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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S REPORT AND RECOMMENDATION**
2 **RE THE ALE POLICY MANUAL**

3 Introduction

4 While the nominal issue that the parties are working on is described as the ALE Policy
5 Manual, the issues involved have to do with ALE policies and practices that are described in the
6 policy manual as well as the ALE Progress Report and the ALE Operations Manual. The District
7 filed its description of the completion plan for the ALE Policy Manual on August 30, 2019. The
8 Fisher plaintiffs filed their objections on September 20 and the Mendoza plaintiff’s filed their
9 objections on September 23. The District then filed its response to the plaintiff’s objections on
10 October 7, 2019. These dates are important to keep in mind because the data that are cited by the
11 Mendoza plaintiffs and the District are quite different. Since the only data available comes from
12 the District, the Special Master will use the District’s data from its October response to the
13 plaintiffs in this report.
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16 It seems worth noting that between 2012-13 and 2018 19, the numbers of African
17 American students participating in ALE has increased 41% and the number of Latino students has
18 increased 23%. For both racial groups, the sharpest rise in participation occurred over the last
19 two years after a drop in enrollment in the 2016-17 school year.

20 The Fisher plaintiffs did not object to elements of the plan submitted by the District but
21 they expressed doubt that the District’s conclusions were accurate and requested relevant
22 information. The Mendoza plaintiffs called into question numerous claims by the District and
23 asserted that most of these were required by the Court as elements of the policy manual. Special
24 Master is not concerned in this part of the report with where the information related to ALE
25 policies and practices should be published and will deal with that issue in his recommendations.
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1 In the next section of this report, the Special Master examines 10 claims made by the Mendoza
2 plaintiffs.

3 Analysis

- 4 1. The Mendoza plaintiffs claim that the District has ignored the Court's direction
5 that additional self-contained GATE programs be located in areas where large
6 numbers of Latino and African American students live. The Special Master and
7 the members of the Implementation Committee agree with the District that most of
8 the self-contained GATE programs are located in schools and communities with
9 relatively large numbers of Latino and African American students. Moreover, the
10 District has increased the number of schools in which students can participate in
11 GATE programs without passing the test that determines eligibility for self-
12 contained programs by locating cluster GATE programs in schools with relatively
13 large numbers of African-American and Latino students and has created two self-
14 contained programs in which tests do not determine eligibility in schools with
15 large numbers of African-American and Latino students.
- 16 2. The Mendoza plaintiffs claim that the District did not undertake a study ordered by
17 the Court about whether pre-AP or GATE programs promote success in AP
18 classes. The District cites a study by the Special Master that concluded that pre-
19 AP classes have only a small effect on success in AP classes. This is not
20 surprising because these pre-AP classes are not preparation classes for AP and do
21 not map on the content of AP classes. Prior to the AP tests, schools do provide
22 test prep sessions so that students will know what to expect and have guidance
23 about making decisions when they are not certain about the answer. The District
24 cites a study of its own that shows that students who participate in self-contained
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1 GATE programs do better on AP tests than those who do not. This too is not
2 surprising. Students in self-contained GATE programs are in those programs
3 because they scored well on tests of cognitive capability.

4 3. Mendoza plaintiffs assert that the District does not adequately answer the question
5 of whether schools should be allowed to replace AP classes with dual credit
6 classes. This is the case at Santa Rita High School although there is one AP class.
7 The school administrators and apparently families at Santa Rita prefer dual credit
8 classes to AP because state law says that such courses will count for credit in
9 Arizona colleges and universities. This saves students and their families a
10 considerable amount of money. Moreover, passing such courses is considerably
11 easier than scoring three or above on AP test. But for students who wish to go to
12 college outside of Arizona, their credits will transfer to those institutions to the
13 extent those institutions accept a transfer of Pima Community College or the
14 University of Arizona credits, which some of the more selective institutions may
15 not allow.

16 4. Mendoza plaintiffs assert that the District did not respond to the Court's direction
17 that it undertake a study of the feasibility of opting out as a way of increasing
18 enrollment of African American and Latino students in a GATE or UHS. The
19 District points out that the Fisher plaintiffs were adamant in their opposition to
20 automatically enrolling students who were eligible to participate in courses or
21 schools where tests determine eligibility. They note that the Special Master, while
22 favoring the opt-out option, recommended that at the time that this issue was
23 considered that it was not worth contesting the Fisher's position. The Special
24 Master now feels otherwise and notes that the Fisher plaintiffs provide no evidence
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1 that African American families oppose an opt-out policy. The Special Master
2 believes that an opt-out approach could be implemented in ways that allow parents
3 to immediately opt-out should they wish to do so. This approach is identified in
4 the recommendations below.

- 5
- 6 5. An impediment to increasing the number of GATE programs has been the
7 difficulty of recruiting teachers to become GATE certified. The Mendoza
8 plaintiffs assert that the District has not studied whether increasing the stipends to
9 teachers would remedy this problem. The District's response is that its incentive
10 plan has resulted in a substantial increase in GATE-endorsed teachers¹ and a
11 corresponding increase in available GATE options throughout the District, as
12 reflected in the increased number of students enrolled in GATE programs.
- 13
- 14 6. The Special Master has recommended that the District explore the possibility of
15 using the tutoring model employed for IB students at Cholla High School. This
16 model uses IB teachers to tutor students in the courses the teachers teach and using
17 Title I funds, the school pays teachers more than is the going rate in other schools
18 where 910 G money is used. The District responds by saying that the cost of such
19 a program of tutoring would be prohibitive. The Special Master and the plaintiffs
20 have argued that tutoring should be done by certified teachers. It is time to rethink
21 that policy even though it is supported by research. Robert Slavin of Johns
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24 ¹ During SY2018-19, 71 GATE teachers with their permanent gifted endorsement who were teaching in a
25 GATE classroom received a stipend. An additional ten GATE self-contained teachers earned their
26 permanent endorsement at the end of SY2018-19, thus increasing the total number of gifted teachers for
27 SY2019-20. An additional fifteen GATE cluster teachers earned their provisional gifted endorsement and
28 eight teachers at Tully's GATE open-access magnet school earned either their provisional or permanent
gifted endorsement at the end of SY2018-19. A total of 206 certificated staff members have gifted
endorsements. (**Appendix V – 9, V.G.1.j Certificated Staff with ALE Credentials**). (ECF 2298-1,
p. 63)

1 Hopkins University, who is one of the most prominent scholars who has studied
2 tutoring, has recently endorsed a different approach using tutoring teams made up
3 of teacher candidates and others who are supervised by a certified teacher who
4 teaches the course for which students need tutoring. This model would cost less to
5 implement even if the teachers who supervise and train the tutors would be paid
6 larger stipends.
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8 7. The Mendoza plaintiffs assert that the district does not make sufficient
9 accommodation for GATE students to participate in dual language programs when
10 they do not speak Spanish. This Court knows that the District has chosen to
11 implement a model for dual language that requires students who have completed
12 kindergarten and first grade to speak Spanish or to take a test to qualify them with
13 a certain level of Spanish competence. Research shows this TWDL model to be
14 the best approach to achieving fluency in English and Spanish but it is not the best
15 model for integration. There is but one dual language GATE program – Hollinger
16 K8 (the GATE program was K-6. There was a 6-8 program at Pistor dual
17 language program that enrolled only six middle grade students. The dual language
18 students at Hollinger apparently chose not to transfer to Pistor’s GATE program so
19 the District moved to the middle school dual language program to Hollinger and
20 facilitated the movement of those students at Pistor who chose to transfer over a
21 three-year period. This resulted in a noticeable increase in the number of TUSD
22 students in dual language GATE programs though the number is small (178
23 students).
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26 8. Mendoza plaintiffs assert that the District has not undertaken a study directed by
27 the Court to examine whether creating the courses or summer programs facilitate
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1 success in advanced placement at UHS where most courses are AP. The District's
 2 response to the Mendoza plaintiffs is essentially to finesse the question because
 3 they do not offer a summer program to UHS entering students.

4 Boost, a freshman orientation and induction program, continued its mission to address and
 5 implement more targeted interventions for incoming freshmen and eliminate academic skill gaps.
 6 As shown in Table 5.7 below, the percentage of African American students participating in Boost
 7 more than doubled between 2018 and 2019. (Doc. 2298-1, p. 75)

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 9 **Table 5.7: Four-Year Boost Participation Data**

10 Ethnicity/Race	Summer 2016	Summer 2017	Summer 2018	Summer 2019
11 White	91 (38%)	163 (49%)	117 (47%)	189 (49%)
12 African American	3 (1%)	2 (1%)	9 (3%)	23 (6%)
13 Hispanic	103 (44%)	107 (32%)	81 (32%)	122 (32%)
14 Native American	0 (0%)	0 (0%)	3 (1%)	2 (1%)
15 Asian/Pacific Islander	15 (6%)	37 (11%)	24 (9%)	32 (8%)
16 Multi-racial	19 (8%)	22 (6%)	14 (12%)	19 (5%)

17 9. In response to concern is that out of District students at UHS reduce the
 18 opportunities that TUSD students have to enroll at UHS, the District says that not
 19 only are all TUSD students who meet the eligibility requirement for admission to
 20 UHS admitted but that TUSD students below the cutoff line (which is defined by
 21 test scores and grade point averages) are offered the opportunity to be admitted to
 22 UHS based on alternative measures of their potential success in the school.

23 10. Mendoza plaintiffs claim that the District did identify policies to reduce attrition
 24 but did not focus on Latino students as it was directed to do so by the Court. It
 25 seems that if the District wants to reduce the attrition of all students regardless of
 26 race that the District should be congratulated for doing so rather than criticized.
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1 The Mendoza plaintiffs did not identify policies and practices that would be
2 uniquely productive for Latino students.

3 Recommendations

4 In holding the District accountable for addressing the requirements of the USP, a
5 ubiquitous problem is the setting of goals. With respect to ALEs, the Mendoza plaintiffs want the
6 District to achieve parity across all races. The District appears to support the 15% rule.² The
7 District's external consultant, a prominent African American researcher from Vanderbilt
8 University, recommended a 20% rule. The goals that the District should meet are not at issue but
9 the Special Master makes note of this difference of perspective because it shapes the way the
10 plaintiffs and the District interpret the success of the District policies and practices. The Special
11 Master sides with the external consultant in recognition of the many factors that influence student
12 and family choices and student outcomes that make it is highly unlikely that parity could be
13 attained.³

14 Dual credit courses should be more available throughout the District's high schools and
15 the number of AP classes at Santa Rita should be expanded.

16 The District should pilot an opt-out program for all students of all races in one or two
17 schools. This pilot would apply only to schools in which self-contained GATE is offered;
18 students would not be automatically enrolled in a GATE program in a school in which they are
19 not or are about to be enrolled. Families would immediately be notified and congratulated. At
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² The 15% rule as applied in TUSD means that the participation in ALE by African American and
24 Latino students should be within 15 percentage points of the participant rate of white students (or
25 whichever racial group has the greatest participation).

26 ³ One of the more important constraints on participation in ALE programs is "stereotype threat."
27 This well researched but not widely recognized phenomenon involves the influence of perceived social
28 beliefs by individuals and groups who internalize what they see as reality. An example of stereotype
29 threat in this case is the perception among black students that African-Americans are not likely to do well
30 in rigorous academic endeavors.

1 the same time, they received the congratulatory letter or email, they would be given a self-
2 addressed card or email address so they could opt-out. They would be invited to talk with a
3 parent from the gifted program at the school in which the student is enrolled or UHS.

4 The Special Master and the plaintiffs have endorsed the idea that tutors should be certified
5 teachers. Not only should they be certified teachers but, ideally, they should be certified in the
6 subject for which the student is being tutored. It has proven difficult to recruit sufficient numbers
7 of teachers to satisfy the needs for tutors among District teachers. The District should be
8 authorized to employ a tutoring model using uncertified tutors who work under the supervision of
9 a more highly paid District teacher. These teaching assistants could be chosen from teacher
10 preparation students in neighboring universities and colleges, retired teachers, high school
11 students in the Teacher Cadet programs, or other individuals with a college degree. Since it is
12 difficult to know how many tutors can be effectively supervised, the District should experiment
13 and evaluate different team sizes.

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16 The District's policies and practices relating to attrition from ALE should not be limited to
17 African American and Latino students.

18 All ALE policies and practices should be printed in the ALE policy manual even if this
19 means that they appear in more than one type of document.

20
21 When the district initiates implementation of these recommendations it should be awarded
22 partial unitary status for those portions of the USP dealing with ALE.

23 Respectfully submitted,

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25 _____
/s/
Willis D. Hawley
Special Master

26 Dated: November 22, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2019, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master