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12

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 NOTICE AND REPORT OF
COMPLIANCE: INTERNET ACCESS
AND OBJECTION TO THE DISTRICT'S
REQUEST (DOC. 2263) THAT IT BE
AWARDED PARTIAL UNITARY
STATUS WITH RESPECT TO SECTION
IX, B OF THE USP**

Hon. David C. Bury

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1 Maria Mendoza, et al.,
 2 Plaintiffs,
 3 United States of America,
 4 Plaintiff-Intervenor,
 5 v.
 6 Tucson United School District No. One, et
 7 al.,
 8 Defendants.

Case No. CV 74-204 TUC DCB

9
 10 Pursuant to this Court’s Orders of September 6, 2018 (“9/6/18 Order”) (Doc. 2123),
 11 July 26, 2019 (Doc. 2243), and September 6, 2019 (Doc. 2271), Mendoza Plaintiffs submit
 12 this Response to TUSD’s Notice and Report of Compliance: Internet Access (Docs. 2263
 13 (“IA Notice”) and 2264-1 (“IA Report”)), and objection to TUSD’s request that it be
 14 awarded partial unitary status with respect to section IX, B¹ of the USP.
 15
 16

17 **Argument**

18 ***TUSD has Failed to Comply with This Court’s Order to Review the TCI, Update it***
 19 ***to Include an Internet Access Category, and Develop a Plan for Correcting***
 20 ***Disproportionality to the Extent it Affects Racially Concentrated Schools***

21 In the 9/6/18 Order, this Court noted that “[t]he Mendoza Plaintiffs, the District, and
 22 the Special Master agree that recent investments in technology with priority for Racially
 23 Concentrated schools increased demand for internet service, especially at these schools.”
 24 (9/6/18 Order at 139:18-20.) This Court expressly stated that it assumed that the parties
 25

26 ¹ Mendoza Plaintiffs note that the District’s request is overly broad as this Court expressly
 27 ruled that USP Sections IX, B, 1, iv and IX, B, 4 would be considered separately from the
 28 remaining sections of USP IX, B to which this IA Notice relates. (9/6/18 Order at 140:6-10.)

1 had proceeded under the expedited review and revision process² the Mendoza Plaintiffs
2 had proposed for revising the technology condition index (“TCI”) to include an internet
3 access category, ordered TUSD to review updated TCI data, and directed “ to the extent
4 inadequate internet speeds disproportionately affect Racially Concentrated schools, [that]
5 the District shall develop a plan for correcting disproportionality... .” (*Id.* at 139:20-27.)
6

7 Notwithstanding that it had previously asserted that it was “developing proposed
8 revisions to the TCI to measure schools’ wireless bandwidth and connectivity... .” (*see*
9 TUSD 3/10/17 Response to RFI #1013, attached as Exhibit A (at 15)) and notwithstanding
10 this Court’s statement that it expected the proposed review and comment process proposed
11 by the Mendoza Plaintiffs to have been followed, the District never provided the Plaintiffs
12 and the Special Master with proposed revisions to the TCI and never suggested that no
13 such revisions were required until its filing of August 30, 2019. As detailed below, the
14 District provides its rationale for having failed to comply with this Court’s Order, but that
15 explanation raises further questions that Mendoza Plaintiffs respectfully submit must be
16 answered before this Court can consider any award of partial unitary status for this area.
17
18

19 ***TUSD’S IA Report Directly and Irreconcilably Contradicts Multiple Statements***
20 ***TUSD Made Throughout 2017 That Suggests That TUSD Must, at a Minimum,***
21 ***Explain Such Contradictions to the Satisfaction of This Court and Demonstrate***
22 ***that Inequities Affecting Racially Concentrated Schools that TUSD Previously***
23 ***Identified Have Been Satisfactorily Addressed***

24 In its filing, TUSD asserts that it conducted an analysis “over two successive years”
25 and found that “[e]ach school has wireless coverage with capacity and speed far above that

26 ² Consistent with the review provisions in Section I, D, 1 of the USP, Mendoza Plaintiffs
27 had proposed that the District promptly provide the Special Master and Plaintiffs for
28 review and comment revisions to the TCI to include a wireless connectivity category. (*See*
Mendoza Plaintiffs’ Objections to the Special Master’s 2016-17 Annual Report, Doc. 2101,
at 68:1-12.)

1 necessary to serve any location within the school’s classrooms and other areas in which
2 internet connectivity is needed. There... is no disparity in internet access between or
3 among schools in the District.” (IA Notice at 2:8-9; IA Report at 2.) TUSD specifically
4 details its design formula of “at least one [wireless] access point³ for every thirty
5 classroom seats in the school” and that such formula results in “[e]very single school
6 [having] far more wireless access points than necessary to meet peak usage.” (IA Report
7 at 3.) Thus, TUSD reasons, “there is no need to add an internet access category to the TCI,
8 as every school would score the same in that category.” (IA Notice at 2:14-15.)
9

10
11 Beyond the fact that the District’s new assertion contradicts the Court’s
12 understanding that TUSD had agreed there existed “increased demand for internet service,
13 especially at [Racially Concentrated] schools” (9/6/18 Order at 139:18-20), the IA Report
14 irreconcilably contradicts assertions TUSD made throughout 2017. In TUSD’s Budget
15 Narrative for the 2017-18 School Year (attached as Exhibit B), TUSD requested
16 desegregation funds for WAP equipment given that the number of WAPs in each
17 classroom “has not kept up with the growing number of devices... [t]o meet the needs of
18 the *current bandwidth demands* of the classroom the District is installing an additional
19 WAP per classroom resulting in *two WAP’s per classroom.*”⁴ (Exhibit B at 41; emphasis
20 added.) Indeed, TUSD went so far as to identify ten racially concentrated schools at which
21 its proposed expenditure would be used “in order to provide more equitable wireless
22 coverage district-wide which are in the most immediate need.” (*Id.*)
23
24
25

26 ³ The District explains that wireless access points (“WAPs”) are located at each school and
27 “connect wirelessly to student devices” to provide internet service. (*Id.*)

28 ⁴ The District subsequently “eliminated th[e] proposed allocation in Draft #2” of the 2017-
18 USP Budget. (Exhibit A at 15.)

1 Moreover, in January 2017, the internet access issue was apparently so significant
2 that TUSD was “applying for approximately \$2 million in E-rate funds for additional
3 wireless networking equipment at the high schools for the 2017-18 school year... [and
4 planned] to apply for E-rate funds for the 2018-19 school year if available, to address the
5 additional WAP needs at the elementary and middle schools.” (*Id.*) Approximately, nine
6 months later, in TUSD’s September 1, 2017 Annual Report for 2016-17, TUSD similarly
7 stated it was “investing \$425,000 of capital funds and is applying for \$875,000 of E-rate
8 funds to provide and install 1,475 WAPs in all high schools.” (Doc. 2057-1 at xxv and IX-
9 373.)
10

11 TUSD’s statements throughout 2017 concerning the inability to meet “current
12 bandwidth demands,” identification of ten racially concentrated schools where additional
13 WAPs would provide “more equitable” internet access, and its budget request, E-rate
14 applications, and capital fund investment for additional WAPs conflict with the IA Notice
15 assertion that every school’s peak usage falls far below every school’s capacity and that
16 therefore there are no disparities in internet access or need to add an internet category to
17 the TCI --- or take any actions to address inequities it previously had identified.
18

19 Accordingly, Mendoza Plaintiffs respectfully submit that TUSD must provide explanation
20 on the following before this Court can consider whether TUSD should be awarded unitary
21 status with respect to TCI-related subsections of USP Section IX, B:
22

- 23 • On what basis did the District conclude in 2017 that then “current bandwidth
24 demands” were not being met and that it required two WAP’s per classroom?
25
26 How did the District go from this position to now finding that internet
27
28

1 capacity at every school falls far below capacity and that as little as one
2 WAP is necessary in each classroom?

- 3
- 4 • How did the District identify the ten racially concentrated schools (Exhibit B
5 at 41) it said were “in most immediate need” of “more equitable wireless
6 coverage”? For each of these schools, did the school receive additional
7 WAPs or internet equipment to improve internet access after TUSD
8 identified them as in “most immediate need”?
 - 9 • Did the District invest the \$425,000 in capital funds it said it was investing
10 (Doc. 2057-1 at xxv and IX-373) or any other amount, to provide and install
11 WAPs? If so, what equipment was purchased and in which schools was the
12 equipment installed?
 - 13 • Did the District apply for E-rate funds in either 2017-18 or 2018-19 (Exhibit
14 B at 41; Doc. 2057-1 at IX-373)? Did the District receive those funds, and if
15 so, in what amount, and for what purpose was the money expended, and at
16 which schools?
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21 **Conclusion**

22 For the reasons set forth above, Mendoza Plaintiffs respectfully request the Court to
23 hold that the District has failed to comply with its 9/6/2018 Order relating to the TCI and
24 deny the District’s request that it be granted partial unitary status with respect to those
25 parts of USP Section IX, B relating to the technology index, that is B, 1, 2, and 3.⁵ They
26

27

28 ⁵ In expressly addressing the District’s recent submission with respect to a portion of
Section IX, B of the USP, Mendoza Plaintiffs do not intend to waive, and hereby retain,

1 further respectfully request that TUSD be ordered to supplement its IA Notice filing with
2 explanations for the above listed issues. In an excess of caution, Mendoza Plaintiffs
3 respectfully invite the Court's attention to their earlier objections to such requests by the
4 district and to their Motion to Stay (Doc. 2186), expressly incorporate herein the
5 arguments set forth in those pleadings, and also note this Court's statement when it denied
6 that Motion that it will not again reach the question of unitary status until after the
7 District's Executive Summary filing and the proceedings relating thereto.
8

9
10 Dated: September 20, 2019
11

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15 /s/ Juan Rodriguez
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20 /s/ Lois D. Thompson
21 Attorney for Mendoza Plaintiffs
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26 their claim that the District has not yet attained unitary status with respect to any portion of
27 the USP.
28

CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD NOTICE AND REPORT OF COMPLIANCE: INTERNET ACCESS AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2263) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION IX, B 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: September 20, 2019