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Tucson Unified School District No. 1

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 REPLY TO MENDOZA PLAINTIFFS' OBJECTIONS (2341)**
25 **TO SECOND SUPPLEMENTAL NOTICE OF COMPLIANCE:**
26 **DIVERSITY PLAN FOR TEACHERS AND ADMINISTRATORS**
(Orders 2123, 2217, and 2273)

1 The Court should overrule the Mendoza Plaintiffs' objections to the District's
2 Second Supplemental Notice of Compliance regarding its Diversity Plan for Teachers
3 and Administrators. As discussed in greater detail below, there should be no
4 "confusion," as the District did exactly as the Court requested, presenting in one single
5 document, with explanation and exhibits, its Diversity Plan for Teachers and
6 Administrators, including the previously approved filings. The District has made
7 steady progress in increasing diversity of its teaching staff, has expanded the transfer
8 program to include administrators, has dedicated a director level employee to do
9 nothing other than oversee and direct recruiting efforts for the transfer and grow-your-
10 own programs, and made it very clear that the grow your own programs are not unique
11 or limited to any particular race or ethnicity, but derive their status as programs for
12 teachers of color, or administrators of color, as a result of the targeted recruiting effort,
13 which has been quite successful this school year.

14 **A. There Is No Genuine Confusion.**

15 The Court's order on September 10 directed the District as to what to file:

16 The District shall file a Diversity Plan for Teachers and Administrators for
17 Certified Staff transfer programs and GYOPs, which shall include
18 previously reviewed and approved provisions (Docs 2159-1-2159-3; 2016-
19 1) and revisions previously ordered by the Court (Docs. 2123 and 2217)
20 and the directives ordered here.

21 ECF 2273, p. 1. In particular, there should be no issue about why the District included
22 the original study of the TDP (ECF 2159-1) or the original study of grow your own
23 programs (ECF 2159-3), since the Court specifically directed that those be included.
24 Nor is there any reason to go back and modify or restate the original TDP study, as the
25 Court has indicated that it was previously approved.

1 The District’s Diversity Plan, filed on October 10, 2019 (ECF 2329-1) followed
2 these directions, with specific explanation of its organization:

3 “This Diversity Plan for Teachers and Administrators has two major parts.

- 4 1. The first part is a Diversity Transfer Plan designed to encourage teachers
5 and administrators to transfer from one District school to another, to
6 improve the diversity at the receiving schools. A copy of the Diversity
7 Transfer Plan is attached as Exhibit 1.

8 The Diversity Transfer Plan in turn has several exhibits:

- 9 Exhibit 1-1: List of Diversity Transfer Plan Target Schools for Teachers.
10 Exhibit 1-2: Job Description, Director of Talent Acquisition Recruitment
11 and Retention.
12 Exhibit 1-3: School Administrative Staff by Race/Ethnicity
13 Exhibit 1-4: List of Diversity Transfer Plan Target Schools for
14 Administrators
15 Exhibit 1-5: The study of the original Teacher Diversity Plan filed as ECF
16 2159-1, and presented here again pursuant to the Court’s directives.
17 Exhibit 1-6: The recruiting plan for the Director of Talent Acquisition
18 Recruitment and Retention, originally filed as 2221-1, now
19 incorporated into the Diversity Transfer Plan, but presented here
20 again pursuant to the Court’s directives.

- 21 “2. The second part is a Plan for Improved Diversity Through Grow Your Own
22 Programs. A copy of this Plan is attached as Exhibit 2.

23 The Plan for Improved Diversity through Grow Your Own Programs in turn
24 has two exhibits:

- 25 Exhibit 2-1: LPA Syllabus.
Exhibit 2-2: The study of Grow Your Own Programs originally filed as
ECF 2159-3, now revised and updated, and presented here again
pursuant to the Court’s directives. This study formed the basis
for the Diversity GYO Plan.”

ECF 2329-1, p. 3. This clearly explains each part, why it is presented, and matches the
directions of the Court. There should be no genuine confusion.

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2 **B. The District Followed the Court's Instructions.**

3 The District followed the Court's instructions. The District has designated a
4 central staff, director level position, the Director of Talent Acquisition Recruitment and
5 Retention, who will be responsible for a focused, directed effort to identify and recruit
6 District teachers and administrators for its transfer and grow your own programs. The
7 Director will devote full time to these tasks, and will report to the head of the Human
8 Resources department at the District. [ECF 2329-1, p. 7.]

9 The District has developed a detailed recruiting plan for the transfer program,
10 originally filed in response to the Court's April, 2019 order (ECF 2221-1), but now
11 incorporated into the body of the plan, as directed by the Court. The District
12 considered and modified the available stipends to provide incentives for the plan, and
13 included the authority to customize incentives as needed to meet the needs of a transfer
14 candidate. [ECF 2329-1, pp. 7-9.]

15 The District selected new target schools for the next three years. The
16 methodology was clear and simple: the district identified as target schools any school
17 that currently did not meet the 15% rule, using the Final TDP numbers/beginning
18 Diversity Plan numbers for all schools, reported to the Court as directed (ECF 2329-2).
19 From that group, the District excluded dual language schools, as the Special Master did
20 with the original TDP, and any school at which only one individual would change the
21 status of the school under the 15% rule. [ECF 2329-1, p. 7.] The District reported the
22 resulting list of target schools to the Court. [ECF 2329-1, p. 15.]

23 The District expanded the transfer program to include administrators. The
24 District developed a list of incentives to offer, a recruiting plan, and a reporting plan for
25 the administrator transfer program. [ECF 2329-1., pp. 10-13.]

1 The District selected target schools for the administrative transfer plan. Of the
2 District's 85 schools, 55 have only one administrator, so "within-school" diversity of
3 administrative staff is not possible. Of the 30 schools with more than one administrator
4 in SY2019-20, only seven had homogeneous teams. Three of these schools had white
5 administrators (Alice Vail and Mansfeld middle schools and Safford K-8), and four
6 racially concentrated schools had Hispanic administrators (Vesey and White elementary
7 schools, Roskruge K-8, and Valencia Middle School).

8 Thus, only a few schools within the District are affected by an administrator
9 incentive plan. All schools were within one administrator of complying with the 15%
10 rule. The District considered the possibility of designating as target schools only the
11 schools which currently have homogeneous teams, and also considered simply
12 including every school not in technical compliance. Ultimately, the District began by
13 including every school not in technically in compliance with the 15% rule, and then
14 removing schools where the particular make-up of the current team, or other
15 considerations, suggested that the current racial/ethnic makeup of the administrative
16 team should not be artificially disturbed.¹ A list of resulting Diversity Transfer Plan
17 Target Schools for Administrators appears at ECF 2329-1, p. 24.

18
19
20 ¹ Booth-Fickett was not included because its three-administrator team is composed of one
21 each of White, African-American and Native American. There does not seem to be a
22 good reason to disturb this very healthy mix. Sahuaro was not included, because its four-
23 administrator team is one White, one African-American, and two Hispanic. No other
24 combination would yield a closer approach to compliance with the 15% rule. Tucson
25 High was not included because its seven-member administrative team is already very
diverse: two white, one African-American, and four Hispanic. Roskruge was not
included because it is a dual language school. Valencia, a three-administrator all-
Hispanic team was inadvertently not included on the target list, but will be considered a
target school for the program.

1 Finally, with respect to Grow Your Own Programs, the District was very clear
 2 that for many of the programs, the factor that rendered it a program for teachers or
 3 administrators of color was not the content of the program, but rather the recruiting for
 4 the program targeted to teachers and administrators of color. There is no suggestion
 5 that the content of any of the District's Grow Your Own programs is inappropriate for
 6 teachers or administrators of color.

7 The District's targeted recruiting program for its Leadership Prep Academy, one
 8 of the District's principal Grow Your Own programs for administrators, has been
 9 successful. This year (SY2019-20), the District sent e-mails to all African American
 10 and Hispanic teachers with at least three years of teaching experience, and who had not
 11 already attended the LPA, to invite them to consider applying to participate in the LPA
 12 set to begin in late October. A widespread announcement was also published on the
 13 TUSD intranet. In addition to the initial targeted recruitment of African American and
 14 Hispanic teachers, the Regional Assistant Superintendents sent a follow-up email to all
 15 African American teachers to further encourage them to apply, and made individual
 16 phone calls in many cases. The results are shown below and reflect the most diverse
 17 applicant pool to date.

18 **2019-20 SY Number of LPA Applicants by Race/Ethnicity**

Race/Ethnicity	Number	Percentage
African American	25	45%
Hispanic	14	25%
White	17	30%
TOTAL	56	

22 The 2019-20 LPA cohort was limited to 30 participants for logistical reasons.
 23 The District used screening criteria to consider when determining which applicant
 24 would be selected to participant in this year's LPA cohort, as follows:
 25

- 1 • Number of years of teaching experience
- 2 • Additional leadership roles
 - 3 ○ Principal designee
 - 4 ○ Dean of Students
 - 5 ○ MTSS Facilitator or Lead
 - 6 ○ Curriculum Service Providers
- 7 • Complete LPA Application Packet
 - 8 ○ Recommendation from an individual of the applicant’s choosing
 - 9 ○ Application form itself
 - 10 ○ Resume or Vita

11 The District considered all of these factors and selected the 30 strongest applicants
 12 to include in the 2019-20 cohort. The 2019-20 LPA Cohort is the most diverse
 13 cohort to date as shown below.

2019-20 SY LPA Applicants Selected to Participate

Race/Ethnicity	Number	Percentage
African American	13	43%
Hispanic	9	30%
White	8	27%
TOTAL	30	

18 The District is pleased with this result, and will evaluate the results of the academy in
 19 formulating its plans for the next academy.

21 **C. The District Has Made Steady Progress in Improving Diversity.**

22 Contrary to the Mendoza Plaintiffs’ argument, the District has in fact made steady
 23 progress in increasing diversity among its teaching and administrative staffs. Merely
 24 counting the number of schools in technical compliance with the 15% rule from year to
 25 year gives no credit for progress towards compliance. Over the past four years, the

1 District has successfully persuaded over 100 teachers to transfer to a school at which their
2 presence improves diversity. Given that many schools are now within one teacher of
3 compliance, this shift is significant, but totally ignored by the Mendoza Plaintiffs.

4 Moreover, elementary schools often have very small teacher groups – some as few
5 as ten, and many less than 25. Data for groups that small is likely to be (a) volatile from
6 year to year as a result of small random changes in personnel, and (b) so small that no
7 valid conclusions can be drawn. A change in one or two teachers at a small school, unless
8 they are replaced with teachers of the same race or ethnicity, can have massive impact on
9 percentages, with the result that schools bounce in and out of compliance from year to
10 year. The District observed this phenomenon, both within and outside the target group of
11 schools. The District is also concerned that in this small group setting, concern about
12 meeting 15% targets may elevate race or ethnicity above acceptable levels of importance
13 in hiring decisions, particularly given that there is no finding that the District has ever
14 discriminated in the hiring of teachers.

15 In addition, the District already employs African American and Hispanic teachers
16 at a rate higher than would be expected, considering the teacher demographics of the
17 United States and the state of Arizona, as reflected in the chart below. Moreover, the
18 trend over the last four years at the District is towards increasing diversity:

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Percent of Teachers by Race and Ethnicity ²						
	Hispanic	White	AA	Asian	Haw/P.I.	Nat. Am.
United States	7.8%	81.9	6.8%	1.8%	.1%	.5%
Arizona	13.1%	80.1%	2.8%	1.7%	n.r.	1.3%
Tucson Unified School District						
2016-17	28.1%	65.4%	3.0%	1.8%	0.2%	1.4%
2017-18	29.1%	64.2%	2.9%	2.0%	0.2%	1.5%
2018-19	29.0%	63.0%	3.4%	2.8%	0.3%	1.4%
2019-20	30.0%	61.9%	3.4%	2.9%	0.2%	1.6%

But more fundamentally, requiring any particular outcome as a condition for termination of supervision, as suggested by the Mendoza Plaintiffs' objection, is wholly inappropriate and contrary to law, particularly where, as here, factors beyond the District's control affect outcomes, such as teachers' personal choices as to where they wish to teach, and the practical inability to force placement in the face of a widespread national teachers' shortage. *Cf. People Who Care v. Rockford Board of Ed.*, 246 F.3d 1073, 1076 (7th Cir. 2001)(school district has no duty to eliminate effects of factors beyond the control of the District.)

Accordingly, the District respectfully submits that it has complied with the Court's orders, and renews its request that the Court grant partial unitary status in this area of District operations (USP IV.A, F.1, I.3).

² United States and Arizona data is for 2011-12, the latest year for which the District could find data.

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Dated this 31st day of October, 2019.

Respectfully submitted,

/s/ P. Bruce Converse

P. Bruce Converse

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Attorneys for Tucson Unified School

District No. 1

CERTIFICATE OF SERVICE

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I hereby certify that on the 31st 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