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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 **TUSD REPLY TO**  
37 **MENDOZA PLAINTIFFS' OBJECTION TO**  
38 **DISTRICT'S SECOND SUPPLEMENTAL**  
39 **NOTICE AND REPORT OF COMPLIANCE: INCLUSIVE SCHOOL**  
40 **ENVIRONMENTS AND CULTURES OF CIVILITY (ECF 2343)**

1 **A. The District Collaborated with the Special Master on the Study of**  
2 **Effectiveness and Identification of Additional Strategies.**

3 The District wishes to be completely and unequivocally clear: the District  
4 undertook a study, in May and June of 2019, of the effectiveness of its strategies to  
5 promote inclusiveness and civility, and to identify additional strategies that might be used  
6 in the future. The Special Master was directly involved in the design of that study,  
7 reviewed drafts, and provided comments on those drafts. **The Special Master has**  
8 **acknowledged that he collaborated on that study.**<sup>1</sup> The study of effectiveness and  
9 additional strategies was filed on July 1, 2019. [ECF 2232-1.]

10 Here is the section of the study which identified additional strategies that might  
11 be used in the future:

12 **“PART B: Other Strategies.**

13 TUSD also addressed whether there were other strategies to promote a sense of  
14 inclusiveness and culture of civility which the district should employ, or at least  
15 consider for future use. Research suggests that although there are a plethora of  
16 different names for programs from various sources, almost all are based on the same  
17 common underlying principles already in use in the District. Whether a school  
18 district chooses to implement Restorative Practice instead of Restorative Justice, or  
19 PBIS instead of Safe & Civil Schools, each set shares the same primary features.  
20 For example, PBIS and Safe & Civil Schools both employ positive behavior  
21 strategies. Indeed, since the five strategies currently used by the District are viable  
22 options implemented to some extent by a number of school districts across the  
23 nation, the key for TUSD success is to implement the chosen strategies with  
24 fidelity, monitor, evaluate, and improve as needed over time.

25 There is one additional strategy that has been used in other districts, however, that  
26 TUSD has not yet attempted: the use of a specific social-emotional learning  
27 curriculum for students. An SEL curriculum appears to be most effective when used  
28 across all grade levels, especially in grades Kindergarten – Eighth Grade. This may  
be a strategy that the district can consider later as an extension for building SEL  
skills.

There are 25 high-quality leading SEL programs which have been shown to  
produce positive outcomes for students, but there continues to be further research  
conducted to better understand which combination of social-emotional skills most

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<sup>1</sup> The Mendoza Plaintiffs once again misleadingly quote the Special Master on this issue. The quote they proffer concerned the **professional learning plan**, not the study of effectiveness and identification of additional strategies for the future.

1 effectively influences which outcomes for different subgroups of students and how  
2 best to support staff as they implement interventions (CASEL, 2008).

3 The District will continue to build on the strong base that has been established,  
4 continuing to monitor and analyze responses to the student and teacher surveys, and  
5 discipline data. Should the continuing analysis show a significant change in the  
6 future, in addition to emphasizing fidelity in implementation of the existing  
7 strategies, TUSD will consider the integration of a formal SEL curriculum within  
8 the overall curricula for teaching at TUSD.”

9 [ECF2232-1, pp. 19-20.] The Special Master was involved even to the extent of offering  
10 suggestions as to the wording of the concluding paragraph of the above-quoted section.

11 Accordingly, this study, which identifies other strategies to be used in the future,  
12 done with the collaboration of the Special Master in May and June of 2019, meets the  
13 requirements of the Court’s subsequent order on September 10 to “collaborate with the  
14 Special Master to identify strategies to be used in the future at schools that need  
15 improvement.” In short, the collaborative identification of strategies requested by the  
16 Court in September **did in fact occur** – but it occurred in May and June, 2019. This was  
17 all explained in the District’s Second Supplemental Notice of Compliance (ECF 2328 at  
18 2-3). The Mendoza Plaintiffs objection based on lack of collaboration should be  
19 summarily overruled.

20 **B. The District Collaborated with the Special Master on the Study of the Effects**  
21 **of the Pilot Intervention Program Using Restorative Practices as Instruction.**

22 Recognizing the Special Master’s acknowledgment that a traditional, quantitative  
23 study of the effectiveness of individual strategies based on data from the District would  
24 be all but impossible (since multiple strategies have been employed simultaneously  
25 across the District), the Special Master instead suggested, and the Court ordered, an  
26 alternative: a study of the pilot intervention program using restorative processes as  
27 instruction, and identifying positive and negative outliers.

28 As noted in the District’s Second Supplemental Notice of Compliance, the District  
did in fact collaborate with the Special Master on the design of this alternative study, and  
the study itself was attached to the Second Supplemental Notice of Compliance.  
Significantly, no objection to the substance of this study has been raised.

1 The Mendoza Plaintiffs complain because they apparently do not understand that  
2 the study of the pilot program was the alternative suggested by the Special Master, and  
3 subsequently ordered by the Court, in place of the all-but-impossible quantitative study  
4 of the effectiveness of individual strategies, where multiple strategies have been  
5 employed simultaneously across the District. The Mendoza Plaintiffs' objection that the  
6 all-but-impossible quantitative study has not been undertaken should thus be overruled.

7  
8 **C. The District Collaborated with the Special Master on the Combined Professional Learning Plan for Discipline and Inclusiveness/Civility.**

9 The District collaborated with the Special Master on the combined professional  
10 learning plan for discipline and inclusiveness/civility, as described in the Second  
11 Supplemental Notice of Compliance, including in-person meetings, phone conferences,  
12 and comments back and forth on drafts. The Special Master's statement in his August  
13 R&R, "the District and the Special Master did not collaborate in the development of the  
14 professional learning plan" apparently referred to the period before the District filed its  
15 first plan (inclusivity only) in December, 2018.<sup>2</sup> As noted in the Second Supplemental  
16 Notice of Compliance, the District continued working on the combined plan (both  
17 inclusivity and discipline) after that December, 2018 filing, and the collaboration on the  
18 combined plan occurred after that December, 2018

19 On May 6, 2019, the Special Master attended an in-person meeting with District  
20 staff related specifically to "ISE & Professional Learning for Cultures of Civility and  
21 Discipline Professional Learning Plan." *See* Exhibit A, Calendar Invite for 5/6/19.  
22 Between May and August, District staff and counsel discussed the plan via phone  
23 conferences. Over the summer, the District submitted documents and plan provisions to  
24 the Special Master for feedback. The Special Master responded both by telephone and  
25 email. *See* Exhibit B, SM Email re Discipline/Inclusion PLP, August 2019. In short, the

26  
27 <sup>2</sup> At the time the Special Master made that comment in August, 2019, the only  
28 professional learning plan covering inclusivity and civility on file was the December,  
2018 plan, thus he had to have been referring to the period prior to the filing of that plan  
in December, 2018.

1 District collaborated fully with the Special Master on the development of the combined  
2 professional learning plan for discipline and inclusiveness/civility, which was filed on  
3 August 30, 2019, to comply with the Court’s timetable for a discipline professional  
4 learning plan, and again on October 10, 2019, to comply with the Court’s timetable for  
5 an inclusiveness/civility professional learning plan. Accordingly, the Mendoza  
6 Plaintiffs’ objection based on claimed lack of collaboration on professional learning plans  
7 should be overruled.

8 **Conclusion**

9 Having found no deficiencies and having raised no substantive objections to the  
10 District’s compliance with the Court’s directives, Mendoza Plaintiffs sole objection – that  
11 the District did not collaborate with the Special Master – must be overruled in light of the  
12 evidence of District collaboration with the Special Master to assess existing strategies,  
13 identify additional strategies, and develop a professional learning plan. For the foregoing  
14 reasons, the District respectfully requests that the Court overrule the Mendoza Plaintiffs’  
15 objections and hold that the District has complied with the Court’s directives related to  
16 inclusivity and civility.

17 Respectfully submitted on October 31, 2019.

18 **TUCSON UNIFIED SCHOOL**  
19 **DISTRICT LEGAL DEPARTMENT**

20 /s/Samuel E. Brown

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 31<sup>st</sup> 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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