

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Roy and Josie Fisher, et al.,
Plaintiffs
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.,
Defendants,
and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

Maria Mendoza, et al.,
Plaintiffs,
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.
Defendants.

No. CV-74-00090-TUC-DCB
(Lead Case)

No. CV-74-0204-TUC-DCB
(Consolidated Case)

ORDER

Supplemental Notice of Compliance: ELL Dropout and Graduation Rates

1 On September 6, 2018, the Court considered the District's assertion that it had
2 attained unitary status for the Unitary Status Plan, Student Engagement and Support,
3 Academic Intervention and Dropout Prevention, USP § V.E.d-1. The Special Master
4 reported that District graduation rates are relatively high and would be envied by any other
5 District serving the type of diverse student body found in Tucson Unified School District
6 (TUSD). (Order (Doc. 2123) at 104.) With one exception, African American students,
7 graduation rates exceeded state and national averages, but African American students
8 graduated at rates equal to or higher than White and Latino students in all the District's
9 high schools. The Special Master's recommendation for completion was that the District
10 needed to develop an ELL Action Plan for Dropout, Retention and Absenteeism before the
11 Court should consider granting unitary status. *Id.* at 105. The Court adopted the Special
12 Master's recommendation that the "District should be awarded unitary status with respect
13 to rates of graduation, dropout, retention and absenteeism except with respect to ELL
14 students." (R&R (Doc. 2096) at 53.)

15 On December 6, 2018, the District filed a Notice of Compliance (NC): ELL Action
16 Plan. (Doc. 2153-1). The Court reviewed the ELL Action Plan, Objections, and a Report
17 and Recommendation (R&R). The Court approved the District's ELL graduation goal, but
18 questioned the ELL dropout goal: "the ELL dropout rate to be equal to or lower than the
19 non-ELL rate." (Order (Doc. 2217) at 4.) The Court compared the ELL dropout goal with
20 the ELL graduation goal. *Id.* at 5. The Court noticed that the graduation goal had resulted
21 in ELL graduation rates exceeding state ELL graduation rates, but that the ELL dropout
22 goal had not resulted in beating the state average. The Court asked the District to determine
23 and report in the 2018-19 DAR whether the goal was sufficiently ambitious. *Id.* The Court
24 directed the District to add Family and Community Engagement (FACE) strategies to the
25 ELL Action Plan. (Order (Doc. 2213) at 12.)

26 On August 30, 2019, the District filed the ELL Action Plan for Dropout Prevention
27 to add FACE strategies. (Doc. 2261.) The Mendoza response, filed September 20, 2019,
28 expressed concern that the District ELL Action Plan reflected SY 2017-18 goals. They

1 questioned whether annual review and goal setting was in fact occurring. The District's
2 October filing, discussed below, reflects that the annual review and goal setting is occurring
3 as reported by the District. The Court addresses the sufficiency of the ELL dropout goal
4 below. Instead of discussing the newly added FACE strategies, the Mendoza Plaintiffs
5 questioned the status of efforts to strengthen sheltered content as being the same as reported
6 in December 2018. The Mendoza Plaintiffs reference the ELL Action Plan (Doc. 2153-1),
7 which the Court ordered the District to revise to add the FACE strategies. The Court did
8 not intend for the District to provide ongoing updates of all the provisions included in the
9 plan.¹ Nevertheless, the District responded to the Mendoza Plaintiffs' concerns and the
10 Court is satisfied that the plan provisions for expanding sheltered content classes is
11 progressing. *See* (Reply (Doc. 2316) at 3-5.)

12 As noted below, the FACE strategies include roles and responsibilities assigned to
13 AASSD and MASSD. These plans are currently under review by the Special Master. The
14 Court finds that it makes sense to have the Special Master comment on the FACE additions
15 to the ELL Action Plan after he has worked out specifics for AASSD and MASSD.

16 On October 1, 2019, the District filed the Supplemental Notice of Compliance (Doc.
17 2310) reporting its reconsideration of the dropout goal for ELL students, it determined to
18 retain it because the goal "equaled or was lower than the state dropout rate of 1.8 percent)
19 in two of the past four years for African American ELLs and for three of the past four years
20 for Hispanic ELLs." (NC (Doc. 2310-1) at 4.) Put another way, "[s]etting an expectation
21 that ELL students . . . will have a dropout rate that is equal to or *better than* non-ELL
22 students (who have a dropout rate better than the rest of the nation) is sufficiently
23 ambitious." (Reply (Doc. 2335) at 3.) The Court notes that the NC appears to measure the
24 goal against the state average dropout rate for all non-ELL students. The latter justification

25
26 ¹ The Court notes that the December 6, 2018, NC (2153-1) was captioned "ELL
27 Action Plan: Graduation, Dropout Retention and Absenteeism" as compared to the revision
28 (Doc. 2261-1) which is captioned "ELL Action Plan: Graduation and Dropout Prevention."
The District should hereto forward use the latter title unless there was a substantive
distinction for including the Retention and Absenteeism designation in the title of the
former document.

1 in the Reply assess the sufficiency of the ELL dropout goal against the national dropout
2 rates for non-ELL student counterparts, African American and Hispanic students. Either
3 way, the Court approves the ELL dropout goal as follows: “an ELL dropout goal that is
4 equal to or lower than² the dropout rate for non-ELL TUSD student cohorts for African
5 American and Hispanic ELL students, *providing that the non-ELL TUSD student dropout*
6 *rates are equal to or better than the national and state averages for non-ELL African*
7 *American and Hispanic student.*

8 As the Court understands the assertions of the District, it failed to meet the
9 graduation and dropout goals for both African American and Hispanic students in SY 2018-
10 19, but met the ELL dropout goal for both cohorts by being equal to or less than the non-
11 ELL dropout rates. Linking the ELL dropout goals to the non-ELL dropout rates means all
12 boats rise or sink together, which may or may not be a good thing depending on whether
13 the boats are rising or sinking. Consequently, the Court approves the ELL dropout goal
14 with the District’s rationale supporting it, which allows for the two to be linked providing
15 that the non-ELL TUSD student dropout rates are equal to or better than the national and
16 state averages for their non-ELL student cohorts. This creates a floor under the District’s
17 more ambitious goals, the ceiling. It also brings into view the Mendoza Plaintiffs’ concerns
18 regarding non-ELL African American student dropout rate.

19 In rebuttal to the Mendoza challenge that the District has failed to take measures to
20 improve African American graduation and dropout rates, the District refers the Court to
21 the 2018-19 DAR to flesh out the Supplemental NC assertion that the District “made
22 improvements in several areas.” (Reply (Doc. 2335) at 4-5 (citing NC (Doc. 2310-1) at 2.)
23 The Court has reviewed the DAR and is concerned because one of the primary means of
24 delivering graduation support and dropout prevention are the student support departments,
25 AASSD and MASSD. The Court has just asked the Special Master to rework them. The
26 Court is especially concerned that the District’s planned reliance on AASSD to improve
27 African American graduation and dropout rates could be misplaced, if changes are made

28 ² Alternatively stated as: “better than.”

1 to AASSD without considering its role in a successful DPG Plan for African American
2 students. The AASSD, as revised by the Special Master, shall include an addendum
3 addressing the responsibilities, if any remaining delegated to AASSD, for the DPG plan
4 for African American students, including ELL African American students. The addendum
5 shall include recommended alternative delegations for responsibilities not assigned to
6 AASSD, which are better performed by other core-departments. Overall, the Court wants
7 to see that a comprehensive plan exists for improving graduation and dropout rates for
8 African American students, including ELL African American students. This addendum
9 should reflect a clear plan, without duplication, identifying respective responsibilities for
10 each core-department and the individual schools, with professional staff qualified to
11 perform the various responsibilities as assigned. To the extent that success of the DPG Plan
12 for African American students, including ELL students, relies on EBAS, this should be
13 explained. This addendum is an opportunity to make a record on the role EBAS is playing
14 in the effective delivery of student support services, or not. (Order (Doc. 2123) at 142-143
15 (noting record is scant and effectiveness of EBAS will be considered in the context of
16 specific USP programs).

17 Simultaneously, the Special Master shall file the R&R addressing the District's
18 Notices of Compliance Re: ELL Dropout and Graduation Rates solely in the context of the
19 FACE strategies and whether they are sufficient or require amendment subsequent to any
20 revisions made, pursuant to his recommendations, to the AASSD and MASSD plans. The
21 Special Master shall also, with the assistance of the District, consider substantively the
22 District's strategies for improving the ELL-goals' underpinning graduation and dropout
23 rates for African American students. He shall provide an addendum which briefly outlines
24 the District's strategies for improving African American graduation rates and reducing
25 dropout rates and make any recommendations for additional strategies available to the
26 District to target this problem.

27 **Accordingly,**

28 **IT IS ORDERED** that the ELL dropout goal is approved as follows: "an ELL

1 dropout goal that is equal to or lower than³ the dropout rate for non-ELL TUSD student
2 cohorts for African American and Hispanic ELL students, providing that the non-ELL
3 TUSD student dropout rates are equal to or better than the national and state averages for
4 non-ELL African American and Hispanic (cohort) students.

5 **IT IS FURTHER ORDERED** that the Special Master and the District shall work
6 together to prepare the African American DPG Addendum to the AASSD Plan to be
7 included in the pending Special Master’s Report and Recommendation Re: AASSD and
8 MASSD Plans.

9 **IT IS FURTHER ORDERED** that simultaneously with the filing of the Report
10 and Recommendation Re: AASSD and MASSD Plans, the Special Master shall file a
11 Report and Recommendation to the Notices of Compliance Re: ELL Dropout and
12 Graduation Rates (Docs. 2310, 2261) addressing the FACE strategies, including the
13 Addendum for DPG strategies for African American students.

14 Dated this 15th day of November, 2019.

15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable David C. Bury
United States District Judge

³ Alternatively stated as: “better than.”