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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' OBJECTION
TO TUSD NOTICE OF FILING
DOCUMENTS REQUIRED BY BUDGET
ORDER, EXHIBIT B – READING
RECOVERY/READING SUPPORT
STATUS REPORT (DOC. 2289-2)**

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.
8

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10 Pursuant to this Court’s Order of September 10, 2019 (“Budget Order”) (Doc.
11 2272), Mendoza Plaintiffs submit their objection to the Reading Recovery/Reading
12 Support Status Report (“Reading Recovery Report”) that the District filed as Exhibit B
13 (Doc. 2289-2) to its Notice of Filing Documents Required by Budget Order [2272] (Doc.
14 2289) and request that the District be ordered both to amend its 910(G) budget for 2019-20
15 to include additional Reading Recovery teachers and to comply with so much of this
16 Court’s Budget Order as directed it to “ensure that ...alternative programs [to Reading
17 Recovery] must be best-practices programs...” (Budget Order, Doc. 2272, at 9:24-25.)
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19

20 **Argument**

21 ***The District’s Reading Recovery Expansion Plan Fails to Adequately***
22 ***Address the Needs of Latino Students and Illustrates why Additional Reading***
23 ***Recovery Teachers are Required to More Equitably Provide this Effective***
Intervention

24 Mendoza Plaintiffs well understand that both the Special Master and the Court have
25 observed that the Reading Recovery program “targets African American students better
26 than most other academic interventions” (Budget Order, Doc. 2272, at 8:18-19) and that
27 the Court directed the District to “identify target schools for implementing or retaining the
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1 Reading Recovery program, with a priority of reaching African American students, and
2 secondarily, students attending underachieving schools.” (*Id.* at 9:17-20.) Nonetheless,
3 they believe that the District’s 2019-20 expansion plan inadequately (and inequitably)
4 addresses the needs of Latino students and thereby establishes the need for additional
5 Reading Recovery teachers to address that inequity.
6

7 As a preliminary matter, Mendoza Plaintiffs note that the District determined that
8 approximately 32.5% of its incoming first grade African American and 35% of its
9 incoming first grade Latino students were in “need of support” based on falling into what it
10 says are the “intensive” and the “strategic” categories on its assessments. (Doc. 2289-2 at
11 3, and using the figures 68 of 209 tested African American students and 728 of 2070 tested
12 Latino students “in need of support” as reported in the chart at the bottom of the page.)
13 The District states that during the first semester of this year it is providing direct Reading
14 Recovery services to 16% of the African American first graders whom it found in “need of
15 support” and 5.5% of the Latino students. (*Id.* at 4, based on the direct services chart¹ on
16 the bottom of the page, reporting 11 (of 68) African American students and 40 (of 728)
17 Latino students to be receiving the services.)
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21 TUSD then says that it plans to expand Reading Recovery services to four
22 additional schools in the spring semester of 2019-20 by splitting the time of two itinerant
23 Reading Recovery teachers so that they each spend half of their time providing direct
24 services in a school but provide no “indirect” services (which reach a greater number of
25 students than the direct services). (*Id.* at 5.) The four schools are Blenman, Bloom,
26

27 ¹ Although the charts on pages 4-7 have labeled references to the 2018-19 school year, the
28 text clearly refers to the 2019-20 school year and the context confirms that reference is
indeed to the current school year.

1 Bonillas, and Dietz. (*Id.* at 8.) According to the chart on page 5 of the Reading Recovery
2 Report, at each of these schools three African American and one Latino student will
3 receive direct services. The chart on page 8 reveals that these 12 African American
4 students (3 x 4) represent 100% of the African American students in “need of support” at
5 these four schools. That in isolation is commendable. **But**, the same chart on page 8
6 reveals that there are 57 Latino (Hispanic) first graders in these four schools who are “in
7 need of support”. However, under the District’s current plan *only a total of four of those*
8 *57 students (7%)* will receive that support. Mendoza Plaintiffs respectfully suggest that
9 this distribution of resources is inequitable and must be remedied. They hasten to add that
10 they do not seek a reduction in the number of African American children to be served.
11 Rather, the number of Latino children receiving direct Reading Recovery services must be
12 increased. On this basis alone it is clear that more Reading Recovery teachers must be
13 provided for in the budget.²

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17 ***The Inequity to Latino Students is Compounded by TUSD’s Failure to***
18 ***Prioritize Underachieving Schools, to Provide Alternative Reading***
19 ***Support Programs in a Consistent Manner, and to Offer Alternative Programs***
20 ***that Have Documented Records of Success***

21 ² Mendoza Plaintiffs understand that there is a difference between a 2019-20 budget item
22 and long term costs but with respect to the relatively high cost of the Reading Recovery
23 intervention they cannot help but note the District’s statements about the cost effectiveness
24 of the program in its Budget Year 2017-18 Student Support Criteria Form for Reading
25 Recovery provided on January 20, 2017 (but described in that document as pertaining to
26 “Budget Year 2016-17”). In that form, the District wrote (on page 5; emphasis added):
27 “Reading Recovery addresses literacy learning *in cost effective ways*. In Reading
28 Recovery, the long-term benefits of literacy achievement may significantly outweigh the
short-term cost of instruction and teacher preparation. By intervening early, Reading
Recovery reduces referrals and placements in special education, limits retention, and has
lasting effects. The local cost of providing Reading Recovery for 12 to 20 weeks will be
substantially less than those for retention and special education, particularly when the
majority of Reading Recovery children sustain their learning gains.” (A copy of the
Student Support Criteria Form is attached as Exhibit 1.) This statement is of course at
odds with the District’s assertion quoted in the Budget Order that “RR is not cost-
effective....” (*See* Budget Order at 9:5, quoting TUSD Response (Doc. 2256, at 7.))

1 In the Budget Order, the Court directed that while the District's priority in targeting
2 schools to provide Reading Recovery services should be reaching African American
3 students, "secondarily, [the priority should be] students attending underachieving schools."
4 (Doc. 2272 at 9:18-20.) According to the District's 3-Year Plus Integration Plan, Exhibit
5 C (Doc. 2270-3), in 2018, two TUSD elementary schools received AzMerit grades of F:
6 Blenman and Ochoa. (*Id.* at 4.)³ As noted above, the District now plans to provide some
7 Reading Recovery services to students at Blenman in the 2019-20 spring semester.
8 However, still omitted from its targeted schools (presumably because it has few African
9 American students) is Ochoa, which has a significant number of underachieving Latino
10 students.⁴ Mendoza Plaintiffs respectfully suggest that the District also should be
11 providing direct Reading Recovery services at Ochoa.
12
13

14 In this regard, Mendoza Plaintiffs additionally note that in its January 20, 2017
15 Budget Narrative for the 2017-18 school year (attached to Mendoza Plaintiffs' recently
16 filed (9/20/19) Doc. 2277 as Doc. 2277-2), the District first reported that transition
17 schools, of which Ochoa is one, had been given the option of choosing the Reading
18
19

20 ³ Mendoza Plaintiffs understand that, at the elementary school level, the AzMerit is
21 administered only to students in grades 3-5, and that "DIBELS is the primary source of K-
22 2nd grade literacy data... ." (Doc. 2289-2 at 1.) The results of each of these assessments
23 are of course key in identifying "underachieving" schools under the Budget Order. (*See*
24 September 10, 2019 Order (Doc. 2273) at 3, n.2 (describing the term, as defined by USP
25 Section IV, E, 5, as "schools in which students are achieving at or below the District
26 average in scores on state tests or other relevant measures of academic performance."))

24 ⁴ Mendoza Plaintiffs do not have the District's data on the number of first graders entering
25 Ochoa for the 2019-20 school year who tested "intensive" and "strategic" on the DIBELS
26 assessment but they do see that the Ochoa Integration and Academic Achievement Plan
27 filed as part of the District's 3-Year Plus Integration Plan says that the school is 85 %
28 Latino and that only 14.7% of its Latino students tested as "proficient" on the 2018
AzMerit exam. (Doc. 2270-3 at 109-110.) Further, the July 8, 2017 version of the
school's 2017-18 school year transition plan (attached as Exhibit 2) states that 17 of its 27
kindergarten students in 2016-17 were categorized as "intensive" or "strategic" on the
DIBELS assessment. (Exhibit 2 at 5.)

1 Recovery support program (Doc. 2277-2 at 6-7) and then went on to state that Reading
2 Recovery was indeed to be implemented at Ochoa. (*Id.* at 10.) However, that statement to
3 the contrary notwithstanding, by the time the Ochoa transition plan was finalized in August
4 2017, Reading Recovery was nowhere in its plan. (*Compare* Ochoa 2017-18 transition
5 plan, attached as Exhibit 3 *with* Robison 2017-18 transition plan at 1, 6, 9, attached as
6 Exhibit 4.)
7

8 The decision not to implement Reading Recovery at Ochoa is particularly troubling
9 because the District apparently does not have an alternative, “best-practices” program to
10 promote reading and because Ochoa was provided a reading support program for the 2017-
11 18 school year (albeit not of the intensity of Reading Recovery and geared to students in
12 grades two through five) that the District determined was not working well (and replaced)
13 in the 2018-19 school year.⁵
14

15 The January 2017 Budget Narrative for the 2017-18 budget year states that Ochoa
16 will use the online program Imagine Learning to support student learning in literary. (Doc.
17 2277-2 at 13.) It goes on to state that “[r]esearch conducted by SEG Measurement (2013)
18 found that students in grade 2 using Imagine Learning showed 36% greater gains in
19 reading than students who did not use the program [and] students in grades 3 through 5
20 showed 65% greater gains in reading than non-users.” (*Id.*)
21
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23

24 ⁵ In the context of this discussion, Mendoza Plaintiffs note that the District has failed to
25 address this Court’s directive that if “the District’s position [is] that the Reading Recovery
26 program is not cost effective..., the District shall ensure that there are alternative
27 programs, which must be best-practices, to promote reading. The District should have a
28 comprehensive reading student-support program and explain how it will pick and choose
which reading programs to implement in which schools. The District will propose a time
frame, based on budgetary constraints, for implementing these student support reading
programs in target schools.” (Doc. 2272 at 9:22-10:1.)

1 Nonetheless, in its February 2, 2018 Budget Narrative, attached as Exhibit 5, the
2 District reported that it would be discontinuing funding for Imagine Learning at Ochoa
3 (and elsewhere). (2018-19 Draft #1 USP Budget Narrative at 4.) In response to Mendoza
4 Plaintiffs’ RFI, the District reported that Ochoa would henceforth use the online program
5 SuccessMaker to support student learning in literacy. According to the District’s Transition
6 Schools Status Report (Doc. 2289-3), it is planning to use “SuccessMaker for Tier 2
7 reading centers....” (*id.* at 2) at Ochoa again this year.

9 Mendoza Plaintiffs have been unable to locate a TUSD Student Support Criteria
10 Form for SuccessMaker and are unaware of any report by TUSD that SuccessMaker has
11 demonstrated success like that of the now-replaced Imagine Learning Program. On its
12 website, the What Works Clearinghouse (“WWC”), a division of the U.S. Department of
13 Education’s Institute of Education Sciences, reports in its “WWC Intervention Report” for
14 SuccessMaker (updated on November 2015), that SuccessMaker “was found to have no
15 discernable effects on comprehension and reading fluency for adolescent readers [that is
16 grades 5 to 7].⁶” (*See* WWC Intervention Report for “SuccessMaker”, attached as Exhibit
17 6, at 1, 4-5.)⁷

20 Mendoza Plaintiffs understand that many TUSD schools use SuccessMaker and that
21 the District has said that it has been “shown to be successful for improving students’
22

23 ⁶ The WWC Intervention Report references the fact that the SuccessMaker program is
24 designed for K-8. Mendoza Plaintiffs therefore infer, and other entries on the WWC
25 website appear to confirm, that the clearinghouse has located no studies of students using
SuccessMaker in the earlier grades that meet its study design standards.

26 ⁷ By contrast, as recognized by TUSD in the Reading Recovery Student Support Criteria
27 Form, WWC “gave Reading Recovery positive ratings across all four areas of Alphabeticity,
28 Fluency, Comprehension, and General Reading Achievement.” (Exhibit 1 at 3.)

1 reading...skills when operated with fidelity” (TUSD Response to RFIs 1896, 1897, 1909,
2 attached as Exhibit 7); however, they have not, and, so far as they know, the Special
3 Master has not, seen data to support the District’s statement. Therefore, Mendoza
4 Plaintiffs continue to question whether the alternative to Reading Recovery on which the
5 District is relying is a viable, best practices reading support program for its Latino students
6 (or, indeed, for any of its students) and continue to object to the District’s failure to further
7 expand the Reading Recovery program to underachieving schools like Ochoa.
8

9
10 **Conclusion**

11 For the reasons set forth above, this Court should require the District to expand its
12 Reading Recovery program and provide evidence that alternative programs that it offers or
13 plans to offer to promote reading are effective “best-practices” programs.
14

15 Dated: October 1, 2019
16

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27
28

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' OBJECTION TO TUSD NOTICE OF FILING DOCUMENTS REQUIRED BY BUDGET ORDER, EXHIBIT B – READING RECOVERY/READING SUPPORT STATUS REPORT (DOC. 2289-2) Order** 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: October 1, 2019