

1 P. Bruce Converse (#005868)
bconverse@dickinsonwright.com
2 Timothy W. Overton (#025669)
toverton@dickinsonwright.com
3 **DICKINSON WRIGHT PLLC**
1850 N. Central Avenue, Suite 1400
4 Phoenix, Arizona 85004-4568
courtdocs@dickinsonwright.com
5 Phone: (602) 285-5000
Fax: (844) 670-6009

6 Robert S. Ross (#023430)
7 Robert.Ross@tusd1.org
Samuel E. Brown (#027474)
8 Samuel.Brown@tusd1.org
TUCSON UNIFIED SCHOOL DISTRICT
9 **LEGAL DEPARTMENT**
1010 East Tenth Street
10 Tucson, Arizona 85719
Phone: (520) 225-6040
11 *Attorneys for defendant*
Tucson Unified School District No. 1

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

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

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

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

22
23 **DISTRICT RESPONSE**
24 **TO MENDOZA PLAINTIFFS' OBJECTIONS (2280)**
25 **TO NOTICE OF COMPLIANCE RE DISCIPLINE (2263)**
26

1 Defendant Tucson Unified School District No. 1 (“Tucson Unified” or the
2 “District”) hereby replies in support of its Notice and Report of Compliance: Discipline
3 Progress Report, and Combined Discipline/Inclusivity Professional Learning Plan
4 (ECF 2266), and addresses the objections made in the Mendoza Plaintiffs’ Related
5 Response and Objection (ECF 2280).

6 Court Order 2123 directed the District to prepare a completion plan for discipline
7 that accomplished the following:

- 8 1. Report data using the same measures that were in place in 2013-14, adding
9 the total number of incidents to the total number of students disciplined;
- 10 2. Provide teachers, principals and others easy access to best practices for
11 dealing with particular offenses defined in the GSRR;
- 12 3. Hire or designate a Director of Discipline with specified responsibilities;
- 13 4. The Coordinator of Discipline shall report to the chief academic officer for
14 the District;
- 15 5. The process for dealing with hotspots shall be streamlined;
- 16 6. Include days suspended prior to DAEP placement in calculating the length
17 of DAEP placement.
- 18 7. Institute a process to regularly assess teachers’ understanding of
19 disciplinary practices, the GSRR, PBIS, and restorative practices;
- 20 8. Regularly review and assess the accuracy of principal reports relating to
21 PBIS and ensure proper protocol is being used; and
- 22 9. Develop practices and procedures to ensure the disciplinary program
23 designed by the USP is implemented and that buy-in is being promoted.

24 [ECF 2123, pp. 130-32.]

25 The Mendoza Plaintiffs raise five arguments regarding the District’s compliance
26 with the Court’s Order. First, they argue the District’s data reporting has not been
continuous and proper. Second, they argue the District has not provided teachers with
sufficient access to best discipline practices. Third, they argue the District must
demonstrate compliance with discipline-related desegregation efforts over time in order
to be declared unitary. Fourth, they argue the District’s tools for assessing whether

1 teachers understand disciplinary practices are insufficient. Fifth, they argue the District
 2 was required to collaborate with the Special Master to develop the Inclusivity
 3 Professional Learning Plan. The District addresses each of these below.

4 It is important to note both that the District's Notice of Compliance addresses each
 5 area listed in the Court's Order (ECF 2266-1), and that, with the exception of the Mendoza
 6 Plaintiffs' first argument (regarding consistent data reporting), the Mendoza Plaintiffs
 7 acknowledge the District's compliance efforts, but they disagree with the District's
 8 manner of compliance. As shown below, each of their arguments should be rejected, and
 9 the District should be declared unitary in this area.

10 **A. The District's data reporting has been consistent and proper.**

11 The USP requires the District to institute policies to develop alternative types of
 12 discipline. The District has implemented ISI and DAEP, which are research-based best
 13 practices used throughout the United States. The District has seen many great benefits
 14 from these alternative forms of discipline, including a significant reduction in the number
 15 of days students have been suspended from school, overall discipline, and disparities.

16 The Mendoza Plaintiffs incorrectly argue the District's data reporting has not been
 17 consistent and proper. The Mendoza Plaintiffs' argument focuses on the following chart:

18

Entire District Discipline by USP Race/Ethnicity SY 2013-2014								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enroll*	N	12318	4626	33110	2021	1158	1723	54956
	%	22%	8%	60%	4%	2%	3%	100%
In-school Discipline	N	4065	3565	10317	657	163	685	19452
	%	21%	18%	53%	3%	1%	4%	100%
In-school Suspension	N	601	643	1827	131	34	108	3344
	%	18%	19%	55%	4%	1%	3%	100%
Short-Term (out of School) Suspension	N	669	579	1709	143	17	104	3221
	%	21%	18%	53%	4%	1%	3%	100%
Long-Term (out of School) Suspension	N	45	55	214	15		11	342
	%	13%	16%	63%	4%	1%	3%	100%

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1 In SY13-14, SY14-15, and SY15-16, this chart included four discipline categories:
 2 in-school discipline, in-school suspensions (ISS), short-term out-of-school suspensions
 3 (ST OOS), and long-term out-of-school suspensions (LT OOS). For SY16-17, SY17-18,
 4 and SY18-19, the chart added the categories of in-school interventions (ISI) and the
 5 District Alternative Education Program (DAEP).
 6

Entire District Discipline by USP Race/Ethnicity SY 2017-2018								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enroll*	N	10489	4869	31243	1842	1094	1751	51268
	%	20%	9%	61%	4%	2%	3%	100%
In-School Discipline	N	546	458	1692	124	28	116	2964
	%	18%	15%	57%	4%	1%	4%	100%
In-School Suspension (ISS)	N	91	84	247	19	5	34	480
	%	19%	18%	51%	4%	1%	7%	100%
Short-Term (out of School) Suspension	N	340	278	933	79	18	70	1718
	%	20%	16%	54%	5%	1%	4%	100%
Long-Term (out of School) Suspension	N	40	40	104	7	0	7	198
	%	20%	20%	53%	4%	0%	4%	100%
ISS and ISI COMBINED TOTAL								
In-School Suspension	N	91	84	247	19	5	34	480
	%	19%		51%	4%	1%	7%	100%
In-School Intervention (ISI)	N	287	255	888	57	11	60	1558
	%	18%	16%	57%	4%	1%	4%	100%
ISS and ISI	N	378	339	1135	76	16	94	2038
	%	19%	17%	56%	4%	1%	5%	100%
ISS and ISI COMBINED TOTAL								
Short-Term (out of School) Suspension (W/O DAEP)	N	312	261	874	75	16	65	1603
	%	19%	16%	55%	5%	1%	4%	100%
Long-Term (out of School) Suspension (W/O DAEP)	N	32	31	78	7	0	6	154
	%	21%	20%	51%	5%	0%	4%	100%
DAEP students	N	46	40	124	11	2	0	233
	%	20%	17%	53%	5%	1%	0%	100%

In addition, in SY18-19, the District provided a modified version of this chart broken down by the number of disciplinary incidents.¹

Entire District Discipline by USP Race/Ethnicity SY 2018 - 2019								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enrollment	N	10106	4832	30205	1823	1093	1720	49779
	%	20%	10%	61%	4%	2%	3%	100%
In-School Discipline	N-Student	587	486	1850	156	37	134	3250
	%	18%	15%	57%	5%	1%	4%	100%
	N-Incident	873	766	2222	227	48	234	4370
	%	20%	18%	51%	5%	1%	5%	100%
In-School Suspension (ISS)	N-Student	99	70	278	20	7	19	493
	%	20%	14%	56%	4%	1%	4%	100%
	N-Incident	108	71	268	24	7	22	500
	%	22%	14%	54%	5%	1%	4%	100%
Short-Term Out-of-School Suspension	N-Student	417	358	1344	123	23	101	2366
	%	18%	15%	57%	5%	1%	4%	100%
	N-Incident	557	520	1482	166	29	170	2924
	%	19%	18%	51%	6%	1%	6%	100%
Long-Term Out-of-School Suspension	N-Student	21	22	53	9	1	3	109
	%	19%	20%	49%	8%	1%	3%	100%
	N-Incident	22	22	50	10	1	3	108
	%	19%	20%	48%	8%	2%	4%	100%
In-School Intervention (ISI)	N-Student	169	155	495	46	6	46	917
	%	18%	17%	54%	5%	1%	5%	100%
	N-Incident	206	197	529	48	6	55	1041
	%	20%	19%	51%	5%	1%	5%	100%
In-School Suspension (ISS)	N-Student	99	70	278	20	7	19	493
	%	20%	14%	56%	4%	1%	4%	100%
	N-Incident	108	71	268	24	7	22	500
	%	22%	14%	54%	5%	1%	4%	100%
District Alternative Education Program (DAEP)	N-Student	22	27	92	10	1	7	159
	%	14%	17%	58%	6%	1%	4%	100%
	N-Incident	22	28	93	10	1	8	162
	%	14%	17%	57%	6%	1%	5%	100%
Out-of-School Suspension (OSS) Short- and Long-Term Combined	N-Student	438	380	1397	132	24	104	2475
	%	18%	15%	56%	5%	1%	4%	100%
	N-Incident	579	542	1532	176	30	173	3032
	%	19%	18%	51%	6%	1%	6%	100%

¹ Prior reports were broken down only by the number of students.

1 The District implemented ISI and DAEP as research-based best practices to
2 accomplish USP's directives to (1) reduce exclusionary consequences, (2) require
3 consequences that correspond to the severity of the misbehavior, and (3) require that
4 consequences be paired with meaningful instruction and supportive guidance to offer
5 students an opportunity to learn from their behavior and continue to participate in the
6 school community. [See ECF 1713, p. 45.]

7 If the District correctly understands the Mendoza Plaintiffs' objection, they object
8 to the District reporting ISS totals without including in that total number the number of
9 students who received ISI. The District does not understand the objection to be that the
10 District is not reporting all of the information it reported in SY13-14.

11 The District reports the same data that it reported in SY13-14. With the
12 implementation of ISI and DAEP, the students who receive these alternative forms of
13 discipline are tracked separately for the purpose of best serving these students, though the
14 numbers are still reported to the Court and the parties each year in the annual report. To
15 the extent anyone wants to include the ISI numbers with the ISS numbers, the data is
16 provided to do so. In fact, for the charts provided with the District's last two annual
17 reports, these numbers are separately calculated to provide these totals to the reader. [ECF
18 2133-3, pp. 8-9; ECF 2305-4, pp. 36-38.]

19 Although, naturally, there are variations in the data, the trend shows a substantial
20 reduction in discipline within the District, including a substantial reduction in disparities
21 between White and African American students (there is no disparity between White and
22 Hispanic students). For the disciplinary categories that show increases at times (in-school
23 discipline and short term out of school suspensions), these increases are due to the fact
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1 that discipline is decreasing in severity (USP goal), reducing suspensions from long-term
2 to short term and from in-school suspensions to in-school interventions.

3 There are two primary ways for measuring exclusionary discipline: (1) number of
4 suspensions; and (2) number of days suspended from school. The more important of these
5 two is the number of days suspended from school, which tracks more closely the amount
6 of time students spend outside of the regular academic environment. Thus, while at times
7 the number of suspensions may increase temporarily, the number of days spent outside of
8 the classroom is steadily decreasing.

9 Moreover, these research-based best practices not only reduce the number of days
10 students spend outside of the classroom, they also combine consequences with workshops
11 and mediations that help the students make changes to enhance academic opportunities
12 and reduce discipline (USP goal). For example, in the past, some drug offenses resulted
13 in automatic long-term suspensions (10 days or more). Now, however, some of those
14 same offenses result in a three-day suspension, with the option for that suspension to be
15 reduced to a one-day suspension if the student agrees to participate in a substance abuse
16 workshop. Similarly, fighting in the past often resulted in a 3-5 day suspension, but now
17 results in a one-day suspension if the student agrees to participate in mediation.

18 And, as noted above, the level of discipline and discipline disparities related to
19 African American students have both decreased significantly. Disciplinary figures
20 produced by the District with its recent Annual Report show just how far the District has
21 come in reducing disciplinary actions for African American students. While there was a
22 9% difference in discipline *rates* for African American versus White students in SY2013-
23 14, that has been cut in half to a current difference of 4.60%. In fact, discipline rates for
24 African American students in the past two years (10.39% and 10.93%, respectively) were
25

1 lower than the discipline rate for White students in SY2013-14 (11.56%). [ECF 2298-1,
2 p. 150.]

3 The discrepancies in out-of-school suspensions, a particularly noteworthy
4 disciplinary action (because it limits in-person educational time), has also been
5 dramatically reduced. In SY2014-15, African American students were 3.2 times more
6 likely than White students to have a short-term suspension, and 3.5 times more likely to
7 have a long-term suspension. By SY2018-19, a mere four years later, the likelihood ratio
8 had dropped to 1.7 times for short-term suspensions and 2.1 times for long-term
9 suspensions. [ECF 2298-1, p. 151.]

10 The District's significant reduction in the discipline disparity (especially compared
11 to the national disparity), coupled with the low levels of discipline African American
12 students experience overall in the District, show that any remaining disparities in
13 discipline within the District are not connected to prior conduct by this specific school
14 district half a century ago. These significant reductions to levels far better than state and
15 national averages counsel in favor of unitary status.

16
17 **B. The District provides its teachers with ready access to discipline best
18 practices.**

19 As explained in the District's Progress Report on Discipline:

20 Teachers, principals, and other relevant staff have easy
21 access to information about how best to deal with particular
22 offenses as defined by the Student Code of Conduct (aka
23 GSRR). The District continued to provide access to the TUSD
24 "What Works" online resource to provide information about
25 behavior and discipline at TUSD, and to highlight successful
26 strategies and practices. The site includes specific information
on how to best deal with various code violations, and includes
links to internal resources (including documents, templates,
and videos) and external resources (including research and best
practices). The site also includes information for individual
staff members and other professional personnel who have

1 demonstrated relevant expertise and are willing to provide peer
2 support. For SY2019-20, the District moved the link to the site
3 to a more prominent area of its internal staff website to increase
4 its visibility and use.

5 In addition, the District provides comprehensive training
6 to teachers and administrators on discipline and related
7 issues, as set out in the discipline professional learning plan
8 provided separately along with this progress report.

9 [ECF 2266-1, pp. 2-3.]

10 The District included in its notice of completion several sample pages from its
11 website where it provides these best practices. [ECF 2266-1, pp. 26-31.] Although the
12 Mendoza Plaintiffs make several “acknowledge[ments]” and notes wherein they
13 “recognize,” among other things, “that there are four GSRR ‘particular offenses’ listed
14 under the ‘AGGRESSION’ heading of the homepage, and three under ‘ALCOHOL,
15 TOBACCO, AND OTHER DRUG VIOLATIONS,’ each of which appears to provide link
16 to information,” they argue the District does not provide enough information. [ECF 2280,
17 pp. 8-9.]

18 The District’s best practices websites address not only these most-common offenses
19 acknowledged by the Mendoza Plaintiffs (which offenses have accounted for the vast
20 majority of discipline in the District for the last three years), they also address several other
21 “code of conduct scenarios,” minor aggressions, major aggressions, non-serious but
22 inappropriate contact, fighting, and assaults. [ECF 2266-1, p. 27.] And each of these
23 offenses contain a link to additional information on related offenses and/or offenses which
24 fall under that category. [Id.] For example, “Aggression” encompasses the following
25 offenses: disorderly conduct, fighting, assault, minor aggressive act, other aggression,
26 endangerment, verbal provocation, aggravated assault, and recklessness. [ECF 2305-3, p.
36.] The section on alcohol, tobacco and other drug violations also encompasses additional
specific offenses. And the District’s “Code of Conduct Scenarios” link contains even more

1 best practices related to specific code of conduct offenses. [ECF 2266-1, p. 27.] The
2 Mendoza Plaintiffs’ attacks here are completely unmerited.

3 Likewise, the Mendoza Plaintiffs’ argument that they “question if TUSD staff have
4 ‘easy access’ to offense-specific information if they must scroll through videos” should be
5 summarily rejected. On the one hand they argue there are insufficient materials, and on
6 the other hand they argue there are so many materials that the teachers don’t have “easy
7 access” to specific materials.

8 Moreover, the District’s online best practices include multiple pages for specific
9 offenses that provide lists of mandatory actions, guidelines for applying actions, and best
10 practices for those specific actions. [See, e.g., ECF 2266-1, p. 29.] The website also
11 includes contact information for the District’s Discipline Review Team members, who
12 are excellent resources for best practices and information regarding specific offenses.
13 [ECF 2266-1, p. 27.] And, as the Mendoza Plaintiffs also acknowledge, the website
14 contains multiple PBIS videos and a restorative practices video in the District’s
15 “Exemplar Practices Around TUSD” section.

16 The District provides easy access to teachers, administrators and staff to discipline
17 best practices, including best practices for specific GSRR offenses.

18
19 **C. The Mendoza Plaintiffs request more time to for the Court to**
20 **supervise the Director of Discipline, improperly demanding results as**
a condition of terminating supervision, contrary to the constitutional
standard and the Court’s rationale for completion plans.

21 The Mendoza Plaintiffs argue that in addition appointing a Director of Discipline
22 tasked with specifically enumerated responsibilities, the District must also show that it has
23 made positive progress in discipline statistics as a result of this compliance. [ECF 2280,
24 pp. 10-11.] This is an inappropriate attempt to add more requirements to the Court-ordered
25 completion plan in an effort to extend Court supervision for several years into the future.

1 In addition to appointing a Director of Discipline, the District created a Student
2 Relations department focused exclusively on the implementation of discipline-related
3 equity efforts. [ECF 2266-1, p. 4.] Among other things, the Student Relations department
4 conducts regular discipline data reviews, including analysis of school-level data on a bi-
5 weekly, monthly, and quarterly basis, working closely with principals, assistant principals,
6 and regional superintendents to bring any issues warranting investigation or remediation to
7 the attention of the chief academic officer of the District. [Id. at 4-5.]²

8 The Mendoza Plaintiffs' argument here is not that the District did not comply with
9 the completion plan (they acknowledge compliance), but that such compliance is still
10 insufficient. This argument should be rejected as contrary to the purposes of the
11 completion plans and far beyond constitutional parameters. *Freeman v. Pitts*, 503 U.S.
12 467, 490 (1992) (“Returning schools to the control of local authorities at the earliest
13 practicable date is essential to restore their true accountability in our governmental
14 system.”); *Davis v. Sch. Dist. of Pontiac*, 95 F. Supp. 2d 688, 698 (E.D. Mich. 2000) (“As
15 noted, the involvement of Federal courts in the governance of our local schools was always
16 intended to be limited and circumscribed, and, it is only where supervision or monitoring
17 is required by continuing constitutional violation that the Court should maintain a
18 continuing role.”); *Cf. Stell v. Bd. of Pub. Educ.*, 860 F. Supp. 1563, 1569 (S.D. Ga. 1994)
19 (“A school system will always be in a state of transformation, as it responds to current
20 circumstances and prepares for prospective growth and needs. When a system has,
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23 ² The Mendoza Plaintiffs attempt to use this argument to say the District has not seen
24 sufficient changes in discipline data. As shown above and in the District's SY18-19 annual
25 report, the District has reduced both the overall levels of discipline and discipline
26 disparities over the life of the USP. [ECF 2305-3, pp. 49-52.] This includes a reduction in
disparities between African American and White students from 3.5 in SY14-15 to 2.1 in
SY18-19, well below the State and National averages. [Id.]

1 however, effected desegregation to the extent practicable, federal court supervision of the
2 public school system must come to an end.”).

3
4 **D. The District’s tools for assessing teachers’ understanding of disciplinary practices are based on best practices and are well-suited for assessing and improving teachers’ proper implementation.**

5 The Mendoza Plaintiffs also argue that the District’s assessment tools are
6 insufficient to assess teacher understanding of disciplinary practices, the GSRR, PBIS,
7 and restorative practices. [ECF 2280, p. 13.] This is yet another argument about
8 “insufficient” compliance. Again, the Mendoza Plaintiffs don’t argue that the District has
9 not complied; instead, they argue the District’s compliance does not meet their subjective
10 belief of what the assessment tools should do. If this were the standard, the District would
11 remain under Court supervision in perpetuity.

12 Contrary to the Mendoza Plaintiffs’ arguments, the District’s Discipline Progress
13 Report details the many assessment tools the District has implemented to assess teachers’
14 understandings of disciplinary practices. [ECF 2266-1, pp. 10-12.] Indeed, many of the
15 District’s evidence based tools for measuring teachers’ understanding are based on best
16 practices from other school districts and those recommended by experts. The Mendoza
17 Plaintiffs’ arguments here have no merit, and should be rejected.

18
19 **E. The District collaborated with the Special Master to develop the Combined Discipline and Inclusivity/Civility Professional Learning Plan.**

20 The Mendoza Plaintiffs’ final argument is that the District must collaborate with
21 the Special Master in developing the Inclusivity Professional Learning Plan. The District
22 has collaborated with the Special Master in developing this plan, and the plan was
23 submitted with the District’s notice of completion. [ECF 2266-2, pp. 25 – 37.]
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Conclusion

The District respectfully submits that it has complied with the Court’s orders regarding Discipline and has met the requirements of USP § VI in its entirety. The District requests that the Court grant unitary status in area § VI of District operations.

Dated this 7th day of October, 2019.

Respectfully submitted,

/s/ P. Bruce Converse
P. Bruce Converse
Timothy W. Overton
DICKINSON WRIGHT, PLLC
1850 N. Central Avenue, Suite 1400
Phoenix, Arizona 85004-4568
*Attorneys for Tucson Unified School
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 attached 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