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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: INCLUSIVE SCHOOL  
ENVIRONMENTS AND CULTURES OF  
CIVILITY AND OBJECTION TO THE  
DISTRICT'S REQUEST (DOC. 2328)  
THAT IT BE AWARDED PARTIAL  
UNITARY STATUS WITH RESPECT TO  
SECTION V,F OF THE USP**

25  
26 Hon. David C. Bury  
27  
28

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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9  
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: Inclusive School Environments and Cultures of Civility ("Second  
14 Supp. Report") (Doc. 2328), and objection to the District's request that it be granted partial  
15 unitary status with respect to USP Section IV, F.  
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18 **ARGUMENT**

19  
20 ***Apparently, TUSD has Again Failed to Collaborate With the Special Master With***  
21 ***Respect to Assessing the Effectiveness of Existing Inclusivity Strategies and Identifying***  
22 ***Possible Additional Strategies, and, Potentially, the Development of the Professional***  
***Learning Plan***

23  
24 After having reviewed TUSD's July 1, 2019 Supplemental Notice and Report of  
25 Compliance: Study of Strategies for Fostering Inclusiveness and Cultures of Civility  
26 ((Docs. 2232, 2232-1 ("July 1 Report")), Plaintiffs' objections, and the Special Master's  
27 related R&R ("8/9/19 R&R") (Doc. 2254), this Court stated the following in the 9/10/19  
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1 Order: the “District did not collaborate with the Special Master” with respect to assessing  
2 “the effectiveness of the strategies it has used to improve inclusive school environments  
3 and identify[ing] these and other effective strategies it intends to use now and, in the  
4 future, to improve and retain the sense of inclusiveness at its schools.” (9/10/19 Order at  
5 17:17-21, 2:21-25.) This Court therefore ordered TUSD to “immediately comply with this  
6 Court’s directive [originally] issued on September 6, 2018.” (*Id.* at 17:22-24.)

7  
8 Notwithstanding this Court’s clear directive, TUSD apparently has again failed to  
9 collaborate with the Special Master because it has attached the very same July 1 Report to  
10 its current filing that this Court referenced when it found that the District had failed to  
11 engage in the ordered collaboration. (*Compare* Exhibit B to Second Supp. Report (Doc.  
12 2328-2) *with* July 1 Report.) Indeed, the Second Supp. Report’s description of the  
13 purported collaboration with the Special Master matches the District’s description of the  
14 purported collaboration in its July 1 filing that the Special Master contested in his 8/9/19  
15 R&R and that this Court rejected in the 9/10/19 Order. (*Compare* Second Supp. Report at  
16 2:22-3:4, 4:12-19 *with* Doc. 2322 at 2:14-21; *see* 9/10/19 Order at 17:16-21 (“The District  
17 did not collaborate with the Special Master...”); 8/9/19 R&R at 2:19, 2 n.1 (TUSD “did  
18 not undertake an assessment...,” “there was no collaboration in the development of the  
19 professional learning plan”).)

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23 Tellingly, while the District cited to portions of the 8/9/19 R&R to claim that the  
24 Special Master’s comments “during [] collaboration” regarding the assessment of strategy  
25 effectiveness demonstrate that he is satisfied with TUSD’s July 1 Report (Second Supp.  
26 Report at 3:8-22), the District omitted the following contradictory 8/9/19 R&R language  
27 immediately preceding its selective citation:  
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1           The District *did not undertake an assessment of each of its own*  
2           *practices* but argued that the efficacy of those practices is  
3           demonstrated (a) by the research showing that inclusiveness and the  
4           absence of bullying in comparison to national data cited by the  
5           Special Master and [*sic*] (b) a review of published studies in other  
6           Districts.

6 (8/9/19 R&R at 2:19-23 (emphasis added).)<sup>1</sup>

7           Plainly, TUSD could not have collaborated with the Special Master concerning “an  
8           assessment” that “[t]he District did not undertake.” (*Id.*) Further, while Mendoza  
9           Plaintiffs recognize that in the 8/9/19 R&R (at 2-3) the Special Master described that it  
10          would be difficult to study the effectiveness of some TUSD inclusiveness strategies, this  
11          Court nonetheless subsequently ordered the District to comply with its long-standing order  
12          that TUSD work with the Special Master to (1) assess the effectiveness of existing  
13          strategies and (2) identify possible additional strategies. (9/10/19 Order at 22-24.) The  
14          District cannot selectively rely on comments in the Special Master’s 8/9/19 R&R to excuse  
15          its ongoing failure to comply with this Court’s directives.<sup>2</sup>

16           Because the District failed to follow this Court’s 9/10/19 Order and instead re-filed  
17           its July 1 Report as Exhibit B to the Second Supp. Report, the following issue raised with  
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<sup>1</sup> Mendoza Plaintiffs note that the TUSD “argu[ment]” referenced by the Special Master as not reflecting that the required assessment was conducted (and, therefore, that the related required collaboration occurred) regards the document filed as Exhibit B to the Second Supp. Report.

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<sup>2</sup> In this regard, Mendoza Plaintiffs see no reason why the District could not have collaborated with the Special Master with regard to assessing the effectiveness of its strategies, and, had such collaboration revealed strategies for which a study of effectiveness is exceedingly difficult, the District could have provided such report to the Court.

1 respect to the July 1 Report concerning TUSD’s claimed assessment of the effectiveness of  
2 TUSD’s strategies remains:

3 The issue, which the District has failed to address, is not the  
4 effectiveness of [its] general practices [as is reflected in the July 1  
5 Report and in the Second Supp. Report, Exhibit B ] but, rather,  
6 whether the particular strategies TUSD elected to include in its  
7 Inclusiveness [Professional Learning Plan (“PLP”)] (for example,  
8 workshops on “culturally responsive trauma-informed practices”  
9 delivered by the CEO of Youth Uprising, an ‘organization targeting  
10 at-risk youth in the Oakland, CA area’ [] Doc. 2156-2, at 4[])<sup>3</sup> can be  
11 or have been shown to be effective (or, alternatively, given the  
12 nature of the District’s recent submission, whether [TUSD] is in fact  
13 implementing a general methodology like Restorative Practices... in  
14 a manner that will build and sustain supportive and inclusive school  
15 environments, and whether it is providing the requisite professional  
16 development to ensure that outcome).

17 (Mendoza Plaintiffs’ Supplementary Response to TUSD Supplemental Notice and Report  
18 of Compliance: Study of Strategies for Fostering Cultures of Civility and Objection to the  
19 District’s Request That it be Awarded Partial Unitary Status With Respect to Section V, F  
20 of the USP (Doc. 2238) at 2:3-17.)

21 Further, it is unclear to the Mendoza Plaintiffs whether the District additionally  
22 failed to comply with this Court’s 9/10/19 Order mandate that it “collaborate with the

23 <sup>3</sup> In the Second Supp. Report, the District asserts that it will not engage “Youth UpRising,”  
24 and is “not even sure where the Special Master and Court got the idea that the District had  
25 used, worked with or even considered Youth UpRising.” (Second Supp. Report at 6:12-  
26 15.) Mendoza Plaintiffs understand that what the Special Master and Court were referring  
27 to was the “culturally responsive trauma-informed practices” training the District had  
28 previously indicated would be delivered by the “CEO of Youth Uprising” (Doc. 2156-2, at  
4). (The District’s filing had left unclear whether Youth Uprising itself was involved in  
the delivery of the contemplated services or to what extent its non-research based program  
was proposed to be the basis for the contemplated training.) Mendoza Plaintiffs note that  
while the District has now filed a “combined” discipline and inclusivity PLP (Second  
Supp. Report, Exhibit C), that PLP still includes a proposed “culturally responsive trauma-  
informed practices” workshop training (even though the reference to the CEO of Youth  
Uprising no longer remains). (Second Supp. Report, Exhibit C at 13.) Regardless of  
whether Youth Uprising itself is involved in the delivery of these workshops, the question  
remains whether its program and approach (or the program and approach of whatever  
unnamed alternative now is proposed to provide this professional development) has been  
shown to be effective.

1 Special Master to develop a professional learning plan for preparing District staff to  
2 implement the District’s program to create and maintain school environments of  
3 inclusiveness and civility.” (9/10/19 Order at 18:10-12.) The District’s vague description  
4 of the purported collaboration (at Second Supp. Report 5:9-6:6) with respect to the  
5 combined discipline and inclusivity PLP (Second Supp. Report, Exhibit C) seems to match  
6 the purported collaboration described in TUSD’s July 1 Filing (Doc. 2232 at 2:14-21) with  
7 respect to which the Special Master stated that “the District... [actually] did not  
8 collaborate” with him (8/9/19 R&R at 4:3-7, 5:1-3 (“The Court should remind the District  
9 that it had been directed to work with the Special Master to develop the professional  
10 learning plan for fostering inclusiveness and cultures of civility.”).)  
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13           Accordingly, Mendoza Plaintiffs respectfully request that this Court find that the  
14 District failed to comply with its 9/10/19 Order (and 9/6/18 Order) directive that it  
15 collaborate with the Special Master in assessing the effectiveness of existing strategies and  
16 identifying possible additional strategies to be used in the future, and potentially, with  
17 respect to developing a professional learning plan for preparing TUSD staff to implement  
18 TUSD’s program to create and maintain school environments of inclusivity and civility.  
19 (9/10/19 Order at 17:2218:12.)  
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23           ***In Light of This Court’s Recent Budget Order Providing Directives as to Discipline and***  
24           ***Inclusive School Environments and Cultures of Civility With the Possibility of Future***  
25           ***Corrective Action, Partial Unitary Status Cannot be Awarded in This Area***

26           The District first filed its combined discipline and inclusiveness PLP (filed as  
27 Second Supp. Report, Exhibit C) on August 30, 2019 as part of its Notice and Report of  
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1 Compliance Discipline Progress Report and Combined Discipline/Inclusivity Professional  
2 Learning Plan (Doc. 2266). As Mendoza Plaintiffs stated in response to that filing, this  
3 Court’s September 10, 2019 Order concerning the 2019-20 USP Budget (Doc. 2272)  
4 issued directives that preclude an award of partial unitary status in the areas of discipline  
5 and inclusivity and cultures of civility at this time.  
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7           Specifically, the Budget Order addressed the Special Master’s concern that TUSD’s  
8 heavy use of consultants resulted in “multiple resources [that] has led the District to have  
9 multiple instruments... which could be confusing. [The Special Master] recommends  
10 professional training and instruments of measurement be aligned to ensure coherence and  
11 consistency.” (Budget Order (Doc. 2272 at 6:11-16.) This Court ordered the Special  
12 Master to undertake an investigation to determine whether these problems exist with an  
13 opportunity to reurge his objections if they continue to exist. (*Id.*) The District has heavily  
14 relied on consultants to deliver discipline professional development, which, as TUSD  
15 states, “...completely overlaps [with] the inclusivity/civility plan: all of the training to  
16 create and maintain inclusive school environments is included within, and a subset of, the  
17 training the District provides to reduce the incidence of discipline by preventive means.”  
18 (Second Supp. Report at 5:11-14.)  
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22           Thus, given this Court’s order that the Special Master conduct a review of  
23 professional training and measurement instruments, with the possibility that future  
24 corrective action will be required, TUSD cannot be released from Court supervision in the  
25 area of inclusive school environment and cultures of civility at this time.  
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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 inclusive  
4 school environments and cultures of civility, and USP Section IV, F, and deny the  
5 District’s request that it be granted partial unitary status with respect to Section IV, F of  
6 the USP. In an excess of caution, Mendoza Plaintiffs respectfully invite the Court’s  
7 attention to their earlier objections to requests by the District to be awarded unitary status  
8 and to their Motion to Stay (Doc. 2186), expressly incorporate herein the arguments set  
9 forth in those pleadings, and also note this Court’s statement when it denied that Motion  
10 that it will not again reach the question of unitary status until after the District’s Executive  
11 Summary 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: INCLUSIVE SCHOOL ENVIRONMENTS AND CULTURES OF CIVILITY AND OBJECTION TO THE DISTRICT'S REQUEST (DOC. 2328) THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION V,F 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