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12

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' OBJECTION
TO THE SPECIAL MASTER'S REPORT
AND RECOMMENDATION
REGARDING THE REVISIONING OF
STUDENT SUPPORT DEPARTMENTS
(DOC. 2403)**

Hon. David C. Bury

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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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10 **Introduction**

11 By Order dated November 6, 2019 (Doc. 2359, “November 6 Order”), the Court
12 directed the Special Master to work with the District to develop revised plans for the
13 African American and Mexican American Student Services Departments consistent with
14 the provisions of that Order and further directed the District to file those revised plans
15 within 30 days (which date was extended in the Court’s Order of December 3, 2019 (Doc.
16 2386)). The Order also granted the parties 14 days to file objections to the revised plans.
17 On December 23, 2019, in lieu of plans themselves, the Special Master filed a Report and
18 Recommendation Regarding the Revisioning of Student Support Departments (Doc. 2403)
19 (“the SSD R&R”) that sets forth his proposal for the two departments. The Mendoza
20 Plaintiffs have a number of objections to that proposal which they set forth below.

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22
23 **Argument**

24
25 The Special Master’s Proposal is Based on a Misunderstanding of the
26 Departments’ Role Under the USP and the Collaborations That are
27 Central to That Role

28 *The Plans for the Two Departments are not Intended to be Virtually
Identical*

1 The provisions of the USP relating to services to support African American and
2 Latino students and the departments to spearhead those efforts (USP Sections V, E, 4a, 4b,
3 7, and 8) are the only sections of the USP in which remedies are separately delineated for
4 the two plaintiff classes. While the pertinent language describing the services and
5 relevant departments is similar for the two classes, the separation reflects a clear
6 recognition that the impediments to full academic achievement by members of the two
7 classes are not identical and that “one size does not fit all.” Yet, even as he acknowledges
8 that “some issues that need to be addressed would be particularly relevant to students of a
9 given race [or, presumably, ethnicity]” (SSD R&R at 3:1-4), the Special Master proposes
10 the identical structure, key personnel, and job responsibilities for the two departments. (*Id.*
11 at 3:5-4:26.)¹

12 Mendoza Plaintiffs believe the Court was mindful of the need to craft two distinct
13 albeit complementary plans when it expressly directed the Special Master, as part of the
14 process to develop the revised plans, to (1) first review the Traben and Associates report
15 on academic achievement for African American students in TUSD and the plaintiffs’
16 objections to the plans then before the Court, specifically including the Mendoza
17 Plaintiffs’ objections, which, it found, “were especially helpful in identifying specific
18 student support services which...should be directly delivered by MASSD”, and (2) then
19 “identify student-support service priorities for each department.” (Doc. 2359 at 3:23-24;
20 3:8-10; emphasis added; *see also* Order dated 4/10/19 (Doc. 2213) at 7:11-12 (“differences
21 between AASSD and MASSD are legitimate and stem from the differing needs between
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27 ¹ This approach also ignores the significant differences in the sizes of the populations to be
28 served.

1 the two minority communities.”).) This, as noted above, the Special Master has failed to
 2 do.²

3 *The Special Master’s Proposal Fails to Recognize the Important*
 4 *Role the Departments³ Play in Helping to Instill Attributes*
 5 *That Further Academic Success Like Pride, Self-Esteem,*
 6 *and Empowerment*

7 The extensive research relied on when the MASSD 2018-19 Plan was developed
 8 (see Exhibit A hereto at 20) documents the extent to which a successful asset-based model
 9 must be culturally responsive and empowering. Hence, the MASSD 2018-19 Plan defined

10 ² Mendoza Plaintiffs respectfully suggest that the Court’s observation that the current
 11 department plans are “stuck in the past” (Doc. 2359 at 3:20) was inapposite with respect to
 12 the MASSD plan, particularly before the District’s August 2019 revisions to the 2018-19
 13 iteration of the plan that had been developed with significant input from the Mendoza
 14 Plaintiffs. (Doc. 2265-2, Exhibit B, at 1-13 (Mexican American Student Services
 15 Department Operating Plan as revised by the District in 2019. [It was to the District’s
 16 2019 revisions that the Mendoza Plaintiffs’ objections (Doc. 2287), discussed by the Court
 17 in the November 6 Order, were directed.]) The Mexican American Student Services
 18 Department Reorganization Plan SY 2018-19, appended to Doc. 2265-2, Exhibit B, as
 19 Exhibit 1, expressly states that the MASSD would be moving from its old deficit model
 20 focused on identifying student deficiencies to a new asset-based approach that “embraces
 21 and builds upon students’ and families’ strengths, potential, culture/linguistic background,
 22 experiences, knowledge, and skills.” (Doc. 2265-2, Exhibit 1 to Exhibit B at 17; footnote
 23 to supporting academic literature omitted. For the Court’s convenience, a copy of the
 24 Mexican American Student Services Department Reorganization Plan SY 2018-19
 25 (“MASSD 2018-19 Plan”) is attached as Exhibit A.) The MASSD 2018-19 Plan itself
 26 expressly acknowledged that the change to an asset-based model would be
 27 “transformational.” (Exhibit A at 4.) Further, in discussing the new asset-based model, in
 28 a statement highly relevant to the extent to which collaboration with the District’s family
 engagement efforts is integral to the work of the reorganized MASSD, the MASSD 2018-
 19 Plan goes on to say: “Students and parents bring ‘funds of knowledge’ from their
 community and homes to utilize at every level of the educational experience to further
 commitment to equity and improved academic achievement in TUSD.” (*Id.* at 17.)
 Mendoza Plaintiffs therefore further suggest that, consistent with a move to an asset-based
 model, each of the two student support departments should be structured and staffed to
 maximize the ability of each department to implement a culturally responsive approach
 that is tailored to the particular community it serves and to that community’s specific
 service and support needs, and that is a complement to the District’s family engagement
 and empowerment efforts.

³ Although the Mendoza Plaintiffs assert that this is a critical role for both student services
 departments, the following discussion focuses on the MASSD because the Mendoza
 Plaintiffs are more familiar with the needs of the population served by the MASSD than
 with that served by the AASSD, because there is an existing MASSD plan that already
 fleshes out this role, and because they believe that the Fisher Plaintiffs should have the
 primary input in the formulation of the AASSD plan.

1 the role of its personnel in terms of empowerment. Contrast, for example, the MASSD
2 2018-19 Plan's discussion of the job responsibilities of the two Academic Empowerment
3 and Engagement Program Specialists⁴ (Exhibit A at 16) with the Special Master's proposal
4 that there be one "equity specialist" responsible for "mathematics achievement" and
5 another responsible for "literacy achievement" and the job responsibilities he would assign
6 to these roles (SSD R&R at 3:8-13; 4:5-14, 23-26.) Similarly, the Special Master focuses
7 on "discipline" and truancy when he references family engagement (*id.* at 3:15-16) while
8 both the 2018-19 MASSD Plan and the District's August 2019 revisions focus on parent
9 outreach & empowerment, community outreach, and social-emotional & behavioral
10 support. (Exhibit A at 12, 17, 18; Doc. 2265-2, Exhibit B, at 4, 8.)⁵

13 The Mendoza Plaintiffs respectfully suggest that the Special Master's proposed
14 structure compromises rather than enhances the ability of the MASSD to deliver a
15 comprehensive asset-based approach to student services, integrated with culturally
16 responsive practices for student growth and parental advocacy that was first set forth in the
17 MASSD 2018-19 Plan and that was carried forward in the District's 2019 revisions, even
18

21 ⁴ In its 2019 revision, the District preserves the role (and job title) (Doc. 2265-2, Exhibit B
22 at 7) but narrows it and, for reasons that are unclear to the Mendoza Plaintiffs, omits the
23 express provisions for interdepartmental collaboration and cooperation that were included
24 in the job description in the MASSD 2018-19 Plan. (Exhibit A at 16.)

25 ⁵ A significant difference between the MASSD 2018-19 Plan and the District's 2019
26 revisions, and one to which the Mendoza Plaintiffs objected (Doc. 2287 at 4:16 – 5:25), is
27 that under the District's 2019 revisions, all program specialists would provide direct
28 academic services and direct behavioral services while under the MASSD 2018-19 Plan
delivery of direct services was more limited. (Mendoza Plaintiffs recognize that under the
Court's November 6 Order AASSD and MASSD are to provide direct student services
only when such services cannot be more effectively provided by school staff; however,
they believe that there remains an important role for both departments in working with
school staff to ensure that such services are culturally responsive and asset-based
particularly as the District transitions from a deficit-based model.)

1 as the District made other revisions to which they objected. (MASSD 2018-19 Plan,
2 Exhibit A, at 3, under “Purpose”; Doc. 2265-2, Exhibit B, at 1, under “Overview”.)

3 The Special Master would divide the domains for attention by the department into
4 four units (mathematics achievement; literacy achievement; discipline (including school
5 culture); and community and family engagement (including student truancy)) and then
6 supplement these with personnel responsible for three other areas: college and career
7 exploration and success; public relations and community events; and other activities not
8 performed elsewhere (which he identifies as including student leadership development,
9 teacher cadet programs, and mentoring programs not related to academic subject matter).
10
11 Mendoza Plaintiffs strongly believe that the positions and job responsibilities set forth in
12 the MASSD 2018-19 Plan are much more appropriate to the overall goal of developing “an
13 integrated comprehensive approach for services utilizing an asset-based model to build
14 systemic, institutional equity for improving academic student achievement and educational
15 outcomes.” (Exhibit A at 1.) From the onset of USP planning and through its
16 implementation there has been much discussion about moving away from the District’s
17 compartmentalized or siloed model of services to one that is much more integrated and that
18 fosters interdepartmental communication and interfacing. Mendoza Plaintiffs respectfully
19 suggest that the model proposed by the Special Master perpetuates the siloed model and
20 would move two critical service departments backward instead of forward.

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24 *The Special Master’s Proposal Seems to Omit Essential Activities*

25 *Access to and Successful Participation in ALEs*

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27 A critically important component of the USP is its emphasis on ensuring that the
28 District’s Latino and African American students have genuine opportunities to successfully

1 participate in what the USP references as ALEs (Advanced Learning Experiences ranging
2 from GATE to middle school classes for high school credit to attendance at and graduation
3 from UHS). As currently constituted, the MASSD includes a position, the program
4 specialist for ALE Recruitment & Retention, who is charged with “developing and
5 implementing an action plan to increase the number of Mexican American/Latino students
6 recruited, participating in, and successfully completing ALE opportunities as evidenced in
7 student data.” (Exhibit A at 14; *see also* District August 2019 revisions, Doc. 2265-2,
8 Exhibit B, at 6.) So far as Mendoza Plaintiffs can determine, no activities relating to such
9 an undertaking are included in the Special Master’s proposal yet the District relies on the
10 MASSD (and the AASSD) to engage in sustained efforts to educate the populations they
11 serve about the District’s ALEs and to undertake personal outreach to encourage qualified
12 students to participate in these opportunities.
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15 Support for ELL and “PHLOTE” Students

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17 In its November 6 Order, the Court expressly referenced the need for the MASSD
18 (and the AASSD as appropriate) to provide student support services to ELL students.
19 (Doc. 2359 at 3:10-11.) (*See also*, Mendoza Plaintiffs’ objections to the District’s 2019
20 revisions to the MASSD plan specifically discussing the need for the plan to provide
21 “Support for ELL Students and Engagement of Spanish-Speaking Families”. (Doc. 2287
22 at 9:5- 11:18.)) Notwithstanding the Mendoza Plaintiffs’ extensive discussion of this
23 omission in the objections to which the Court directed the Special Master and in the
24 Court’s own discussion of the issue in its November 6 Order, the Special Master’s
25 proposal appears to omit services expressly tailored to the needs of the District’s
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1 approximately 4,100 ELL students and 14,000 students in families in which the primary or
2 home language is other than English (classified as “PHLOTE” students).

3 *The Special Master’s Proposal Does not Adequately Address*
4 *Collaboration Between the Student Services Departments and*
5 *Other Departments Whose Missions and Activities are*
6 *Complementary*

7 In his proposal, the Special Master places significant emphasis on collaboration
8 between the two student services departments⁶ rather than on collaboration between each
9 of those departments and the other departments in the District whose responsibilities
10 complement or interface with those of the two departments. Under the section labeled
11 Responsibilities for Collaboration, with respect to the other departments in the District, the
12 SSD R&R says only that student services department “staff would have the responsibility
13 for sharing their expertise and developing working relationships with District leaders
14 responsible for the various domains in which the student support departments work...”
15 (Doc. 2403 at 1-4.) Mendoza Plaintiffs respectfully suggest that this component of the
16 Special Master’s proposal is inadequate.

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19 This Court has repeatedly recognized the interconnectedness of various sections of
20 the USP and, consequently, of the departments charged with implementing those sections.
21 Most recently, it deferred consideration of the revised FACE Action Plan awaiting a fuller
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24 ⁶ See, e.g., the SSD R&R (Doc. 2403) at 2: 27-18: “This proposal seeks to align the
25 activities of key personnel in both departments so that collaboration is facilitated.” And,
26 under the heading Responsibilities for Collaboration: “[T]he professional staff in each
27 department should work collaboratively with their counterparts in the other department.”
28 (*Id.* at 5:6-8.) Mendoza Plaintiffs hasten to state that they support collaboration between
the two departments particularly when their efforts like, for example, that of ensuring
culturally responsive implementation of restorative justice techniques, overlap but again
stress that the bigger issue, not adequately addressed by the SSD R&R, is collaboration
between the two departments and other District departments, including, for example,
Student Relations (discipline).

1 explanation of how the roles and responsibilities of the AASSD and MASSD would
2 complement but not duplicate family engagement activities called for in the FACE Action
3 Plan. (Order dated 12/3/19, Doc. 2386.) It acted similarly with respect to the ELL
4 Dropout Prevention Plan. (*Id.*) Mendoza Plaintiffs suggest both that the SSD R&R
5 provides inadequate guidance in this regard and that such guidance does exist in the form
6 of the MASSD 2018-19 Plan that explicitly and clearly sets forth interdepartmental
7 collaborative activities. (*See, e.g.*, Exhibit A at 12-16, 18.)

9 The Organizational Structure Proposed by the Special Master Appears
10 Cumbersome

11 The organizational structure proposed by the Special Master (SSD R&R at 5:10-23)
12 appears cumbersome; however, beyond agreeing with the Special Master that the student
13 services departments must have access to top-level leadership in the District to be
14 effective, Mendoza Plaintiffs defer to the District on the issue of the particulars of the
15 structure. The question that the Special Master's proposed structure leaves open,
16 however, and that Mendoza Plaintiffs believe should be addressed, is whether it is the
17 Special Master's view that the Senior Director for Equity position that he proposes will
18 replace the current Senior Director for Desegregation (and assume all of the
19 responsibilities of that current role). If not, the Mendoza Plaintiffs believe that the roles
20 and responsibilities of the two separate positions need to be more clearly delineated.

21 The Special Master's Proposal Fails to Address Specific Goals,
22 Objectives, Timelines, and Evaluation Methodology

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25 This Court has repeatedly stressed the need for the District to assess both outcomes
26 and the efficacy of its programmatic undertakings. The MASSD 2018-19 Plan includes an
27 express undertaking to engage in assessment and evaluation. (Exhibit A at 6.) By contrast,
28

1 the Special Master's proposal makes no reference to any assessment of program outcomes
2 or efficacy, saying only that more functions might be added to the work of the departments
3 once the District determines how much time is required for department personnel to
4 perform the primary functions that the Special Master would assign to them. (SSD R&R at
5 4:16-19.)⁷ Mendoza Plaintiffs believe that without specific evaluation and assessment
6 components in the plans for the departments, the investment of funding, staffing, and time
7 may go without accountability. Therefore, the problem that has long been recognized by
8 both the Mendoza and the Fisher Plaintiffs (a lack of accountability for the services (direct
9 and indirect) provided by MASSD and AASSD), and also articulated by this Court, will be
10 allowed to continue if the Special Master's proposal is adopted without significant
11 amendment.
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14 **Conclusion**

15 For the reasons set forth above, the Mendoza Plaintiffs request that the Court
16 decline to adopt the SSD R&R and that it direct the Special Master to more fully comply
17 with its November 6 Order (Doc. 2403).
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25 ⁷ Mendoza Plaintiffs also believe that the functions that the Special Master suggests might
26 be added if there is sufficient time in their personnel's days (Saturday academies,
27 supervision of college student mentors for high school students, support for Teacher Cadet
28 mentoring and leadership programs (SSD R&R at 4:23-26) are in fact core responsibilities
of the departments. Therefore, sufficient personnel should be allocated to these
departments to ensure these functions are performed.

Dated: January 6, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' OBJECTION TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING THE REVISIONING OF STUDENT SUPPORT DEPARTMENTS (DOC. 2403)** 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: January 6, 2020