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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,
25

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’
SUPPLEMENTARY RESPONSE TO
TUSD NOTICE OF FILING: REVISED
AASSD AND MASSD OPERATING
PLANS (DOC. 2265) AND OBJECTION
TO DISTRICT’S REQUEST THAT IT BE
AWARDED PARTIAL UNITARY
STATUS WITH RESPECT TO SECTIONS
V.E.7 AND 8 OF THE USP**

Hon. David C. Bury
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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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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 Supplementary Response to TUSD's Notice of Filing: Revised AASD and MASSD
13 Operating Plans (Doc. 2265).

14
15 **Preliminary Statement**

16 The Mendoza Plaintiffs have concerns about certain changes the District has made
17 to the MASSD Operating Plan from the plan as it was filed with the Court in December
18 2018 (Doc. 2151-2) and with how it has responded to some of this Court's directives.
19 However, before they discuss those concerns, they believe it is important to address the
20 Court's own concern as it was expressed in its observation that "[I]f the USP has been
21 successful there should be less for AASSD and MASSD to do and their roles should have
22 markedly changed" (4/10/19 Order, Doc. 2213, at 16:1-3), and to answer the question
23 posed by both the Special Master and the Court: don't these departments duplicate and
24 confuse delivery of services and divert millions of dollars away from direct student
25 services? (See, e.g., 9/10/19 Order, Doc. 2272, at 17:1-6.)
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1 The Mendoza Plaintiffs' short answer, putting aside the disagreement they have
2 with the District about whether, to date, USP implementation has been sufficiently
3 successful, is that many of the tenets of the USP are not yet embedded in the District's
4 DNA and that the role of the AASSD and MASSD has changed (and will continue to
5 change)¹ to help make that happen. Further, as to the MASSD operating plan, with which
6 Mendoza Plaintiffs are more familiar than the AASSD operating plan and on which they
7 principally focus below: the operating plan, if first revised to correct weaknesses the
8 Mendoza Plaintiffs believe result from the District's recent revisions to that plan and
9 failures to fully respond to the Court's directives, and then implemented with fidelity, will
10 not duplicate or confuse delivery of services but will result in (1) collaboration that
11 supports and complements the work of other TUSD departments to ensure the infusion of
12 culturally responsive and asset-based practices at all levels of the District, (2) identification
13 of and attention to Latino students who require additional support (and the related
14 surfacing of larger systemic issues for attention), (3) greater and more meaningful
15 participation in the education of their students by Latino parents/guardians including those
16 of ELL students and those in which the primary home language is Spanish, and (4) better
17 educational outcomes for the District's Latino students. Mendoza Plaintiffs will provide
18 further elaboration of these points in their discussion below.
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26 ¹ In its April Order, the Court noted the understandable differences between the plans of
27 the two departments and that the AASSD plan, of necessity, had evolved less over time
28 than that of the MASSD. (4/10/19 Order, Doc. 2213 at 7:11-19.) As discussed more fully
below, the MASSD plan expressly contemplates modifications in response to ongoing
assessments of effectiveness and need. (Doc. 2265-2 at 14.)

Argument

Changes to the MASSD Operating Plan

In its Notice of Filing (Doc. 2265), the District says the following: “The District has revised the plans² by providing a narrative explanation of the roles and functions of the various key positions in the[] departments, addressing whether the function or service provided is academic, behavioral or outreach, and also identifying whether the roles of the department in those functions is supportive, supplemental or additional. The plans also identify and cross-reference other departments involved in those functions. The revised plans also reflect some evolution since the original filing, based on experience in the interim.” (Doc. 2265 at 2:8-13.)

Changes that are Said to “Reflect Evolution”

No explanation of the changes the District made to the MASSD plan to “reflect some evolution” has been provided. This in itself raises an issue relating to the District’s adherence to the MASSD plan.

Both the original 2018 MASSD plan (“2018 Plan”) and the revised version (“Revised Plan”) have a section entitled “Data Driven Progress Monitoring” which says that there will be “[o]ngoing data monitoring [to] determine[] the MASSD Plan and MASSD positions and their alignment with job responsibilities and effective support services...” and that “[o]n an annual basis...MASSD staff meet as a group, and with the

² Significantly, the District references no consultation with Plaintiffs with respect to the revisions it has made and, at least with respect to the MASSD operating plan (Mendoza Plaintiffs do not know what occurred with respect to the AASSD plan), that is accurate. This omission is particularly unfortunate because Mendoza Plaintiffs believe the Revised Plan would have been far more viable and more compliant with the Court’s Orders had such consultation occurred.

1 Assistant Superintendent of Curriculum and Instruction, to assess the support services,
2 outcomes, areas for improvement, and to consider operational changes for the following
3 year.” (See Revised Plan, Doc. 2265-2, at 14-15 and 2018 Plan, Doc. 2151-2, at 17-18.)

4 Attached as Exhibit A is the appendix to the 2018 MASSD plan, the MASSD
5 Strategic Plan SY 2018-19 (“MASSD Strategic Plan”), as presented to the Governing
6 Board on July 24, 2018. It is quite detailed and specific³. As set forth below, the District
7 has made material changes to the organization (and work) of the MASSD but it has failed
8 to state how those changes relate to the department’s efforts to implement the Strategic
9 Plan or whether it even engaged in the monitoring and assessment required by both the
10 original and the revised plan. (Tellingly, as well, it has failed to provide a comparable plan
11 for the 2019-20 school year against which the department’s successes and any need for
12 further plan modification can be assessed.)

13 Changes to the Position and Role of Program Specialists

14 Under both the 2018 Plan and the Revised Plan, there are eight Program Specialists.
15
16 According to the Revised Plan, each of these eight “is assigned to provide direct student
17 support services at two schools...Working with each assigned school’s academic and
18 behavioral team, the program specialist identified students who need culturally responsive
19 Tier 2 and/or Tier 3 academic and/or behavioral support. The program specialist then
20 assists and advocates in the development of a culturally responsive intervention plan. The
21 program specialist may assist in the interventions themselves...Since the program
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27 ³ Review of the Strategic Plan also indicates that although it is labeled “Strategic Plan”, it
28 sets forth activities (and goals) for the 2018-19 school year, and might more properly be
considered a detailed operating plan (with measurable goals and objectives) for the year.

1 specialists are not certified, they do not actually instruct, but may assist in instruction under
2 the supervision and direction of a certified teacher.” (Doc. 2265-2 at 4-5.)

3 Under the 2018 MASSD plan only two of the department’s eight Program
4 Specialists were tasked with providing direct student academic services. (2018 Plan at 8-
5 14; *see, in particular*, 2018 Plan at 12 stating that the two Program Specialists for
6 Academic Empowerment & Engagement will, among a number of other responsibilities,
7 “[c]onduct individual academic mentoring for students”.) Significantly, the qualifications
8 for the individuals providing these services include teacher certification. (*Id.* at 12.)
9 Therefore, the individuals in these positions were (and remain) qualified to “actually
10 instruct”. Additionally, under the 2018 Plan, the Program Specialist for Social-Emotional
11 & Behavior Support, who also was to represent student interests in discipline
12 hearings/suspensions (along with a number of other defined responsibilities), was given the
13 responsibility for providing “individual student support...in developing joint behavioral
14 management strategies.” (*Id.* at 14.) Qualifications for that position included a background
15 in participating in school discipline proceedings as well as training in Restorative
16 Practices, PBIS, social and behavioral advocacy. (*Id.*) The person holding that position is
17 a licensed social worker. (Revised Plan, Doc. 2265-2, at 9.)

18 Now, without explanation and without apparent attention to the differing
19 qualifications for the eight Program Specialist positions, the District has determined that
20 all eight will deliver both direct academic services and direct behavioral services while
21 also carrying out other responsibilities. Not only does this approach ask the same person
22 to be knowledgeable about both academic and behavioral interventions even as elsewhere
23 and particularly with the redesign of the delivery of MTSS services, the District has

1 recognized the need to separate and distinguish between those providing academic
2 interventions and those providing behavioral interventions. It also ignores the very
3 different qualifications of the persons being called upon to perform these functions. As
4 noted, two hold teaching certificates and one is a licensed social worker. (Doc. 2265-2 at 8,
5 9.) In addition, according to the District, one holds a Doctorate in Teaching & Learning
6 (and is also the CRC Collaboration & Support Program Specialist). (*Id.* at 7.)
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9 Further, what is unknown from the limited information provided by the District is
10 whether TUSD has determined that the need/demand at 16 schools (two per Program
11 Specialist) is so great that eight individuals must devote some significant amount of time to
12 this effort rather than the three envisioned as recently as last year. (Nor, if this is so, does
13 the District address the larger implication of there currently being such a great demand for
14 knowledgeable persons to design culturally responsive behavioral and culturally
15 responsive academic interventions that all of the MASSD Program Specialists must be
16 called upon to fill this need.)⁴
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19 Also unexplained are changes that the District has made to the 2018 Plan's process
20 for the development and implementation of individual student plans. The Revised Plan is
21 vague about the development and implementation of the individual student plans, saying
22 only that the Program Specialist will work with the assigned school's academic and
23 behavioral team to identify students who need culturally responsive support, that the
24 Program Specialist will "assist and advocate" in the development of an intervention plan,
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26
27 ⁴ Unfortunately, rather than suggesting duplication and overlap, this change would seem to
28 indicate a void in the District's capacity to deliver culturally responsive direct services that
the MASSD has been tasked to fill.

1 and that she/he will continue to monitor the progress of students and implementation of the
2 plan. (Doc. 2265-2 at 4-5.)⁵ By contrast, the Strategic Plan clearly states the following as
3 to academic support: “Academic benchmark data shall be obtained at the inception of
4 academic support...MASSD staff shall develop an academic plan with each student...in
5 coordination with the student’s teacher and parent...Monthly student assessment of
6 academic success based on logged data within academic plan.” (Exhibit A at 7.)

7 Similarly, as to behavioral support, it says: “ MASSD staff shall develop a behavioral plan
8 for each student...in coordination with the classroom teacher/s, MTSS, and
9 student....Behavioral benchmark data shall be obtained at the inception of behavioral
10 coaching services for each student and progress assessment will be conducted through the
11 term of service for each student.” (*Id.* at 8.)

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15 Mendoza Plaintiffs believe that the changes the District has made to the Program
16 Specialist role constitute a step back toward the unsuccessful Student Success Specialist
17 role and away from a robust asset-based model.

18
19 Omission of the Roles of the Department Director and Program
20 Coordinator

21 For reasons that are unexplained, the District has dropped all discussion of the roles
22 and responsibilities of the MASSD Department Director and Program Coordinator from
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24 ⁵ It is unclear how this description, written to apply to all eight Program Specialists, relates
25 to the description of the two Academic Empowerment & Engagement Specialists: “these
26 program specialists, focusing on identified lower 25% students populations, track
27 individual student progress to evaluate effectiveness of academic interventions, conduct
28 individual academic mentoring for students, consult targeted MTSS teams in academic
interventions using asset-based strategies and facilitate the development of academic
goals.” (Doc. 2265-2 at 7.) Do the two Academic Empowerment & Engagement Program
Specialists track student progress for all students served by all eight Program Specialists or
only those with whom they are personally engaged?

1 the Revised Plan (*compare*, Revised Plan, Doc. 2265-2 at 4 *with* 2018 Plan at 4-5) even as
2 it says it “has revised the plans by providing a narrative explanation of the roles and
3 functions of the various key positions in these departments.” (Doc. 2265 at 2:8-9.)⁶ This
4 omission is particularly troubling because the Revised Plan also says that “[a] formal
5 listing of the qualifications and duties for each position are [sic] set out in Exhibit 2” (Doc.
6 2265-2 at 4) but when one turns to Exhibit 2, it lists a very general “Position Goal” for
7 each position but not a particularization of duties or responsibilities.
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9
10 Mendoza Plaintiffs therefore are concerned that the District has modified the actual
11 responsibilities and duties of the Director and Program Coordinator from those articulated
12 in the 2018 Plan, inclusive of its Strategic Plan, particularly because, unlike the AASSD
13 Operating Plan (see 2265-1 at 11), the MASSD Revised Plan contains no General
14 Statement of Operations. Thus, it no longer is possible to know, for example, whether the
15 Director and Program Coordinator have “work[ed]with the Research Project Manager from
16 the District Assessment & Evaluation Department to develop and implement ongoing
17 monitoring reports of success indicators for Mexican American/Latino students in the area
18 of academic achievement, failures, retentions, disciplinary actions, enrollment in
19 exceptional education, ALE offers, etc.” and whether MASSD staff continues to have the
20 responsibility to “alert appropriate administration of situations, which, based on data and
21 other relevant evidence, suggests there may be disparate treatment of Mexican
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27 ⁶ Mendoza Plaintiffs note that there are descriptions of the responsibilities of both the
28 AASSD Director and that department’s Program Coordinator in the AASSD Plan. (Doc.
2265-1 at 3.)

1 American/Latino students (instructional, disciplinary, programmatic placement, etc.)”
2 (Strategic Plan, Exhibit A, at 13.)⁷

3
4 ***Failure to Fully Respond to the Court’s Directives***

5 Support for ELL Students and Engagement of Spanish-
6 Speaking Families

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8 In its Plan for Expanding Two-Way Dual Language Programs at Tucson Unified
9 (Doc. 2258-1), the District reports that in 2018-19 there were approximately 4,100 students
10 enrolled in TUSD who were classified as ELL students and that approximately 14,000
11 students have a “Primary or Home Language Other the English (PHLOTE).” (*Id.* at 2.) In
12 its 4/10/19 Order, the Court noted the failure of the AASSD and MASSD Operating Plans
13 to adequately address targeted support of ELL students and engagement of their families.
14 The Court found that “unless the ELL Plan is revised to address the omission of strategies
15 specifically directed to families of Mexican American/Latino ELL students, there is no
16 District plan of which it is aware that ‘specifically recognizes the importance of engaged []
17 ELL families to [support] their students’ success, including reduced absenteeism, reduced
18 dropout rates, and ultimate high school graduation.’” (4/10/19 Order, Doc. 2213, at 12:14-
19 18.)
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23 In its revised ELL Action Plan: Graduation and Dropout Prevention (Doc. 2261-1),
24 the District includes a section entitled Family Engagement Strategies (*id.* at 7-8) in
25 apparent response to the Court’s 4/10/19 Order. Mendoza Plaintiffs did not address that
26

27 _____
28 ⁷ Mendoza Plaintiffs understand this to go beyond the use of the TUSD data systems that is
referenced in the Revised Plan at 14.

1 section in their supplemental response to the ELL Action Plan (Doc. 2281) but do so here
2 because while family engagement plainly is important to the District's efforts to reduce the
3 dropout and increase the graduation rates of its ELL students, implementation of that
4 strategy falls primarily to departments other than the Language Acquisition Department
5 (which has primary responsibility for the ELL Action Plan. (Doc. 2261-1 at 2.)⁸ Moreover,
6 given that the Court's discussion of the need for greater engagement of families of ELL
7 students and of Spanish-speaking families also encompassed its finding that the MASSD
8 operating plan was lacking in this regard and with respect to targeted support for ELL
9 students, Mendoza Plaintiffs believe that the changes that the District has made to the
10 Revised Plan to address ELL students and Spanish-speaking families remain insufficient.
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12
13 To a great extent references to services for ELL students remain what the Court
14 concluded were "perfunctory" (Doc. 2213 at 11:24) (For example, the revision now states
15 that the Program Specialist for Parent Outreach & Empowerment coordinates with other
16 departments to do "direct targeted outreach to families (such as families of ELL students)."
17 (Doc. 2265-2 at 5.)) The closest the Revised Plan appears to come to embracing specific
18 strategies to support ELL students is the statement that the Academic Empowerment &
19 Engagement Program Specialists "assist[] sites with ELLs in integrating supports to ensure
20 an asset-based approach in classrooms". (*Id.* at 8.)
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24 ⁸ The ELL Action Plan says little more than that the FACE Plan sets out guidelines for
25 family engagement that apply to families of ELL students as well as other families and that
26 the Language Acquisition Department supplies translators for school-based events,
27 provides "content (both written materials and personnel at events) to inform families of
28 ELL students of language resources available for their students, and engagement
opportunities for their students" (Doc. 2261-1 at 7,) and that three high schools held ELL
Family Orientation Nights that provided information "specific to the needs of immigrant
families." (*Id.* at 8.)

1 A review of the Language Acquisition Department website (which appears to
2 contain no explanation of the range of classifications of ELLs as they attend sheltered
3 content classes and classes for Pre-Emergent and Emergent students, or are classified as
4 “basic”, “low-intermediate level,” and “high-intermediate level”) and of the ELL Action
5 Plan (Doc. 2261) suggests that the Language Acquisition Department, FACE Department,
6 MASSD, and AASSD might usefully collaborate, for example to present parent
7 information sessions in Spanish and other appropriate languages to explain the ELL
8 process to affected families. This is but one example that occurs to the Mendoza Plaintiffs
9 (and it may be that something like this already is done but was not captured -- or seen by
10 the Mendoza Plaintiffs—in the material they reviewed). The point, however, is that it
11 appears that to date and as addressed as well in Mendoza Plaintiffs’ response to the Notice
12 of Filing: Revised FACE Plan more attention needs to be given in the MASSD (and
13 AASSD) plan to support of the District’s 4000 ELL students and outreach and engagement
14 of the families of its 14,000 PHLOTE students (many but not all of whom Mendoza
15 Plaintiffs understand to be Spanish-speaking).

20 Conclusion

21 For the reasons set forth above Mendoza Plaintiffs respectfully request the Court to
22 require TUSD to again revise the MASSD Operating Plan to address the deficiencies set
23 out above and that it deny the District’s request that it be granted partial unitary status with
24 respect to Section V, E, 7 and 8 of the USP.⁹ In an excess of caution, Mendoza Plaintiffs

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26
27 ⁹ In expressly addressing the District’s recent submission with respect to Section V, E, 7
28 and 8 of the 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.

1 respectfully invite the Court's attention to their earlier objections to such requests by the
2 District and to their Motion to Stay (Doc. 2186), expressly incorporate herein the
3 arguments set forth in those pleadings, and also note this Court's statement when it denied
4 that Motion that it will not again reach the question of unitary status until after the
5 District's Executive Summary filing and the proceedings relating thereto.
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8 Dated: September 23, 2019
9

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' SUPPLEMENTARY RESPONSE TO TUSD NOTICE OF FILING: REVISED AASSD and MASSD OPERATING PLANS (DOC. 2265) AND OBJECTION TO DISTRICT'S REQUEST THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTIONS V.E.7 and 8 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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