

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
3 PROSKAUER ROSE LLP
2029 Century Park East, 24th Floor
4 Los Angeles, California 90067-3010
Telephone: (310) 557-2900
5 Facsimile: (310) 557-2193

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
8 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
9 634 S. Spring St.
11th Floor
10 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs
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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' RESPONSE
TO TUSD NOTICE AND REPORT OF
COMPLIANCE: DISCIPLINE
PROGRESS REPORT, AND COMBINED
DISCIPLINE/INCLUSIVITY
PROFESSIONAL LEARNING PLAN AND
OBJECTION TO THE DISTRICT'S
REQUEST (DOC. 2266) THAT IT BE
AWARDED PARTIAL UNITARY
STATUS WITH RESPECT TO SECTION
VI OF THE USP**

25
26
27 Hon. David C. Bury
28

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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11 Pursuant to this Court’s Orders of September 6, 2018 (“9/6/18 Order”) (Doc. 2123),
12 July 26, 2019 (Doc. 2243), and September 6, 2019 (Doc. 2271), Mendoza Plaintiffs submit
13 this Response to TUSD’s Notice and Report of Compliance: Discipline Progress Report,
14 and Combined Discipline/Inclusivity Professional Learning Plan (“Discipline Report”)
15 (Doc. 2266).
16

17 **Argument**

18
19 ***TUSD’s Assertion That it “has Continuously Provided the Same [Discipline] Data
20 That it Provided in 2013-14” is Materially Misleading, Inconsistent with this
21 Court’s Orders Concerning Data Reporting, and Highlights that the Data
22 Reporting Forms TUSD now has Submitted do Not Comply with this Court’s
Orders***

23
24 While Mendoza Plaintiffs prefer to not burden this Court with an explanation of
25 why the District’s implicit assertion (Discipline Report, Doc. 2266-1, at 2) that its
26 discipline data reporting has continuously been proper is materially misleading, they do so
27 to correct the record, because such assertion conflicts with this Court’s repeated order that
28

1 the parties should defer to the Special Master’s data monitoring needs, and because the
2 discussion highlights the fact that the Discipline Report’s reporting forms (Discipline
3 Report, Attachment 2) do not comply with this Court’s Orders.

4 With respect to discipline data reporting, in its 9/6/18 Order, this Court wrote that
5 “[t]he difficulty [] in assessing the effectiveness of the disciplinary strategies rests on the
6 District’s definitional-programmatic change in 2015 and stubborn adherence to it, even in
7 the face of the Special Master’s directive and this Court’s Order to discontinue it.”¹
8 (9/6/18 Order at 126:10-13.) This Court specifically referred to the manner in which the
9 District reported referrals to In-School-Intervention (“ISI”) and the District Alternative
10 Education Program (“DAEP”) and TUSD’s related insistence both that participation in
11 these programs was “not exclusionary” and that these disciplinary actions were not
12 suspensions for reporting purposes. (9/6/18 Order at 125:8-126:13.)

13 In the Discipline Report, the District makes the following misleading statement: the
14 “District has continuously provided the same data that it provided in 2013-14... .”
15 (Discipline Report, Doc. 2266-1, at 2.) First, the assertion seemingly suggests that TUSD
16 has regularly reported the same data in the discipline section of each of its annual reports,
17 and that, therefore, the Special Master (and Plaintiffs) could obtain the data needed for
18 monitoring by, for example and in the District’s own words, “simply adding the reported
19 ISI numbers to the reported short term suspension numbers.”² (*Id.*) However, this ignores
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25 ¹ The referenced Order in which this Court directed TUSD to “discontinue” its
26 “reclassification” of ISI and DAEP in a manner that failed to classify them as suspensions
27 or exclusionary discipline is the November 7, 2017 Order (Doc. 2087) (“Data Correction
28 Order”).

² Mendoza Plaintiffs note that TUSD provides a similar assertion with respect to its
unilateral revision to Facilities Index Condition criteria. (*See* Notice and Report of
Compliance: FCI Scores, Doc. 2264, at 2:6-10.)

1 the fact that TUSD’s submissions of discipline data – that are expressly required to be
2 “substantially in the form of [the USP’s] Appendix I” under USP Section IV, G, a, b³
3 (covering total suspensions across TUSD) -- failed to include DAEP and ISI suspensions
4 from the regular classroom. (*Compare* Exhibit VI-52 of TUSD Annual Report for 2016-17
5 School Year (Doc. 2064-6) (TUSD’s USP § IV, G, a, b data report filed before the Data
6 Correction Order reporting the following discipline incidents for SY 2016-17: In-school
7 discipline (2818); In-school suspension (632); Long-Term Suspension (149)) *with*
8 Discipline Report, Attachment 1 at VI-22, p. 4 (TUSD’s USP § IV, G, a, b data report filed
9 after the Data Correction Order reporting the following for SY 2016-17: In-school
10 discipline (4151); In-school suspension and In-school Interventions (2463); Long-Term
11 Suspension “W DAEP” (353)); Data Correction Order at 5 (noting that the Special Master
12 reports the District’s unilateral reclassifications “jeopardizes compliance with the USP,
13 Appendix A... and also affects his ability to monitor the District’s progress”).)

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17 Second, the District’s statement that it has maintained consistent reporting is
18 seemingly and misleadingly premised on the fact that ISI and DAEP did not exist at the
19 time the USP was adopted and, thus, that its subsequent USP § IV, G, a, b reporting
20 (following introduction of the ISI and DAEP programs, and that was the subject of the
21 Discipline Correction Order) too excluded data on ISI and DAEP referrals.⁴ But that

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23
24 ³ The purpose of this requirement was of course to ensure consistency in the District’s
25 reporting and to avoid the very problem that the Plaintiffs, the Special Master, and this
26 Court, now have been wrestling with for years.

27 ⁴ Significantly, the District’s statement downplays the fact that neither the discipline
28 section of the District’s first annual report following the introduction of the ISI and DAEP
programs nor the attached USP § IV, G, a, b data report disclosed that the District was not
including full data on its ISI/DAEP referrals in its Section IV, G, a, b report, or that the
District treated these programs as “not exclusionary” even though this Court notably would
later conclude that DAEP is “by definition” an exclusionary suspension. (2015-16 TUSD

1 simply ignores the fact that the programs involved exclusionary disciplinary actions and
2 therefore fell within the categories of discipline that the District was required to include in
3 its USP § IV,G, a, b data report. Thus, TUSD’s USP non-compliant data reporting made
4 analysis of actual disciplinary outcomes exceedingly difficult. (*See, e.g.*, Sept 6 Order at
5 125:8-126:13.)
6

7 Mendoza Plaintiffs have detailed the context within which to understand why the
8 District’s statements are so misleading because they are greatly concerned that the fidelity
9 with which the District apparently suggests it has reported data conflicts with a point that
10 this Court has repeatedly had to make, that is, that the parties and the Court should defer to
11 the Special Master’s data directives and data reporting needs. (*See, e.g.*, 9/6/18 Order at
12 125:18-22.)⁵ Indeed, Mendoza Plaintiffs submit that TUSD’s persistent approach of
13 “hiding the ball” when it comes to data reporting, even in the face of orders directing the
14 District to discontinue such practices, does not bespeak a District that has demonstrated an
15 “affirmative commitment to comply in good faith with the entirety of a desegregation
16 plan.” (*Freeman v. Pitts*, 503 U.S. 467, 499 (1992).)
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19 Further, unfortunately, what this Court referred to as the District’s “stubborn
20 adherence” to its definitional-programmatic changes (9/6/18 Order at 126:10-13) seems to
21 persist in the Discipline Report’s reporting forms (Discipline Report, Attachment 2
22

23 Annual Report, Doc. 1958-1, at VI-277 – VI-317; Appendix VI-54, Doc. 1965-3; Data
24 Correction Order at 622-24.) Mendoza Plaintiffs further note that they only discovered
25 how TUSD treated and reported ISI and DAEP referrals when they reviewed *separately*
26 attached appendices VI-32 and VI-36.

27 ⁵ Unfortunately, this ongoing issue appears to be part of the larger continuing problem the
28 Special Master and Plaintiffs have faced concerning their inability to receive from the
District information necessary to perform their roles as specified in the USP. (*See, e.g.*,
Doc 1641-1 at 7 (Special Master’s report concerning District failure to provide needed
information to the Plaintiffs and Special Master); Doc. 1954 at 3:9-12 (Special Master
reporting on TUSD’s failure to adequately provide information during budget process).)

1 (“Discipline Forms”). The Discipline Forms consist of Chart 1, which Mendoza Plaintiffs
2 recognize to be substantially in the form required by USP section IV, G, a, b, and Chart 2
3 titled “Exclusionary Consequences” that separately provides data on ISI and DAEP
4 referrals. As noted below, Chart 1, which details in-school, out-of-school, long-term and
5 short-term suspensions, omits DAEP referrals. (*See* Discipline Forms.) While no express
6 statement is made concerning whether ISI referrals are included in Chart 1, Mendoza
7 Plaintiffs infer that they are not based on the express ISI reporting category in Chart 2. By
8 excluding ISI and DAEP referrals from Chart 1, the District suggests that ISI and DAEP
9 are not types of suspensions that need be reported there notwithstanding that this Court has
10 expressly ordered that DAEP is “exclusionary discipline” and a “suspension of regular
11 classroom instruction” (as is ISI) that is to be reported in the data called for by USP section
12 IV, G, a, b. (*See* Data Correction Order at 22-24; 17-28.) Thus, TUSD has failed to
13 comply with the Data Correction Order and 9/6/18 Order (*see* 9/6/18 at 130:7-11,
14 paragraph A).

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18 Mendoza Plaintiffs hasten to add that they fully agree that, given that ISI and DAEP
19 are “less exclusionary” than out-of-school suspensions, data to distinguish ISI and DAEP
20 from other suspensions should be presented together with USP section IV, G, a, b data so
21 that the parties, Special Master and public can fully contextualize the District’s data and
22 progress. However, this result can be achieved if the District provides Chart 2 data in
23 addition to a version of Chart 1 that *includes* ISI and DAEP referrals, as it should under the
24 Data Correction Order, the 9/6/18 Order, and USP section IV, G, a, b. Thus, Mendoza
25 Plaintiffs respectfully request that this Court order the District to revise the Discipline
26
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1 Forms so that ISI and DAEP referrals are included in Chart 1, the USP Section IV, G, a, b-
2 compliant form and so that ready comparisons with past disciplinary results can be made.

3
4 ***Rather Than Provide the Court-Ordered Information on “how to Best Deal With
5 Particular Offenses as Defined by the GSRR”, the District’s Online Best Practices
6 Resource Primarily Focuses on Providing Discipline-Related Policies,
7 Regulations, Forms, and TUSD Code of Conduct Excerpts***

8 The Sept. 6 Order mandates that TUSD shall provide teachers, principals and others
9 “easy access to information about how to best deal with *particular offenses* as defined by
10 the GSRR... based on research.”⁶ (9/6/18 Order at 130:11-15, paragraph B; emphasis
11 added.) While Mendoza Plaintiffs have not been provided access to TUSD’s online
12 resource, which is in TUSD’s “internal staff website” (Discipline Report, Doc. 2266-1, at
13 3), their review of TUSD’s screenshots of the website (Discipline Report, Attachment 3)
14 (“Resource Snapshots”) makes clear that first and foremost, the website is focused on
15 providing staff with discipline-related forms, TUSD regulations, and excerpts of the code
16 of conduct, as well as general information on PBIS/restorative practices and suspensions.

17 From Mendoza Plaintiffs’ review, the first page of the Resource Snapshots appears
18 to be the homepage of the District resource website. Notably, that homepage is dominated
19 by what appear to be links to TUSD’s policies (JK-R1 (short-term suspensions), JK-R2
20 (long-term suspensions), JK-R2-E3 (long term suspension hearing), JK-R4 (student
21 abeyance), JK-R4-E1 (abeyance for short term suspension), JK-R4-E2 (abeyance for long
22 term suspension)), discipline-related forms (request to elevate process and form, waiver
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27 ⁶ Mendoza Plaintiffs use the terms “GSRR” and “Code of Conduct” interchangeably as
28 does the District.

1 process and form, hearing officer script form) or data entry instructions (synergy incident
2 instructions, synergy conference instructions). (Resource Snapshots at ECF 27.⁷) Plainly,
3 none of these items concern research-based best practices to “deal with *particular offenses*
4 as defined by the GSRR.”

5
6 Mendoza Plaintiffs do recognize that there are four GSRR “particular offenses”
7 listed under the “AGGRESSION” heading of the homepage,⁸ and three under
8 “ALCOHOL, TOBACCO, AND OTHER DRUG VIOLATION”, each of which appear to
9 link to information. (*Id.*) The District appears to provide the information linked to each of
10 the “AGGRESSION” offenses in the Resource Snapshots (at 29- 30) in charts that
11 correspond to each such offense. Notably, for each of these offenses, it appears that the
12 *entirety* of the information provided is language that is verbatim excerpted from the code
13 of conduct. For example, the entirety of each listed point under “GUIDELINES FOR
14 APPLYING ACTIONS” and “OTHER CONSIDERATIONS” for each of the four
15 “AGGRESSION” offenses is wholly taken, word for word, from numbered paragraphs six
16 through eleven of the “Guidelines for Applying Actions” section of the GSRR. (*Compare*
17 Resource Snapshots at ECF 29-30 *with* Code of Conduct (Discipline Report, Attachment
18 6) at 8.)⁹ Excerpts of the student Code of Conduct, a document with which, Mendoza
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23 ⁷ Because the pages of the Resource Snapshots are not numbered, Mendoza Plaintiffs
reference ECF page numbers for citations to the Resource Snapshots.

24 ⁸ Mendoza Plaintiffs note that the three additional links in the bottom left corner of the
25 resource homepage appear to link to a Ted Talk discussion titled “School Suspensions are
26 Adult Behavior”, a documentary film titled “The Mask You Live In”, and an article titled
27 “School suspensions don’t stop violence – they help students celebrate it”. Resource
28 Snapshots at ECF 27. None of these items are best strategies to help teachers “deal with
particular [GSRR] offenses.”

⁹ Mendoza Plaintiffs presume that the same is true with respect to the links to each of the
“ALCOHOL, TOBACCO, AND OTHER DRUG VIOLATION” offenses.

1 Plaintiffs understand, teachers already are provided, plainly is not what this Court
2 contemplated.

3 Finally, each of the PBIS videos (titled “Mission View Elementary”, “Grijalva
4 Elementary School What Works” and “Davidson PBIS Assembly”) and the restorative
5 practices video titled “Restorative Justice with Dr. Carl Hermans” in the “Exemplar
6 Practices Around TUSD” seemingly concern PBIS and restorative practices generally.
7 (Resource Snapshots at ECF 28.) The video titled “Code of Conduct Scenarios” appears
8 as if it may deal with “particular [GSRR] offenses” (based on the four offenses listed
9 below the video), although Mendoza Plaintiffs question if TUSD staff have “easy access”
10 to offense-specific information if they must scroll through videos in search of the offense-
11 specific information.
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14 Mendoza Plaintiffs of course take no issue with the above-cited material being
15 made available to teachers, but the point here is that little information on the District’s
16 resource page reflects what this Court called for in its 9/6/18 Order. Mendoza Plaintiffs
17 thus respectfully submit that the District has far more progress to make with respect to the
18 related Court directive before it can be released from supervision. They further
19 respectfully request that this Court order TUSD to provide the Plaintiffs and Special
20 Master with access to its resources page so that they may better assess the District’s future
21 efforts to comply with this Court’s 9/6/18 Order.
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1 ***TUSD Largely Provides Bare Assertions That it is Complying with the Portion of***
2 ***the Discipline Completion Plan Relating to The Office of the Director of***
3 ***Discipline’s Implementation of Discipline-Related Desegregation Efforts at Sites;***
4 ***However, TUSD Must Demonstrate that it is Effectively Implementing Those***
5 ***Efforts to the Extent Practicable Before This Court can Consider Granting it***
6 ***Unitary Status.***

7 In the 9/6/18 Order, this Court discussed TUSD’s lack of progress in reducing
8 exclusionary discipline and the disproportionate administration of discipline, as follows:

9 “The Court has no evidence that the level of disproportionality has decreased during or
10 from the USP... There has actually been a retreat from initial steps forward. The number
11 of in-school suspensions grew... between 2015-16 and 2016-17, but was obscured by the
12 District changing the definition for exclusionary discipline.” (9/6/18 Order at 125:8-14.)

13 This Court went on to list a substantial number of “roadblocks” the Special Master
14 reported existed with respect to progress in the area of discipline, including with respect to
15 corrective action plans (“CAPs”) and misclassification of fights to justify suspensions.

16 (See *id.* at 127:28-129:9.) Therefore, this Court ordered, among other things,¹⁰ that TUSD
17 hire or designate a Director of Discipline whose office is charged with implementation of a
18 number of discipline-related efforts directed at reducing exclusionary discipline and
19 disproportionality in TUSD schools. (See *Id.* at 130:3-131:8.)

20 TUSD premises its request for a finding on unitary status in the area of discipline on
21 its bare assertions that it has implemented such efforts and will continue to do so without
22 demonstrating that it has effectively implemented them. Plainly put, particularly given
23 TUSD’s prior lack of progress in this area, TUSD cannot be awarded unitary status unless
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27 ¹⁰ This Court notably stated that “[t]he breadth of the Special Master’s Completion Plan
28 [which the Court adopted] is telling in respect to the progress or lack thereof made under
the USP, [Section Symbol] VI: Discipline.” (Sept. 6 Order at 130:3-4.)

1 and until it has demonstrated to the satisfaction of this Court that it has eliminated the
2 vestiges of past race discrimination as to discipline to the extent practicable, and that it has
3 complied in good-faith with the entirety of the consent decree. (9/6/18 Order at 8:14-19
4 (quoting USP Section I, C, 1, Doc. 1713 at 6 (citing *Freeman*, 503 U.S. at 491-91; *Bd. Of*
5 *Educ. Oklahoma City Public Sch. v. Dowell*, 498 U.S. 237, 248-50 (1991)); *Fisher v.*
6 *Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1143-44 (the District Court is to “maintain
7 jurisdiction until it is satisfied that the School District has met its burden by *demonstrating*
8 -- not merely promising – its good-faith compliance... with the [Settlement Agreement]
9 over a reasonable period of time.”))

12 For example, with respect to CAPs, this Court recited the Special Master’s finding
13 that “there is no continuity in these reports and some are nothing more than assertions to
14 do better,” together with his question: “What are the corrective action plans, if any exist,
15 for African-American students who are disproportionately affected by exclusionary
16 discipline?”, and ordered the Office of the Director of Discipline to assist sites with
17 development and implementation of their CAPs (including consistent monitoring,
18 modification, and tracking of improvements) to resolve the identified issues. (Sept. Order
19 at 127:18-22, 128:24-27, 131:3-6.) The Discipline Report contains bare assertions that the
20 District is complying with the Court’s Order, including with respect to CAPs directed at
21 reducing discipline disproportionately administered to African-American students, states
22 that eight schools had CAPs in 2018-19 (without identifying each of those schools), and
23 provides percentages of reductions in total exclusionary discipline of African American
24 students at three schools (without providing any breakdown between types of exclusionary
25 discipline). (Discipline Report, Doc. 2266-1, at 4, 6-7.) The District notably fails to
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1 provide copies of any CAPs for any of the schools that had CAPS (and instead provides a
2 blank template form (Discipline Report, Attachment 4)), detailed data on exclusionary
3 discipline at the CAP schools that would allow the parties, Special Master or this Court to
4 assess TUSD's progress, or any information that would allow for an assessment of whether
5 the problems this Court identified (9/6/18 Order at 128) have actually been resolved.
6

7 As another example, this Court quoted the Special Master's report that in "SY
8 2016-17, the District's handling of fighting as an immediate suspension violated the
9 GSRR, which it has suspended but now there is evidence that in some schools routine
10 fights are being mischaracterized as assaults to justify suspensions under the GSRR."
11 (9/6/18 Order at 129:7-9.) This Court therefore ordered the Office of Director of
12 Discipline to review "school's use of exclusionary discipline to ensure... that exclusionary
13 discipline is not inappropriately used for low-level incidents involving physical aggression
14 (including 'fights' that do not lead to significant injury)... ." Beyond an assertion that
15 TUSD collaborated with the DOJ in reviewing "individual incidents" of fighting (and what
16 appears to be an assertion that there is a CAP that addressed fighting), the Discipline
17 Report is utterly silent on incidents of fighting. (TUSD Report at 1, 5.) TUSD does not
18 report what the findings or results of its DOJ collaboration were, data concerning low-level
19 acts of aggression and fighting, or any information that would allow for an assessment of
20 whether incidents of fighting still are being misclassified and/or are being subject to
21 automatic exclusionary discipline.
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25 Particularly given the number and breadth of the issues TUSD has had in
26 implementing and furthering the goals of the USP's discipline section (*see, e.g.*, 9/6/18
27 Order at 126-129), this Court and the public cannot rely on the District's bare assertions
28

1 that it is complying with and will continue to comply with this Court’s 9/6/18 Order
2 without demonstrating that it has eliminated the vestiges of discrimination to the extent
3 practicable in this area and has demonstrated good-faith commitment with the USP.
4 (*Freeman*, 503 U.S. at 491-91; *Fisher*, 652 F.3d at 1143-44.) Further, given this Court’s
5 express reference to the Special Master’s finding that “‘there is insufficient evidence to be
6 confident that the District has put in place processes... that will enable the District to make
7 progress in the future to reduce levels of discipline, especially that which involves
8 suspensions, and further reduce the disproportionality in disciplinary actions involving
9 African-American students’” (9/6/18 Order at 129:12-18), it is plain that TUSD is not
10 ready to be released from Court supervision in the area of discipline.
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14 ***TUSD’s Assessment Tools are Ill-Suited to Regularly Assess Teacher***
15 ***Understanding of District Disciplinary Practices, the GSRR, PBIS, and***
16 ***Restorative Practices***

17 This Court ordered TUSD to “institute a process to regularly assess that teachers
18 have an understanding of District disciplinary practices, the GSRR, PBIS, and restorative
19 practices.” (9/6/18 Order at 131:22-24.) Rather than institute such a process, the District
20 cites to and attaches a number of existing discipline-related assessment tools that largely
21 are not directed at, or would provide little useful data concerning, teachers’ understanding
22 of the above-cited disciplinary practices.
23

24 The District asserts that it conducted a discipline audit under the Court’s order “of
25 all TUSD schools” and that it provided questionnaires to a sample of teachers and
26 principals – it notably does not provide information on the size of the teacher sample, or
27 what the result of the assessment was. (Discipline Report, Doc. 2266-1, at 9.) The
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1 referenced teacher questionnaire (Discipline Report, Attachment 7), however, asks only six
2 questions, including whether the teacher was “given Professional Development” on four
3 topics, and how the teacher would rate the overall discipline at the school on a scale of 1 to
4 5. (*Id.*) Further, one illogical question on the principal questionnaire is simply “PBIS”,
5 raising questions about the time and care with which the District developed these audit
6 tools, and their usefulness. (*Id.*) Indeed, this Court need only conduct a cursory review of
7 these tools to determine that they are ill-suited to meaningfully assess teacher
8 understanding of discipline processes, the GSRR, PBIS and restorative practices.
9

10 Further, as Mendoza Plaintiffs have raised in the past, they seriously question
11 whether the assessments provided as part of online professional development on the
12 student code of conduct and PBIS are truly directed at assessing teacher understanding of
13 these topics when the District expressly recognizes that their purpose is to provide “PD
14 credit” if a teacher scores over 80%. (*See id.* at 10.) Moreover, while Mendoza Plaintiffs
15 believe that the assessment tool on school-wide restorative practices (Discipline Report,
16 Attachment 9) is well directed at assessing school-wide restorative practices, it plainly is
17 an assessment designed to be conducted by school leadership, does not assess teacher
18 understanding of restorative practices, does not address understanding of the code of
19 conduct or PBIS (except as to restorative practices), and was used only at schools in
20 which the District conducted a pilot program. (*Id.* at 10-11, Attachment 9.)
21

22 Because the assessment tools to which the District cites as compliant with this
23 Court’s September 6, 2018 Order are ill-suited to assess teacher understanding of PBIS,
24 restorative practices, and the code of conduct, Mendoza Plaintiffs respectfully submit that
25 the District has failed to comply with this Court’s 9/6/18 Order.
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1
2 ***In Light of This Court’s Orders Providing Further Directives as to Discipline and***
3 ***Inclusive School Environments and Cultures of Civility, the District Must Revise***
4 ***its Related Learning Plan and Unitary Status Cannot be Granted as to USP***
5 ***Section VI***

6 In the 9/6/18 Order, this Court stated it would “consider whether the District has
7 implemented a Professional Learning Plan for USP [Section] VI strategies to ensure the
8 discipline strategies are uniformly used by teachers and principals district-wide.” The
9 District has submitted a “Combined Professional Learning Plan for Discipline and
10 Inclusivity” (“Combined Learning Plan”) (Doc. 2262-2) because the learning plans for
11 these sections of the USP overlap. (Doc. 2262-2 at 1.) However, given that, as discussed
12 above, there exist issues as to the adequacy of the District’s tools to assess teacher
13 understanding of discipline practices, the code of conduct, PBIS and restorative practices,
14 Mendoza Plaintiffs do not see how the District adequately can assess whether “discipline
15 strategies are uniformly used by teachers.”
16

17 Further, in the recent September 10, 2019 Order concerning the 2019-2020 USP
18 Budget (Doc. 2272), this Court addressed the Special Master’s concern that TUSD’s
19 consultants “should not be used to conduct professional development training unless they
20 have expertise in culturally responsive pedagogy and equity practices... multiple resources
21 has led the District to have multiple instruments to assess professional proficiency which
22 could be confusing. He recommends professional training and instruments of
23 measurement be aligned to ensure coherence and consistency.” (Doc. 2272 at 6:11-16.)
24 This Court therefore ordered the Special Master to undertake an investigation to determine
25 the existence of these problems, and to reurge his objections if they continue to exist.
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1 Discipline is an area for which the District has in the past relied heavily on consultants and
 2 for which the District has multiple assessment tools as described above. Indeed, as this
 3 Court noted, the Special Master reported that “[a]dministrators received ‘Fred Jones’
 4 training which contradict[ed] the premises of PBIS and Restorative Practices.” (9/6/18
 5 Order at 129:7-9.) Thus, given that the Special Master has been ordered to conduct a
 6 review of professional training and measurement instruments, with the possibility that
 7 future corrective action will be required, TUSD cannot be released from Court supervision
 8 in the area of discipline.
 9

10 Mendoza Plaintiffs further note that the District’s Combined Learning Plan is the
 11 subject of further directives and revision under this Court’s September 10, 2019 Order
 12 concerning, among other things, Inclusive School Environments and Cultures of Civility
 13 (Doc. 2273). In that Order, this Court ordered the District to “immediately comply with
 14 this Court’s directive issued on September 6, 2018 [following TUSD’s non-compliance] to
 15 work in collaboration with the Special Master in assessing the effectiveness of existing
 16 strategies and identifying possible additional strategies.” As a result, following such
 17 compliance, the Special Master and District may identify additional or modify existing
 18 strategies, which will require that the District Combined Learning Plan be revised.
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22 23 **Conclusion**

24 For the reasons set forth above, Mendoza Plaintiffs respectfully request the Court to
 25 hold that the District has failed to comply with its 9/6/2018 Order relating to discipline and
 26 deny the District’s request that it be granted partial unitary status with respect to Section
 27
 28

1 VI of the USP.¹¹ In an excess of caution, Mendoza Plaintiffs respectfully invite the
2 Court's attention to their earlier objections to such requests by the district and to their
3 Motion to Stay (Doc. 2186), expressly incorporate herein the arguments set forth in those
4 pleadings, and also note this Court's statement when it denied that Motion that it will not
5 again reach the question of unitary status until after the District's Executive Summary
6 filing and the proceedings relating thereto.
7

8
9 Dated: September 20, 2019
10

11 MALDEF
12 JUAN RODRIGUEZ
13 THOMAS A. SAENZ

14 /s/ Juan Rodriguez
15 Attorney for Mendoza Plaintiffs

16 PROSKAUER ROSE LLP
17 LOIS D. THOMPSON
18 JENNIFER L. ROCHE

19 /s/ Lois D. Thompson
20 Attorney for Mendoza Plaintiffs
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26 ¹¹ In expressly addressing the District's submission with respect Section VI of the USP,
27 Mendoza Plaintiffs do not intend to waive, and hereby retain, their claim that the District
28 has not yet attained unitary status with respect to any portion of the USP.

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: DISCIPLINE PROGRESS REPORT, AND COMBINED DISCIPLINE/INCLUSIVITY PROFESSIONAL LEARNING PLAN AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2266) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION VI 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:

P. Bruce Converse
bconverse@dickinsonwright.com

Timothy W. Overton
toverton@dickinsonwright.com

Samuel Brown
samuel.brown@tusd1.org

Robert S. Ross
Robert.Ross@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

/s/ Juan Rodriguez

Dated: September 20, 2019