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22 **IN THE UNITED STATES DISTRICT COURT**
23 **FOR THE DISTRICT OF ARIZONA**

24 Roy and Josie Fisher, et al.,
25 Plaintiffs,
26 v.
27 Tucson Unified School District No. 1, et
28 al.,
29 Defendants.
30 Maria Mendoza, et al.,
31 Plaintiffs,
32 v.
33 Tucson Unified School District No. 1, et
34 al.,
35 Defendants.

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

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

36 **DISTRICT REPLY**
37 **TO MENDOZA PLAINTIFFS' OBJECTION (2311)**
38 **TO READING RECOVERY STATUS REPORT (2289-2)**

1 For reasons described below, the District respectfully requests that this Court
2 overrule the Mendoza Plaintiffs' objection (ECF 2311) to the District's Reading
3 Recovery Status Report (ECF 2289-2, "Report"). The District has proposed a plan for
4 reading support that equitably serves both African American and Latino students.

5 The District has reported on Reading Recovery, as directed by the Court, and has
6 identified target schools, teacher-student ratios, and two additional teachers to reach
7 African American students in a cost-effective manner.

8 The District does not identify *former* F schools like Ochoa (who are now likely C
9 or B schools) for Reading Recovery because many former underachieving schools are
10 making progress with their existing programs and strategies. These programs at Ochoa
11 (Imagine Learning, SuccessMaker), strategies (reading interventionists, instructional
12 specialists), and professional learning to improve classroom instruction, represent best
13 practices for supporting students in reading. These types of programs, strategies, and
14 professional learning approaches are the foundation of the District's comprehensive
15 approach to reading support, as described below.

16 **A. The District has Proposed an Equitable Plan for Reading Recovery**

17 This Court ordered the District to identify target schools for implementing
18 Reading Recovery, "with a priority of reaching African American students, and
19 secondarily, students attending underachieving schools." (Budget Order, Doc. 2272, at
20 8). The District identified 13 target schools, and an additional four target schools for the
21 express purpose of reaching more African American students (Blenman, Bloom, and
22 Bonillas elementary schools; and Dietz K-8 school) and, secondarily, to serve
23 underachieving schools (two of the four schools are "underachieving").¹ Mendoza
24 Plaintiffs assert that the District's compliance with the Court directive to prioritize
25 reaching African American students has created an inequity for Latino students.
26 Although the Court did not focus on creating an equitable allocation of Reading
27 Recovery resources, the Reading Recovery status report reflects an equitable approach.

28

¹ The 2017-18 AzMERIT letter grade for Blenman is an F, and for Dietz is a D.

1 In the first semester of SY2019-20, four times as many Latino students (40) will
2 receive direct Reading Recovery services than African American students (11) (RR
3 Report, ECF 2289-2 at 4, chart 1). In the second semester, even with the additional 12
4 African American students served by the two new teachers, the District plans to serve at
5 least twice as many Latino students (44) as African American students (23). (Id. at 5,
6 chart 2). However, chart 2 does not identify all students to be served at the 13 schools in
7 second semester as those students have yet to be identified. Based on first semester
8 numbers, the District will likely provide direct services to four times as many Latino
9 students as African American students in second semester. In addition, Latino students
10 receive the bulk of reading recovery support for indirect services.²

11 There is no credible argument that the District's approach to providing Reading
12 Recovery services is inequitable towards Latino students. The District's approach is
13 equitable, complies with this Court's directive, and addresses the challenges in targeting
14 services towards African American students who are integrated throughout TUSD.

15
16 **B. Ochoa is not an Underperforming School**

17 Of the seventeen schools identified in the report, six were "D" or "F" schools in
18 SY2018-19.³ Mendoza Plaintiffs assert that because Ochoa was an "F" school in 2018-
19 19, that it should receive Reading Recovery services in 2019-20. However, recent data
20 suggests that Ochoa will likely move from an "F" in SY2018-19 to at least a "C" (and
21

22 ² Most Reading Recovery schools with relatively high African American populations enroll
23 twice as many Latino students (Blenman, Bloom, Erickson, Myers-Ganoung). Most of the
24 racially concentrated schools with high Latino populations have very small numbers of African
25 American students (Cavett, Hollinger, Mission View, Robison, Van Buskirk, Vesey). Thus,
26 some Reading Recovery schools serve few, if any, African American students with indirect
27 services. However, every school will serve a few, or more, Latino students with indirect
28 services. This numerical inequity is precisely why the District designed the itinerant approach
to provide direct services that will reach African American students.

³ Based on the 2017-18 AzMERIT letter grades: Blenman was an F school; Cavett, Dietz K-8,
Erickson, Myers-Ganoung, and Robison were all D schools.

1 maybe even a “B”) by the time the letter grades are released for SY 2019-20, based on
2 its improvement on the AzMERIT in SY2018-19.

3 Ochoa implements SuccessMaker and Imagine Learning reading programs.
4 Ochoa funds a certified reading interventionist to support struggling K-2nd graders, and
5 three instructional specialists who support teacher-provided reading interventions for
6 3rd-5th graders. The District provides professional learning for Ochoa teachers to
7 improve the effectiveness of reading instruction, funded through a literacy grant.

8 An order to add Reading Recovery to Ochoa would disrupt the current
9 programming, scheduling, and staffing that *already* exists at Ochoa to provide reading
10 support to struggling readers and professional learning support for teachers. The
11 Mendoza Plaintiff argument that the Court should take the extraordinary step of
12 ordering the District to implement Reading Recovery at Ochoa, based on its former “F”
13 school status, is moot.

14
15 **C. Mendoza Plaintiffs Misrepresent the Record re Prior Plans at Ochoa**

16 Mendoza Plaintiffs statement that “Reading Recovery was indeed to be
17 implemented at Ochoa” is a misrepresentation of the record. As Mendoza counsel is
18 well aware, the budget development process starts with a high-level narrative in January,
19 followed by several budget iterations before final adoption in the summer. In January
20 2017, the District wrote:

21 Transition Schools were also asked to choose from the below menu options to
22 include in their Transition Plans (some campuses also included an Expanded
23 Programs initiative): Think Through Math; Big Brainz (Imagine Learning);
ALEKS; Reading Recovery; Balanced Literacy; AVID strategies.
24 (Budget Narrative, Doc. 2277-2 at 7). At page 10 of the same narrative, the District
25 discusses Reading Recovery under the following sub-header:

26 *New Initiative: Reading Recovery*

27 **Proposed** for: Ochoa, Robison, Safford
28

1 (Id. at 10, emphasis added). Mendoza Plaintiffs, having cited this exact page of the 2017
2 narrative, are fully aware that this was a *proposal* in a budget narrative that the District
3 did not implement in the final budget (and, therefore, did not include in the final Ochoa
4 transition plan). Tellingly, the citation highlights that Reading Recovery was a choice
5 among a half-dozen reading programs, and that District and Ochoa school leadership
6 made a decision to go with another program, Imagine Learning. The growth of Ochoa
7 from an “F” school in 2017 to a likely “C” school (and, perhaps even a “B” school) in
8 2019, is evidence that the professional educators at TUSD and at Ochoa made the right
9 decision, and that the Court should not overrule that decision by forcing the school to
10 implement Reading Recovery based on its 2017 label.⁴

11
12 **D. The Continues to Implement Successful, “Best-Practices” Strategies**

13 The Court directed that “*If it is the District’s position that the Reading Recovery*
14 *program is not cost effective* and should, therefore, be discontinued, reduced, or
15 modified, the District shall ensure that there are alternative programs, which must be
16 best-practices programs, to promote reading.” (Budget Order, Doc. 2272 at 9:22-25,
17 emphasis added). The District, in its report, did not state a position that Reading
18 Recovery was not cost effective, but did commit to “evaluate the costs and benefits of
19 [its new, itinerant] approach during the second semester to determine next steps for
20 SY2020-21.” (Doc. 2289-2 at 5).⁵

21
22 _____
23 ⁴ Mendoza Plaintiffs also object to SuccessMaker because a single website’s 2015 report (based
24 on a *single study of 1,000 students*), found it to have no impact on students in grades 5-7. Such
25 information is not relevant to the District’s implementation of Successmaker in grades K-5. In
26 addition, Mendoza Plaintiffs’ Exhibit 6, page 4 refers to those findings as “Extent of evidence:
27 Small,” Criteria met: One study....” (Doc. 2311-6 at 4, chart at midpage).

28 ⁵ Mendoza Plaintiffs’ footnote 2 (Doc. 2311 at 3) compares a statement made in 2016 about
information learned in 2015, with a statement made four years later in 2019. The 2019 statement
was not only made by the District, but the Court also acknowledged that “it is an expensive
program, and in addition to the price tag, the District questions justification for hiring one
teacher for 20 students when it is facing a teacher shortage.” (Budget Order at 9:7-9).

1 The District is not discontinuing, reducing, or modifying Reading Recovery in a
2 manner that requires replacing it with an alternative program. Nonetheless, the District
3 implements and funds a comprehensive, literacy framework that includes the following,
4 research-based, best practices programs and strategies for reading at *all elementary*
5 *schools and K-8 schools*:

- 6 • Benchmark Advanced / Benchmark Adelante (Tier 1 Adoption)
- 7 • Cengage (Tier 1 Adoption)
- 8 • SuccessMaker (Tier 2 and 3 Adoption)
- 9 • Scholastic Bookroom - Guided Reading (Tier 2 and 3 Adoption)

10 For more information, see Exhibit 1, TUSD Balanced Literacy Framework.

11 Based on reviews of evidence and data, the District identifies target sites for
12 additional job-embedded coaching to provide professional learning to teachers, and
13 supplemental programs like Reading Recovery. Job-embedded coaching is the primary
14 student support strategy because it builds teacher capacity to improve reading instruction
15 in classrooms through use of the four, research-based programs listed above.

16 17 **Conclusion**

18 For the reasons set forth above, this Court should reject the Mendoza Plaintiffs
19 request to compel Ochoa to implement Reading Recovery in 2019 based on its 2017
20 school letter grade. The District, having not determined to replace or reduce Reading
21 Recovery, has not developed “alternative programs,” but has provided its literacy
22 framework. The District’s comprehensive literacy approach includes foundational
23 programs (Benchmark, Cengage, SuccessMaker, Scholastic Bookroom at all schools),
24 supportive strategies (job-embedded coaching for teachers at target schools), and
25 supplemental supports (Reading Recovery, Imagine Learning, etc. at target schools).
26 The District respectfully requests the Court adopt its budget related to Reading
27 Recovery, which includes the proposed addition of two itinerant positions for the
28

1 second semester of SY2019-20 targeted, as directed by the Court, towards reaching
2 African American students and, secondarily, towards underachieving schools.

3 Respectfully submitted on October 15, 2019.

4 **TUCSON UNIFIED SCHOOL**
5 **DISTRICT LEGAL DEPARTMENT**

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th 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/ Samuel E. Brown

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