

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
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 OF FILING PLANS
FOR CULTURALLY RELEVANT
COURSES, CR PROFESSIONAL
LEARNING, AND MULTICULTURAL
CURRICULUM AND OBJECTION TO
THE DISTRICT'S REQUEST (DOC. 2259)
THAT IT BE AWARDED PARTIAL
UNITARY STATUS WITH RESPECT TO
SECTION V, E, 6 OF THE USP**

25
26 Hon. David C. Bury
27
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.

8
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 of Filing Plans for Culturally Relevant Courses, CR
13 Professional Learning, and Multicultural Curriculum (Docs. 2259, 2259-1 (“CRC Plan”),
14 2259-2 (“CRP Plan”), and 2259-3 (“MCC Plan”)) and the District’s accompanying request
15 that it be awarded unitary status with respect to Section V, E, 6 of the USP.
16

17 **Argument**

18 ***The District’s Submission Does not yet Provide a “Comprehensive Framework”***
19 ***Because it Fails to “Clearly Outline[]” CR Class Implementation (Including the***
20 ***new AP CRC Course at UHS) or the AP CRC Expansion it is Considering (that***
21 ***Would Resove an Issue Affecting Tucson High School AP Course Enrollment***
22 ***that TUSD Reported)***

23 In this Court’s 9/6/18 Order, the Court noted that the CRC Stipulated Action Plan
24 (“Stip Plan”) (Doc. 1761) called for the development of a “comprehensive curriculum
25 framework” that is to, among other things, reflect “a systemic approach to ensuring the
26 implementation of CR courses as prescribed in the USP.” (9/6/18 Order at 107:26-108:7.)

27 This Court ordered that, to the extent TUSD had not yet developed that framework, which
28

1 the Court referred to as the “CRC Comprehensive Plan,” it was to immediately prepare it
2 “in accordance with this Order and the Stipulated Action Plan Provisions”. (*Id.* at 111,
3 n.47.) The CRC Comprehensive Plan is to further “include additional expansion of CR
4 classes in high school and middle school, as well as the piloting of CR units at the
5 elementary level... [t]he implementation of CR classes... [at] high schools... shall be
6 clearly outlined in the comprehensive framework.” (Stip Plan at 7; *see also* 9/6/18 Order
7 at 107:26-108:7.)
8

9 While Mendoza Plaintiffs recognize that expansion of the CRC program is an area
10 in which the District has made great progress since adoption of the USP, the main CRC
11 Plan¹ document is utterly silent on CRC class implementation at each of the elementary,
12 K-8, middle and high school levels and instead focuses almost exclusively on detailing the
13 CRPI department’s staffing and responsibilities. (*See* CRC Plan at 2-7.) Moreover, the
14 exhibits attached to the CRC Plan (described as a status report on CRCs and CRC plan for
15 the next five years) provide minimal detail on CRC class implementation beyond the total
16 TUSD CRC enrollment figures from 2015-16 through 2018-19 (inclusive of all courses at
17 all grade levels) and statements on aspects of CRC implementation at Santa Rita, UHS,
18 and Cholla High Schools. (*See* CRC Plan, Exhibit 1 at 1.)
19
20
21

22 For example, from the CRC Plan and its attachments, it is impossible to tell what
23 CRC classes are available at each TUSD school (including the subject areas (*e.g.*,
24 literature) and whether they reflect the Mexican American or African American
25

26 ¹ While the 9/6/18 Order (at 117:8-17) contemplated development of a single CRC
27 Comprehensive Plan covering the areas of CRC, Culturally Responsive Pedagogy and
28 Instruction (“CRP”) and Multicultural Curriculum (“MCC”), the District elected to file
separate plans, to which the Mendoza Plaintiffs direct their responses and objections .
(9/6/2018 Order at 117:8-17.)

1 viewpoint), how many CRC class sections exist at each school, at which schools there exist
2 classes that have been infused with CR, or any school-specific enrollment data. Tellingly,
3 in this regard, the Stip Plan which was to be a “short term solution” “pending completion
4 of a comprehensive framework” (9/6/18 Order at 107:26-108:2) provides far more
5 substantive CR implementation information than what appears in the District’s new plans.
6 (See *e.g.*, Stip Plan at 24 (detailing course subjects and numbers of CR sections at each
7 high school).)

9 Notably, with respect to this Court’s order that TUSD implement a CRC AP course
10 at UHS (9/6/18 Order at 86:21-25), the CRC Plan recites that the District “received
11 approval to initiate the course” at UHS, but says little else about the course. (See CRC
12 Plan, Exhibit 1 at 1.) While Mendoza Plaintiffs are mindful that this Court ordered that the
13 status of the AP CRC course at UHS be detailed in the ALE Policy Manual (8/6/2018
14 Order at 85:25-28), as the District did, they would expect that a “comprehensive
15 curriculum framework” would include the ALE Policy Manual information on the UHS
16 course, including the course title and that the course is a “required English course for all
17 juniors.” (See ALE Policy Manual, Doc. 2267-1, at 27.)

18 Further, in the ALE Policy Manual, the District says it is “exploring the possibility
19 of creating AP culturally relevant courses, similar to what UHS has done, which could be
20 implemented across the District’s comprehensive schools”, but provides no other related
21 information. (*Id.*) Mendoza Plaintiffs would expect that the CRC Plan would be the place
22 where the District would set out the process that is involved and its plans concerning the
23 roll out of these AP CRCs to other high schools, particularly given that the CRC Plan
24 purports to cover the “next five years”. (CRC Plan, Doc. 2259-1, at 15.) In this regard,
25
26
27
28

1 Mendoza Plaintiffs highlight the importance of such process, plan, and its inclusion in the
2 CRC Plan, given that the expansion of AP CRCs in high schools other than UHS, and
3 Tucson High specifically, would address the following ALE enrollment issue TUSD
4 describes: “Tucson High added more culturally relevant courses, which had an impact on
5 the number of students choosing AP. Students shared... that they prefer a teacher to whom
6 they can relate... Consequently, at least for some students, AP enrollment decreased when
7 competing enrollment in and demand for culturally relevant classes increased.” (ALE
8 Policy Manual, Doc. 2267-1, at 27).
9

10 Accordingly, Mendoza Plaintiffs do not believe the CRC Plan yet provides the
11 “comprehensive curriculum framework” or “systemic approach to ensuring the
12 implementation of CR courses as prescribed in the USP” that it must reflect.
13

14
15
16 ***The District Submission Does not Reflect the “Interconnected and Interrelated
USP Programs” that this Court Stressed Cannot be “Ignor[ed]”***
17

18 In this Court’s April 10, 2019 Order (Doc. 2213), this Court ordered the District to
19 prepare and file an “Executive Summary,” and that a number of plans, including the
20 AASSD and MASSD Operating Plans, be revised “to reflect the interconnectivity and
21 interrelatedness of the USP’s various units.” (Doc. 2213 at 15:1-3, 17:20-22.) This Court
22 explained that it required such information to assess the adequacy of the implementation of
23 USP programs and noted that: “The parties chose to create interconnected and interrelated
24 programs, which require coordination. Ignoring how these programs fit together is not an
25 option.” (*Id.* at 15:7-17.) Significantly, it noted that the District shall use this guideline
26 “set out here in the context of the AASSD and MASSD revisions for all future filings.”
27
28

1 (*Id.* at 17, n.9.) Notwithstanding the Court’s clear concern and directive, the District’s
2 submission lacks any discussion or reference to areas of collaboration between the MCC,
3 CRC and CRPI departments and other departments, most notably, MASSD (and AASSD),
4 as well as FACE, and therefore requires further revision.²

5
6 For example, the USP mandates that the director of MCC “shall work with [AASD
7 and MASSD and] the CRPI director... to develop and implement strategies to engage
8 African American and Latino students, including, but not limited to, curriculum and
9 [culturally responsive] pedagogy....” (USP, Section V, E, 4, d.) Notably, the District’s
10 revised MASSD Operating Plan makes reference to that department’s collaboration with
11 the CRPI and CRC departments in implementing culturally responsive pedagogy and
12 culturally relevant professional learning. (Doc. 2265-2 at 2, 6.) Mendoza Plaintiffs,
13 however, see no discussion or reference in any of the CRC Plan, the MCC Plan, or the
14 CRP Plan relating to this significant interdepartmental collaboration.
15
16

17 Mendoza Plaintiffs note that the MASSD Operating Plan further discusses
18 collaboration with the CRC department concerning curriculum, workshops at the CRPI
19 Summer Institute and Multicultural Symposium, and CRC grow-you-own program. (*Id.* at
20 6-7.) Yet, Mendoza Plaintiffs do not see discussion of this joint effort anywhere in the
21 CRC or MCC Plans. Nor does the CRC Plan discuss the department’s use of “...AVID[]
22 strategies and models to support... CRC[] classrooms to reduce/eliminate the participation
23
24
25

26
27 ² The only reference to any collaboration between the CRPI Department, FACE
28 Department and the student services departments is that the CRPI Department works with
these departments and others “in outreach to students and to families, to promote the
benefits of culturally relevant courses.” (CRC Plan, Doc. 2259-1, at 2.)

1 gap and increase college readiness” (*id.* at 3.) or any related collaboration with the
2 MASSD or ALE departments.

3 The failure of the CRP plan to reference collaboration with other departments is
4 perhaps most glaring in its discussion of Family and Community Engagement. (CRP Plan,
5 Doc. 2259-2, at 14). Nowhere in that discussion is there a reference to the FACE
6 Department (or the student support departments) even as the plan recites that “[c]ritical to
7 all students’ academic experience is building the bridge between home and school” (*id.*),
8 followed by a discussion of the Parent *Encuentros* that it has implemented.³ (*Id.*) (Nor is
9 there any indication that Mendoza Plaintiffs saw in the FACE plan of any undertaking by
10 that department to seek to replicate the Parent *Encuentros* beyond the CRPI department if
11 they are indeed a successful model.) Additionally, the CRP plan discusses Learning-
12 Communities and writes that “[e]xamples of Learning-Community resources include
13 collaborative curricular development in conjunction with community organizations and
14 community leaders that could visit classrooms.” (*Id.*) Absent is any hint that meaningful
15 collaboration with the AASSD and MASSD departments could lead to the identification of
16 and outreach to community organizations and community leaders who could play a role in
17 this effort, many of whom likely already have relationships with these departments. Thus,
18 Mendoza Plaintiffs do not believe the District’s submissions conform with this Court’s
19 April 10, 2019 Order (Doc. 2213) and require further revision.
20
21
22
23
24
25
26

27 ³ The MASSD plan does state that the department provides family outreach to support and
28 promote the CRC Parent *Encuentros* notwithstanding no such reference in the CRP plan
itself. (Doc. 2151-2 at 8).

The CRP Plan Fails to Comply with this Court’s Order Requiring that it Reflect the CRP-Infused Teacher Evaluation Instrument TUSD Developed, Training for Administrators who Will Evaluate Teachers, and the Procedures for Validating the Capabilities of Administrators to Undertake Such Evaluation.

In the 9/6/18 Order, this Court ordered that the CRC Comprehensive Plan is to reflect “(1) the teacher evaluation instrument used by TUSD, amended, to include culturally responsive pedagogy as an element of teacher proficiency; (2) training for administrators who evaluate teachers to be trained to evaluate teacher proficiency in culturally responsive pedagogy, including procedures for validating the capabilities of administrators to undertake such evaluation...” (9/6/18 Order at 117:22-28.) Mendoza Plaintiffs found no express reference in the CRP Plan⁴ to the teacher evaluation instrument referenced in this Court’s 9/6/18 Order. TUSD does, however, make a reference to “TUSD’s Revised Danielson Framework” and makes the following general statement: “Modifications to the district evaluative tools are conducted to purposefully include CRP, as needed. Administrators are trained in the calibration of the tool to assess staff and faculty performance.” (CRP Plan at 5, 7.) Notably, nowhere is it made clear that the teacher evaluation instrument specifically was revised to be infused with CRP, or that, as Mendoza Plaintiffs understand, principals will be the primary administrators who will conduct teacher evaluations using these instruments. The CRP Plan is further wholly devoid of any discussion of “procedures for validating the capabilities of administrators to undertake” teacher evaluations. Accordingly, the District has failed to comply with the

⁴ Mendoza Plaintiffs note that they find themselves confused because the CRP Plan seems to be composed of two separate documents, one titled “Multi-Year Plan for Professional Learning Culturally Responsive Practices”, and the other, “Culturally Relevant Pedagogy and Instruction Department Framework for Student Academic Achievement” with no explanation provided of how the two relate to each other.

1 provisions in this Court's 9/6/18 Order concerning the CRP-related elements of the CRC
2 Comprehensive Plan.

3
4
5 **Conclusion**

6 For the reasons set forth above Mendoza Plaintiffs respectfully request the Court to
7 hold that the District has failed to comply with its 9/6/18 Order relating to the CRC
8 Comprehensive Plan and deny the District's request that it be granted partial unitary status
9 with respect to Sections IV, E, 6 of the USP.⁵ In an excess of caution, Mendoza Plaintiffs
10 respectfully invite the Court's attention to their earlier objections to such requests by the
11 District and to their Motion to Stay (Doc. 2186), expressly incorporate herein the
12 arguments set forth in those pleadings, and also note this Court's statement when it denied
13 that Motion that it will not again reach the question of unitary status until after the
14 District's Executive Summary filing and the proceedings relating thereto.
15
16
17
18
19
20
21
22
23
24
25
26

27 ⁵ In expressly addressing the District's submission with respect to Section V, E, 6 of the
28 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.

Dated: September 23, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD NOTICE OF FILING PLANS FOR CULTURALLY RELEVANT COURSES, CR PROFESSIONAL LEARNING, AND MULTICULTURAL CURRICULUM AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2259) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION V, E, 6 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 23, 2019