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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' RESPONSE  
TO TUSD SECOND SUPPLEMENTAL  
NOTICE AND REPORT OF  
COMPLIANCE: CERTIFICATION AND  
SUPPORT FOR BEGINNING TEACHERS  
AND OBJECTION TO THE DISTRICT'S  
REQUEST (DOC. 2327) THAT IT BE  
AWARDED PARTIAL UNITARY  
STATUS WITH RESPECT TO SECTION  
IV,E OF THE USP**

25  
26 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 Under this Court’s Orders of September 6, 2018 (“9/6/18 Order”) (Doc. 2123),  
11 April 22, 2019 (Doc. 2217), and September 10, 2019 (“9/10/19 Order”) (Doc. 2273),  
12 Mendoza Plaintiffs submit this Response to TUSD’s Second Supplemental Notice and  
13 Report of Compliance: Certification and Support for Beginning Teachers (Doc. 2327)  
14 (“Notice and Report”), and objection to the District’s request that it be granted partial  
15 unitary status with respect to USP Section IV, E.<sup>1</sup>  
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24 <sup>1</sup> Without waiving any of their other objections to the District’s request, the Mendoza  
25 Plaintiffs note (as they did with respect to TUSD’s Supplemental Notice and Report of  
26 Compliance: Certification and Support for Beginning Teachers (*see* Doc. 2227 at 1, n.1))  
27 that the District’s request is in any event overbroad since only subparagraph 5 of Section  
28 IV, E of the USP relates to the subject of the filing in which it has made this request, the  
assignment of first year teachers to racially concentrated and underperforming schools.  
That TUSD has additional work to do to fully implement other subparagraphs of Section  
IV, E is set forth in additional filings that the Mendoza Plaintiffs will be making in  
response to other second supplemental submissions made by the District on October 10,  
2019.

**ARGUMENT**

***TUSD’s 2019-2020 Beginning Teacher Inventory is Missing Data Expressly Called for by the 9/10/19 Order and Contains Data That Appears to be Inaccurate***

Unfortunately, it appears the District’s 2019-20 Beginning Teacher Inventory (“Inventory”) (Doc. 2327-2) fails to include information this Court expressly called for in its 9/10/19 Order, which it described as “essential to an effective beginning teacher support program... .” (9/10/19 Order at 4:17-18.) Further, based on Mendoza Plaintiffs’ understanding of the relative size of student populations at TUSD schools, it also is plain that the Inventory contains inaccurate data concerning the total number of teachers at schools.

First, this Court expressly called for certain information to be detailed in the Inventory including the anticipated number and percentages of beginning teachers and mentors. However, notwithstanding the Court’s direction, each of the following represents Court-mandated information that the District failed to include for each school in the Inventory:

- The number and percent of anticipated first-year teachers (*id.* at 12:14-15);
- The number and percent of anticipated second-year teachers (*id.*);
- The percent of actual beginning teacher-mentors for first and second year teachers (*id.* at 12:15-17);
- The number and percent of anticipated beginning teacher-mentors for first and second-year teachers (*id.*).

Mendoza Plaintiffs appreciate the District’s explanation that, with respect to additional first and second year teachers, it cannot anticipate where they will be placed

1 “since it is dependent on applicant credentials and subject content expertise” (Doc. 2327-  
2 3). However, the District’s reasoning seems more apt to explain why it cannot *know* with  
3 certainty where such teachers will be placed. This Court plainly was interested in an  
4 educated estimate of where additional beginning teachers would be placed,<sup>2</sup> something the  
5 District is equipped to do. The District for example knows what positions are vacant at  
6 which schools, which of those positions are “hard-to-fill” (*e.g.*, exceptional education) and  
7 thus potentially more likely to remain unfilled (assuming that is what the District’s trend  
8 data, to which TUSD makes reference (*id.*), shows), and which racially concentrated  
9 schools are performing above the District average (and thus are schools at which a  
10 beginning teacher presumably is more likely to be placed). Mendoza Plaintiffs submit that  
11 such information, coupled with the USP’s and this Court’s general guidelines against  
12 beginning teacher placement at racially concentrated or underperforming schools (as well  
13 as the certification process), should provide the District with the ability to make the  
14 school-specific estimates ordered by this Court.  
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18       Second, the Inventory apparently contains erroneous data concerning total number  
19 of actual and anticipated teachers by school. For example, the Inventory reports that  
20 TUSD’s largest school, Tucson High School, has 7 actual teachers and that a total of 8 are  
21 anticipated. (Inventory at 2.) Further, elementary schools like Tolson, Henry, and  
22 Dunham report 162, 99, and 99 total actual teachers, respectively, and 164, 101 and 103  
23 total anticipated teachers, respectively. (*Id.* at 3.) Given the small size of these schools,  
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26 <sup>2</sup> Indeed, this Court expressly ordered that at the end of the school year, the District shall  
27 refile an updated inventory to reflect actual end of year numbers (*id.* at 12:19-21) and thus  
28 plainly understood that actual placements may well turn out to be different than anticipated  
placements.

1 those numbers for actual and anticipated teachers must be wrong. Mendoza Plaintiffs do  
2 not here list every school for which there appears to be erroneous data and do not know if  
3 there are errors with respect to other categories of data, but what is clear is that the District  
4 must revise the Inventory to accurately report all data required by this Court in its 9/10/19  
5 Order. Further, Mendoza Plaintiffs respectfully request, to the extent this Court orders that  
6 the District file a revised Inventory, that TUSD be ordered to file a revised Inventory that  
7 is also updated to reflect the “District’s official 40<sup>th</sup> day enrollment and the final ADE  
8 released AzMERIT proficiency scores [that will be] available in November” that TUSD  
9 says may result in needed revision to the Inventory. (Doc. 2327-3 at 2, n.1.)  
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13 ***The District’s Filing Demonstrates That TUSD has Continuously Violated the***  
14 ***USP’s Provisions Concerning Beginning Teacher Placement Since the USP’s***  
15 ***Adoption and has Further Progress to Make with Respect to Beginning Teacher***  
16 ***Support; an Award of Partial Unitary Status Therefore is Premature***

17 The District’s submission confirms that it is not ready to be released from Court  
18 supervision. The Inventory demonstrates that, as in all past years since adoption of the  
19 USP, TUSD disproportionately assigned first-year teachers to racially concentrated and  
20 underperforming schools in the current 2019-2020 school year. Further, there is no data  
21 concerning any systematic implementation of the sheltering strategies this Court ordered  
22 be employed, and TUSD’s reported entry data errors resulting in the underreporting of  
23 beginning teachers further calls in to question whether these teachers have been provided  
24 required support.  
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27 First, with respect to placement of first-year teachers, Mendoza Plaintiffs  
28 respectfully invite the Court to review Mendoza Plaintiffs’ Objections to the Special

1 Master's 2016-17 Annual Report in which they compiled TUSD's own data to demonstrate  
2 that between the 2014-15 through 2017-18 school years, the District had been assigning  
3 roughly 75% (or more) first year teachers to racially concentrated schools and/or schools  
4 that were underperforming (*see* Doc. 2101 at 19:1-11). Yet, again, for the 2019-2020  
5 school year, the District has disproportionately assigned first year teachers to the these  
6 schools. Using the Inventory, Mendoza Plaintiffs determined that 92 of 125, or **73.6%**, of  
7 first year teachers were assigned to schools that were racially concentrated and/or  
8 underperforming (while only 33 such teachers, or 26.4%, were assigned to schools that  
9 were neither racially concentrated nor underperforming).<sup>3</sup> (*See* Inventory.) (Similarly,  
10 119 of 161, or 74%, of second-year teachers were assigned to racially concentrated and/or  
11 underperforming schools in the 2019-20 school year. (*Id.*)<sup>4</sup> Plainly, the consistent and  
12 ongoing violations of the USP's provision concerning assignment of beginning teachers  
13 (with virtually no decrease in the extent of such violation since the inception of the USP)  
14 does not reflect a school district that is ready to be released from court supervision. For  
15 this reason alone, this Court should deny the District's request that it be granted unitary  
16 status as to USP Section IV, E.

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<sup>3</sup> Notably, only 58.8% of schools in the Inventory are racially concentrated and/or  
23 underperforming. (*See id.*)

24 <sup>4</sup> Mendoza Plaintiffs find themselves confused about placement of first-year teachers  
25 during the 2018-19 school year. The District has inconsistently reported that there were  
26 54, and 82 first-year teachers in the 2018-19 school year. (*See* 4/22/19 Order (Doc. 2217)  
27 at 6:15-18 (54 first-year teachers); TUSD Annual Report for the 2018-19 School Year,  
28 Appendix IV-13 (Doc. 2301-1) at 61-63 (82 first-year teachers). Further, Mendoza  
Plaintiffs are unclear about the extent of the "data entry errors" that occurred with respect  
to beginning teachers, including the extent to which these errors affected any of the reports  
of first-year teachers in the 2018-19 school year referenced herein. (*See* Notice and Report  
at 3:1-6; Exhibit C to Notice and Report (Doc. 2327-3).)

1           Moreover, Mendoza Plaintiffs have not understood that the District has  
2 systematically implemented the very sheltering strategies that its own best practices  
3 information and studies have identified as essential for teacher retention. (*See* 9/10/19  
4 Order at 9:1-16 (identifying TUSD’s best practices information calling for sheltering  
5 strategies and “reaffirm[ing] its prior directive to the District to include... sheltering  
6 strategies, to mitigate the placement of a beginning teacher at an underperforming or  
7 racially concentrated school”).) Notably, beyond assertions that the District now has  
8 adopted sheltering strategies, and a listing of those strategies (Doc. 2327-4 at 1-2; Doc.  
9 2327-6), TUSD does not provide data concerning, for example, the instances in which  
10 individual sheltering strategies have been employed.<sup>5</sup> (Mendoza Plaintiffs further could  
11 not find information concerning the implementation of sheltering strategies in the  
12 District’s recently filed Annual Report for 2018-19 (Doc. 2298-1).)

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15           Further, Mendoza Plaintiffs are troubled by the District’s report that it apparently  
16 only recently discovered data entry issues for which it issued disciplinary letters to staff,  
17 and which resulted in underreporting of the number and assignment of beginning teachers  
18 to this Court. (Notice and Report at 3:1-9.) In its combined response to the Special  
19 Master’s report and recommendation and Mendoza Plaintiffs’ objections to the 2019-20  
20 budget (Doc. 2244), filed a few days before commencement of the school year, the District  
21 asserted that as of July 22, 2019, it had 50 first year teachers under contract to teach at  
22 racially concentrated or underperforming schools, and 135 other first and second year  
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26 <sup>5</sup> Mendoza Plaintiffs presume that following implementation of sheltering strategies across  
27 schools, TUSD would be able to obtain this data with respect to beginning teachers at  
28 racially concentrated and underperforming schools by, for example, compiling related data  
from certification forms (that form now being before this Court) following its finalization.

1 teachers. (Doc. 2244 at 2:12-14.) The Inventory reveals that there actually are **92** first  
2 year teachers assigned to teach at racially concentrated or underperforming schools, and  
3 194 other first and second year teachers (for a total of 286 beginning teachers). (*See*  
4 Inventory.) While the District asserts (without providing much detail or any data) that it is  
5 implementing sheltering strategies, it appears beginning teachers may not have received  
6 needed support, including sheltering strategies, as a result of what seems to have been on-  
7 going erroneous misclassifications.  
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9         Additionally, the District has not provided much information concerning the extent  
10 of the data entry issues it discovered. Thus, Mendoza Plaintiffs are unclear about whether  
11 these data entry issues may have been what caused the District to report different total  
12 numbers of first-year teachers during the 2018-19 school year (*see* 4/22/19 Order (Doc.  
13 2217) at 6:15-18 (54 first-year teachers); TUSD Annual Report for the 2018-19 School  
14 Year, Appendix IV-13 (Doc. 2301-1) at 61-63 (82 first-year teachers)), or to what extent  
15 these data entry errors may have resulted in erroneous reporting in past years, including  
16 such reporting in TUSD's annual reports. Mendoza Plaintiffs respectfully submit that the  
17 District must, to the extent it has not already done so, determine the extent of its data entry  
18 issues, and file revised beginning teacher data as needed to correct any inaccurate  
19 beginning teacher information filed as part of its past annual reports.  
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**CONCLUSION**

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2 For the reasons set forth above, Mendoza Plaintiffs respectfully request the Court to  
3 hold that the District has failed to comply with its 9/10/19 Order relating to beginning  
4 teachers and support, and USP Section IV, E, 5, and deny the District’s request that it be  
5 granted partial unitary status with respect to Section IV, E of the USP. Further, they  
6 respectfully request that this Court order the District to (1) file a revised (and corrected)  
7 inventory that accurately reports all data called for in this Court’s 9/10/19 Order, and that  
8 reflects the “District’s official 40<sup>th</sup> day enrollment and the final ADE released AzMERIT  
9 proficiency scores [that will be] available in November” (Doc. 2327-3 at 2, n.1.), and (2)  
10 determine the extent of its erroneous data entry issues, and file revised beginning teacher  
11 data as needed to correct any inaccurate beginning teacher information filed as part of its  
12 past annual reports.  
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15 In an excess of caution, Mendoza Plaintiffs respectfully invite the Court’s attention  
16 to their earlier objections to requests by the District for awards of partial unitary status and  
17 to their Motion to Stay (Doc. 2186), expressly incorporate herein the arguments set forth in  
18 those pleadings, and also note this Court’s statement when it denied that Motion that it will  
19 not again reach the question of unitary status until after the District’s Executive Summary  
20 filing and the proceedings relating thereto.  
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Dated: October 24, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 24, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD SECOND SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE: CERTIFICATION AND SUPPORT FOR BEGINNING TEACHERS AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2327) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION IV,E 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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Dated: October 24, 2019