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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB  
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

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

Defendants.

CV 74-204 TUC DCB  
(Consolidated Case)

1                                   **SPECIAL MASTER’S REPORT AND RECOMMENDATION**  
2                                   **WITH RESPECT TO INCLUSIVENESS AND CIVILITY**

3                   **Introduction**

4                   On April 22, 2019, the Court ordered the District to provide a supplemental notice of  
5 compliance dealing with inclusiveness and school climates of civility.

6                   On July 1, 2019 the District submitted the requested notice and on July 12 the Mendoza  
7 plaintiffs filed objections to the District notice. The themes of these objections are:

- 8                   1.       The District has failed to assess the efficacy of particular strategies it is  
9                                   implementing with respect to inclusiveness and civility as ordered by the Court.
- 10                  2.       The District is using strategies not supported by research.
- 11                  3.       The District failed to develop a specific professional learning plan for District staff  
12                                   as ordered by the Court.<sup>1</sup>
- 13                  4.       The District did not, despite direction by the Court, identify particular strategies  
14                                   that it would implement in the future, if needed.

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17                   **Analysis**

18                   Assessment of existing strategies

19                   The District did not undertake an assessment of each of its own practices but argued that  
20 the efficacy of those practices is demonstrated (a) by the research showing that inclusiveness and  
21 the absence of bullying in comparison to national data cited by the Special Master and (b) a  
22 review of published studies in other Districts.

23  
24                   It would be extraordinarily difficult to conduct the study mandated by the Court for the  
25 following reasons:

26                   \_\_\_\_\_

27                   <sup>1</sup> While the District and the Special Master collaborated on the design of the study of the  
28 cumulative effects of the District strategies, there was no collaboration in the development of the  
professional learning plan.

- 1           1.     In most schools in the District, three or four of the strategies are being  
2                     implemented simultaneously. It is, therefore, difficult to determine the relative  
3                     weight of each of the practices.
- 4           2.     The practices each school uses are determined by the problems that need to be  
5                     addressed.
- 6           3.     Individual teachers will implement these practices in different ways so in order to  
7                     understand their effects it would be necessary to record variations in teacher  
8                     behaviors.

9  
10           It would, however, be possible – though not easy – to study the effects of pilot  
11           interventions such as the District’s experiment with restorative processes as instruction. It would  
12           also be possible to identify positive and negative outliers among schools and determine whether  
13           there are common practices being implemented.

14  
15           The use of practices that are not research-based

16           Despite the continuing admonition from the Court that the District use practices that are  
17           based on research, the District continues to use practices about which there is little or no  
18           empirical evidence of their effectiveness related to specific goals.<sup>2</sup> For example, the District  
19           brought in a speaker to make a presentation to a school assembly. As the Special Master noted in  
20           an earlier R&R, the chance that this would change campus climates is virtually zero.

21  
22  
23           <sup>2</sup> For example. The District cites Youth Uprising (YU) as a resource. Not only is there no  
24           evidence of its effect on issues civility in the school, YU describes itself as follows: *YU aims to serve as a*  
25           *neighborhood hub, offering East Oakland youth programs designed to increase their physical and mental*  
26           *wellbeing, community connections, educational attainment, and career achievement. To provide real-*  
27           *world employment experiences, it has four social enterprises, which include YU Eat (Corner’s Café), an*  
28           *onsite internet restaurant/café and catering service; YU Count, which offers IT, data input, enrichment,*  
*and analysis services to businesses and non-profits; YU Create, a media production company offering*  
*video production, soundtrack creation, and graphics for organizations and companies; and YU Work, a*  
*green cleaning business that provides janitorial, facade and neighborhood improvement services. Each*  
*year, YU provides services to nearly 2,000 youth and places 200 of its participants in jobs.*

1 The professional learning plan

2 The Court required the District to work with the Special Master to develop a professional  
3 learning plan linked to the practices that it found to be effective. While the District did work with  
4 the Special Master to design the study that shows that the District is doing well with respect to the  
5 set of goals implicit in the relevant section of the USP, the District and the Special Master did not  
6 collaborate in the development of the professional learning plan. What would be useful in this  
7 regard day would be to know how the District could use job embedded learning<sup>3</sup> to prepare  
8 District staff to implement particular practices, such as restorative practice.  
9

10 Strengthening the existing interventions

11 The District says that it has identified an additional strategy *which it might employ*  
12 (emphasis added) should monitoring disclose the need for an additional approach. The District  
13 did not identify this strategy.  
14

15 **Recommendations**

16 The Court should direct the District to work with the Special Master to develop  
17 assessment plans to: (a) study the effects of any new strategies it proposes to employ and  
18 (b) determine whether schools that have particularly inclusive and civil school climates differ  
19 from schools that are troubled and troubling.  
20

21 The Court should require the District to identify practices that it may decide to use in  
22 schools that need to develop more positive school cultures. There are two reasons for this: first,  
23 it will provide the Special Master and the plaintiffs with evidence of the District's commitment to  
24 use research-based practices and, second, it may allow the District to develop the training  
25 program should this new practice be needed.

26 \_\_\_\_\_  
27 <sup>3</sup> While there are different definitions of job embedded learning two essential elements thereof are:  
28 (a) training is driven by the assessment of individual performance and (b) most professional learning takes place in the context of work where new learning can be demonstrated and improved as necessary.



**CERTIFICATE OF SERVICE**

I hereby certify that on August 6, 2019, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

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Andrew H. Marks for  
Dr. Willis D. Hawley,  
Special Master

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