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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Roy and Josie Fisher, et al.,
15 Plaintiffs,
16 v.
17 Tucson Unified School District No. 1, et al.,
18 Defendants.
19 Maria Mendoza, et al.,
20 Plaintiffs,
21 v.
22 Tucson Unified School District No. 1, et al.,
23 Defendants.

4:74-cv-0090-DCB
(Lead Case)

4:74-cv-0204 TUC DCB
(Consolidated Case)

24 **DISTRICT RESPONSE**
25 **TO PLAINTIFFS' OBJECTION (2284)**
26 **TO NOTICE OF COMPLIANCE WITH**
EXTRACURRICULAR ACTIVITIES COMPLETION PLAN (2260)

1 The Court, in its Order dated September 6, 2018, set out a completion plan
2 regarding extracurricular activities that required the District to complete five tasks. [ECF
3 2123, at 137:19-138:5]. The District has completed all five of those — and, as it described
4 in its Notice of Compliance (ECF 2260), it also voluntarily completed additional tasks
5 requested by the Special Master that were not required by the completion plan. For
6 example, the District added a chart that included enrollment numbers, and the District
7 agreed to analyze the clubs at each school to determine whether additional central District
8 support for academic clubs was needed.

9 The data submitted with its Notice of Compliance demonstrates the vibrant,
10 racially unitary nature of participation in extracurricular activities in schools across the
11 District. High numbers of students participate in athletics, fine arts, and clubs at all
12 schools, and there is no pattern of disparities in participation levels based on
13 race/ethnicity. At many schools — both Racially Concentrated and not — African
14 American and Hispanic students participate in extracurriculars at higher rates than White
15 students. Extracurricular participation is, across the District, healthy and unitary.

16 The Mendoza Plaintiffs do not argue otherwise, and they do not raise a single
17 objection related to the actual data submitted by the District. Rather, they point to three
18 alleged deficiencies in the District’s report that are all addressed — and should be
19 considered satisfied — by this Reply.

20 **A. The District has complied with completion plan Item No. 4.**

21 The District thoroughly reported on its compliance with Item Nos. 1, 2, 3, and 5
22 on the completion plan for extracurricular activities. But, as the Mendoza Plaintiffs point
23 out, the District neglected to *fully* report on its compliance with Item No. 4. That item
24 provides:
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1 4. By August 30, 2018, the District shall have put in place and
2 implemented a process by which principals are responsible for reviewing the
3 extent to which extracurricular activities at their schools are providing
4 opportunities for interracial contact and positive settings of shared interest as
5 mandated by the USP. The District shall analyze the array of extracurricular
6 activities occurring in the schools and identify those that provide
7 opportunities for interracial contact and positive settings of shared interest,
8 and if necessary develop remedial strategies to ensure such opportunities are
9 occurring in each school.

6 (Order, ECF 2123, at 137:26-138:2). Although the District fully reported on its
7 compliance with the first requirement in Item No. 4 — and the Mendoza Plaintiffs admit
8 that fact (ECF 2284, at 1:26-2:2) — the District omitted, through an oversight, to report
9 on its compliance with the second requirement. It corrects that oversight now.

10 In compliance with completion plan Item No. 4, the District analyzed the
11 extracurricular activities occurring in all schools and has identified that, due to the broad
12 levels of participation across races/ethnicities, virtually all such activities provide
13 “opportunities for interracial contact and positive settings of shared interest.” The District
14 has actually done this analysis for the past three years and reported the results in its
15 Annual Reports.

16 The District conducts this analysis by looking at the extracurricular activities
17 offered at each school midway through the school year and again at the end of the year.
18 All extracurricular activities in the District (other than competitive activities such as high
19 school athletics) are open to all students. And, over the past three years, as reflected in
20 the data attached as Exhibit A hereto, no more than a handful of activities have had single-
21 race/ethnicity participation: eight out of the 629 reported activities in 2018-19 (1.3%),
22 two out of the 541 reported activities in 2017-18 (less than 0.5%), and four out of the 441
23 reported activities in 2016-17 (less than 1%).¹ The District’s prior reporting on
24

25 ¹ All activities are open to all race/ethnic groups. The few activities that have had single-
26 race/ethnicity participation over the three years of data have almost exclusively been at

1 participation in specific activities by race/ethnicity (2017-18 Annual Report Appx. VIII-
2 1, Doc. 2135-1, at 3-6) confirms that an array of races and ethnicities participate in nearly
3 every activity offered District-wide.

4 Because activities providing opportunities for interracial contact and positive
5 settings of shared interest are occurring in all schools — and, in fact, represent almost
6 every one of the 629 activities occurring in the District — remedial strategies are not
7 necessary. Despite the District’s inadvertent failure to fully report on its compliance with
8 completion plan Item No. 4 in its filing (ECF 2260), the District has, in fact, fully
9 complied with that item.

10 **B. The District has complied with completion plan Item No. 1.**

11 The Mendoza Plaintiffs next suggest that the Court, although it did not expressly
12 so state in its Order, intended for the District to submit additional information as to Item
13 No. 1 on the completion plan for extracurricular activities. That item obligated the District
14 to “revise its reporting on extracurricular activities to include all such activities clearly
15 delineating which are funded by parents, the community, the District, or other sources
16 outside the District including the 21 Century or similar grants.” (Order, ECF 2123, at
17 137:19-21). The District did so. (Exh. 3, Doc. 2260-1, at 15). The Mendoza Plaintiffs now
18 contend that they understood Item No. 1 to require the District to identify these funding
19 sources by school, as well as by activity, and that therefore the District has not complied
20 with this item on the completion plan.

21 The District believed — and continues to believe — that it fully complied with
22 Item No. 1 as it was set forth by the Court. Nevertheless, the District is providing, with
23

24 _____
25 Racially Concentrated schools, and they have involved very small numbers of students
26 participating at all.

1 this Reply, the additional information the Mendoza Plaintiffs seek. That data is attached
2 as Exhibit B hereto.²

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4 **C. The District has more than met the data reporting requirements
5 established by the Court, both for the number of years reporting and
6 for the actual data reported.**

7 The Mendoza Plaintiffs' final objection stems from the fact that, beginning with
8 2016-17, the District changed the data components it reported regarding extracurricular
9 activities in K-8 schools.³ While the Court has noted that this change was a *good* thing,⁴
10 the Court required additional reporting time to remedy the "difficulty in comparing year-
11 to-year data." (ECF 2123, at 137:8-11.) The Mendoza Plaintiffs now suggest that the
12 District must provide additional years of data, beyond those submitted with the District's
13 filing (ECF 2260), to allow the Court to assess compliance under the USP as to
14 extracurricular activities. (ECF 2284, at 3:19-25.)

15 However, the Court has already determined the "sufficient number of years" of
16 reporting data in the current format, and that number has been more than met. In its Order
17 dated September 6, 2018, the Court stated that "[t]wo years of like-participation data is
18 needed to determine whether the District has effectively addressed parity." (Order, ECF
19 2123, at 137:10-11 (emphasis added).) The District has now been reporting data in the
20 current format for three years (2016-17, 2017-18, and now 2018-19) and, in fact, it
retroactively applied *both* the old and the current data reporting methods to the data for

21 ² If the Court shares the Mendoza Plaintiffs' understanding that, notwithstanding the
22 absence of any such express requirement in the Order, the District was in fact required to
23 submit this information from the get-go, the District respectfully requests that the Court
not hold this against the District. The District complied, in good faith, with the directive
of Item No. 1 as the District understood the express terms of that directive.

24 ³ High school data reporting did not change that year and has been presented in the same
format since 2014-15. Despite this, the Mendoza Plaintiffs do not distinguish between
high school and K-8 reporting of extracurricular activities.

25 ⁴ The change was "to develop a more comprehensive approach to assessing participation."
(ECF 2123, at 137:8-9.)

1 2015-16. The result is that the District has provided *four years* of data under the current
2 format for K-8 school activities.⁵ The District has more than met the two-year requirement
3 set by the Court.

4 Beyond that, it must be noted that the reliability and consistency of the data —
5 including the data submitted in the prior formats — has not changed. Although the data
6 *reporting* methods (how the data is aggregated) for K-8 school activities changed slightly
7 in 2016-17, the data *collection* methods did not.⁶ Table 8.1 (ECF 2260-1, at 10), which
8 provides unduplicated student participation counts by race/ethnicity and school grade
9 level, clearly shows that the number of Hispanic and African-American students
10 participating in extracurricular activities across the District as a whole has increased since
11 2014-15, regardless of how the data is aggregated/tabulated.

12 In addressing the sufficiency of the District’s data, the Mendoza Plaintiffs also
13 point to statements by the Special Master in his 2016-17 annual report that the District
14 does not report data on participation in activities funded by 21st Century Learning Center
15 and that not all schools have reported data on extracurricular participation. It should be
16 noted that, the Special Master’s comments notwithstanding, the Court did not require the
17 District to change anything on either point — the Court only required the additional year
18 of data reporting overall. As to the substance of the comments, the District has addressed
19 these issues before but does so again here.

20 The District has not reported on participation in extracurricular activities funded
21 through the 21st Century Learning Centers grant program because not all District schools
22

23 ⁵ Data for extracurricular activities at high schools has been submitted in the same format
24 since 2014-15. Five years of data in an unchanged format is certainly plenty for the Court
to evaluate.

25 ⁶ The Mendoza Plaintiffs note a statement by the Special Master that “[p]rocedures for
collecting data have changed.” This is incorrect. Presumably, this was a misstatement
26 based on the changes in data aggregation.

1 are eligible to apply for those funds and, thus, not all schools have access to those
2 programs. The District has made a conscious decision to continue to omit the 21st Century
3 participation data in its extracurricular activities reporting because including it would
4 create artificial discrepancies and inconsistencies across the schools (including by
5 potentially inflating participation numbers at the schools eligible for the programs) and
6 because such reporting would be inconsistent with prior years' reporting. However, in
7 compliance with the grant program's requirements, the District has extensive monitoring
8 and a separate reporting system in place for student participation in 21st Century activities.
9 The District has provided that information on multiple occasions, including as an
10 appendix in the District's 2018-19 annual report.

11 Finally, while it is true that not all schools in the District have always reported
12 extracurricular participation data (due to the fact that the District relies on self-reporting),
13 the District has followed up with those schools to determine whether this was due to a
14 failure to report or due to an absence of extracurricular activities at those schools. The
15 principal review process now in place, addressed in the Notice of Compliance, ensures
16 that all schools now document their data.

17 In short, the District has provided all data required by the Court, for more years
18 than the Court required. Consideration of unitary status in this area of District operations
19 is now appropriate.

20 **Conclusion**

21 The District respectfully submits that it has complied with the Court's orders
22 regarding extracurricular activities and has met the requirements of USP § VIII. The
23 District requests that the Court grant unitary status in area § VIII of District operations.
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Dated this 7th day of October, 2019.

Respectfully submitted,

/s/ P. Bruce Converse

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District No. 1

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2019, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ P. Bruce Converse