports), 13-17 (Culturally Responsive Pedagogy), and 17-19 (Culturally Relevant Courses).

2018 and file a Supplemental Notice of Compliance and **Revised Professional Learning Plan[] Inclusive School Environments and Cultures of Civility**. (Doc. 2217 at 14:26-28; *see also* Doc. 2217 at 15; emphasis added.)³

Argument

Court Filings and Orders that Delineate the Study the District Was to Have Prepared and the Revisions It Was to Have Made in the Inclusiveness PLP

While the Inclusiveness PLP included some components like “Restorative Practices as an Instructional Strategy” (Doc. 2156-2 at 2) to which neither the Special Master nor the Mendoza Plaintiffs objected, it also included some components that were not shown to be evidence or research based⁴. In his Inclusiveness R&R, the Special Master wrote:

“The District has prepared a professional development plan but it is not specifically linked, as the Court ordered, to the strategies that have enabled the District to facilitate inclusiveness and reduce bullying. The strategies that are listed in the professional

³ Mendoza Plaintiffs recognize that the Inclusiveness PLP was directed to the 2018-19 school year. They therefore suggest that the issues now before the Court are what is to be included in the Inclusiveness PLP for 2019-20; whether the District made any sort of evaluation especially with respect to those 2018-19 undertakings that it described as a “pilot program” (*see, e.g.*, discussion of Restorative Solutions at Doc. 2156-2) to inform its decisions about what should be carried forward into the 2019-20 school year; and whether any such evaluation now “would allow the District to focus its resources on those practices that are most promising”, as recommended by the Special Master. (Special Master’s Report and Recommendation with Respect to Inclusive School Environments (“Inclusiveness R&R”) at 4:15-16.)

⁴ Mendoza Plaintiffs expressly referenced a number of such components, including three that remain of particular concern: bullying prevention assemblies and professional development to be provided by Dr. Da’Mond Holt who is not otherwise identified in the District’s December submission (Doc. 2156-2 at 3); the workshops on culturally responsive trauma-informed practices to be offered by Oakland, CA Youth Rising CEO Dr. Macheo Payne, referenced above (*id.* at 4); and some sort of “learning opportunity [to] facilitate the development of an anti-bullying culture and climate” at Booth-Fickett and Lawrence that was not further explained and as to which neither the “developer” nor the “provider” was identified (*id.* at 3, 6).

1 development plan are not explicitly evidence-based. Among the strategies listed by the
2 District, restorative practices is evidence-based, and one could make an argument that
3 SPARKS targeted training is grounded in research insofar as it is based on culturally
4 relevant pedagogy. It may be that there is evidence to support the utilization of other
5 strategies but, as noted, no such evidence is provided. It is almost certain that some of
6 these practices will have little effect on achieving the goals the District wishes to attain.
7 For example, multicultural curriculum has not been identified as an inclusiveness practice
8 in the sense that term is used in the USP. More obvious, the chances that anti-bullying
9 lectures at school assemblies would result in the desired outcome is zero.” (Inclusiveness
10 R&R at 3:7-18.)

13 The Special Master then concluded that “the District should go back to the drawing
14 board in the development of its professional development plan to focus attention on
15 evidence-based practices....” (*Id.* at 4:10-11.) In addition, he made findings and
16 recommendations with respect to how the District planned to monitor and evaluate the
17 effectiveness of its inclusiveness professional development. He wrote:

19 “In its December 6 filing, the District says it will monitor and evaluate the
20 effectiveness of professional development. However, the monitoring it proposes is simply
21 to identify whether individuals participate in the professional learning options. The PD
22 rubric identified as a source of evaluation describes the processes by which professional
23 development is identified and delivered. Most of the proposed interventions in the
24 professional development plan do not meet the criteria set forth in the professional
25 development rubric, at least as described in the District’s proposal.” (*Id.* at 3:19-4:1.)

1 Thereafter in its Order of April 22, 2019 (Doc. 2217), this Court directed the
2 District to work in collaboration with the Special Master “in assessing the effectiveness of
3 existing strategies and identifying possible additional strategies.” The Court also directed
4 the filing of a revised Inclusiveness PLP that would comply with its prior “substantive
5 directives” relating to Professional Learning and cited the pages of its September 2018
6 Order (pages 143-45) that adopted the Special Master’s recommendation relating to
7 District professional development plans. (Doc. 2217 at 14:19-21, citing Doc. 2123 at 143-
8 45.)

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11 *The District’s Inclusiveness Study and Its Failure to Have Revised the Inclusiveness*
12 *PLP*

13 In the Inclusiveness R&R, the Special Master noted that the District “employ[s]
14 practices that could reasonably be linked to inclusiveness and the reduction of bullying. In
15 addition to restorative practices, these include the district-wide development of teachers’
16 capacity to employ culturally responsive pedagogy, culturally relevant courses, social and
17 emotional learning at [P]roject [MORE] and elsewhere, PBIS, and the Superintendent’s
18 initiative for creating school cultures of high expectation.” (Inclusiveness R&R at 4:2-8.)
19 It now appears that the District, in collaboration with the Special Master, undertook a
20 general study of many of these practices. However, the District failed to undertake any
21 assessment of specific implementation strategies like anti-bullying assemblies that were
22 components of its Inclusiveness PLP. Nor does it appear to have considered the Special
23 Master’s suggestion in his Inclusiveness R&R that there are proven programs to reduce
24 bullying and interpersonal tensions and conflicts that the District might consider adopting
25 in a revised Inclusiveness PLP. (Inclusiveness R&R at 4, n.2.)
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1 In its Inclusiveness Study, the District states that the strategies it is using and will
2 continue to use to promote a sense of inclusiveness or belonging among its students and a
3 general culture of civility within its community are four of the practices mandated by the
4 USP: restorative practices; positive behavior interventions and supports; culturally
5 relevant courses; and culturally responsive pedagogy. (Doc. 2231-1 at 1.) There are at
6 least three problems with this approach.
7

8 First: As the Special Master noted in his R&R, these practices can be linked to
9 inclusiveness and reductions in bullying, but the linkage is not necessarily automatic.
10

11 An example is restorative practices. The studies reported by the District largely
12 focus on reductions in disciplinary outcomes (fewer suspensions, etc., which is not
13 surprising given that restorative practices was designed to “help reduce suspension rates”,
14 Inclusiveness Study, Doc. 2232-1, at 3). While one hopes that there is a linkage between
15 reductions in disciplinary outcomes and increased feelings of inclusion (and reductions in
16 bullying), none of the reported studies appears explicitly to address these issues.
17 (Inclusiveness Study, Doc. 2232-1 at 3-7 which does reference an instance of teachers
18 reporting more positive relations with their diverse students and an effort in Oakland to use
19 restorative practices circles for “non-disciplinary reasons.”) Mendoza Plaintiffs believe
20 that if the four referenced general practices also are to be the District’s strategies for
21 promoting a sense of inclusiveness or belonging among its students, this must be made
22 explicit in the implementation of those practices and the linkages must be made clear.
23
24

25 The District has a ready example at hand but it is unclear from its recent submission
26 whether it plans to continue to implement this approach (or whether it has attempted to
27 assess the effectiveness of such implementation during the 2018-19 school year). The
28

1 Inclusiveness PLP states that TUSD intended to provide professional development training
2 that focused on how restorative practices can be used to enhance inclusiveness and that its
3 proposed approach would “move[] away from restorative practices as a response to a
4 particular harm, and focus[] on the asset-based functions of restorative practices as an
5 instructional strategy.” (Doc. 2156-2 at 2.) Whether is has done so and with what outcomes
6 remains unclear. In any event, Mendoza Plaintiffs believe that to the extent the District is
7 relying on the four general practices set forth in the Inclusiveness Study and the USP, it
8 must address the Special Master’s finding that the linkages of these general practices to
9 inclusiveness and reduction in bullying are not clear and explicitly provide such linkages
10 in its program development and related professional development plan.
11

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13 Second: It appears that the District has determined, without explanation, to
14 abandon strategies that are in the Inclusiveness PLP.
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16 Like culturally relevant courses, multi-cultural courses are mandated by the USP.
17 (USP Section V, E, 6, a, i.) The Inclusiveness PLP stated that the District planned to
18 provide job-embedded professional development related to its multi-cultural social studies
19 classes for sixth graders that would help teachers learn how to use that curriculum “to
20 reduce bias, bullying and prejudice at school sites.” (Doc. 2156-2 at 3.) The District’s
21 recent submission fails to address the current status of that approach but its silence
22 suggests that it has been abandoned notwithstanding that this represented an instance in
23 which the District appeared to have established a link between a USP-mandated practice
24 and the express goal of reducing bullying and increasing students’ sense of inclusion.
25
26

27 The Inclusiveness PLP indicated that the District wanted to embrace strategies
28 directly related to the reduction of bullying and to provide professional development on

1 responding in a culturally responsive manner to students who have experienced trauma.
2 However, neither of these initiatives are necessarily and plainly included in the four
3 practices it now says it will embrace. Once again, it is unclear whether and to what extent
4 the District intends to expressly address bullying prevention and professional development
5 related to both bullying prevention and culturally responsive approaches to students who
6 have experienced trauma in its plan going forward or, if so, what form that will take.
7

8 Third: As pointed out above, in the Inclusiveness Study, the District states that the
9 USP-mandated restorative practices, positive behavior interventions and supports,
10 culturally responsive pedagogy, and culturally relevant courses are the “four specific
11 strategies” that it employs and will continue to employ “to promote a sense of
12 inclusiveness or belonging among its students...” (Inclusiveness Study at 1.) However,
13 TUSD has failed to revise its Inclusiveness PLP to identify any training it will offer to its
14 teachers, administrators, and staff to ensure that the components of these four general
15 practices are explicitly linked to its efforts to promote inclusiveness and that teachers,
16 administrators, and staff will be given the tools and techniques they need to effectively
17 make that linkage in their implementation of the four general practices. Yet, a revised
18 inclusiveness PLP not only was ordered by this Court in April (Doc. 2217 at 14:26-28); it
19 also is an essential component of the requirements the Court set in September 2018 when it
20 addressed the topic of the District’s USP obligation to provide effective professional
21 development. (*See, e.g.*, Doc. 2123 at 145 - 146:6.)
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25 Conclusion

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1 For the reasons set forth above, the District should be directed to clarify the status
2 of strategies set forth in its Inclusiveness PLP that are not explicitly included within the
3 four general practices that it now says it will follow to build and sustain supportive and
4 inclusive school environments and prepare a revised Inclusiveness PLP to delineate the
5 training it will provide to link those four general strategies to the goal of building and
6 sustaining supportive and inclusive school environments.
7

8 Given those deficiencies, there is no need for this Court to consider the District's
9 request that it be granted partial unitary status with respect to Section V, F of the USP. (As
10 noted above, at most, this should be a reference to Section V, F, 2 of the USP.)⁵ However,
11 in an excess of caution, Mendoza Plaintiffs respectfully invite the Court's attention to their
12 earlier objections to such requests by the District and to their Motion to Stay (Doc. 2186),
13 expressly incorporate herein the arguments set forth in those pleadings, and also note this
14 Court's statement when it denied that Motion that it will not again reach the question of
15 unitary status until after the District's December 2019 Executive Summary filing and the
16 proceedings relating thereto. (Doc. 2213 at 2:26-3:1.)
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26 ⁵ In expressly addressing the District's recent submission with respect to a portion of
27 Section V of the USP, Mendoza Plaintiffs do not intend to waive, and hereby retain, their
28 claim that the District has not yet attained unitary status with respect to any portion of the USP.

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2 Dated: July 19, 2019
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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2019, I electronically submitted the foregoing
**MENDOZA PLAINTIFFS' SUPPLEMENTARY RESPONSE TO TUSD
SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE: STUDY OF
STRATEGIES FOR FOSTERING INCLUSIVENESS AND CULTURES OF
CIVILITY AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2232)
THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO
SECTION V, F OF THE USP** to the Office of the Clerk of the United States District
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Dated: July 19, 2019