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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' MOTION TO STRIKE TUSD RESPONSE TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATION WITH RESPECT TO THE THREE YEAR PLUS PIP AND MAGNET PLANS (DOC. 2422) OR, IN THE ALTERNATIVE, TO CONSIDER THEIR RESPONSE THERETO**

**MOTION FOR ACTION**

Hon. David C. Bury

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1 Maria Mendoza, et al.,  
2 Plaintiffs,  
3 United States of America,  
4 Plaintiff-Intervenor,  
5 v.  
6 Tucson United School District No. One, et al.,  
7 Defendants.

Case No. CV 74-204 TUC DCB

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10 **Motion to Strike**

11 This Court’s October 2, 2019 Order setting forth the case management briefing  
12 schedule for this matter (Doc. 2312) plainly states with respect to September 2019 Notices  
13 of Compliance, of which the 3-Year Plus Integration Plan (“3-Year Plus PIP”) was one  
14 (*see*, 10/6/19 Order, Doc. 2123, at 149:17-19), that after the Special Master has filed his  
15 Report and Recommendation “[n]o further briefing will be permitted without leave of  
16 Court.” (Doc. 2312 at 3:10.) Notwithstanding that clear statement and without having  
17 sought leave of Court, TUSD nonetheless filed a “response” to the Special Master’s R&R  
18 with respect to the 3-Year Plus PIP (Doc. 2422.)  
19

20  
21 What is particularly troubling about the “response” is that TUSD proposes both an  
22 amendment of the USP’s definition of what constitutes an integrated school and the  
23 replacement of the sub-section of the TUSD Comprehensive Magnet Plan governing  
24 academic achievement measures for magnet schools without having first discussed these  
25 important proposals with the plaintiffs and in a context in which, absent an order from this  
26 Court, plaintiffs have no opportunity to respond.  
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1 Accordingly, the Mendoza Plaintiffs respectfully request that this Court strike the  
2 TUSD Response to the Special Master’s Report and Recommendation with Respect to the  
3 Three Year Plus PIP and Magnet Plans (Doc. 2422) or, in the alternative, consider their  
4 following reply.

5 **Response to the TUSD Filing**

6 The Court Should Not Change the USP Definition of Integration

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8 This Court previously ruled that the “USP definition of an Integrated school is the  
9 only relevant definition” for purposes of assessing the District’s performance under the  
10 USP. (*See*, 9/6/18 Order, Doc. 2123, at 16, n. 5.) Mendoza Plaintiffs respectfully suggest  
11 that nothing of relevance has changed since the Court so held and that it is far too late in  
12 the life of the USP to change that definition.  
13

14 Having said that, Mendoza Plaintiffs hasten to add that nothing in the USP prevents  
15 the District from seeking to create more diverse schools even if their enrollment numbers  
16 do not meet the USP definition of an Integrated school or prevent this Court from  
17 considering, as it previously said it would, “whether schools are more or less trending  
18 towards integration or racial concentration.” (*Id.*)  
19

20 The District Should be Ordered to Meet with the Plaintiffs and the Special Master to  
21 Discuss its Proposed New Academic Achievement Measures for Magnet Schools

22 Mendoza Plaintiffs do not oppose in principle the new academic achievement  
23 measures that the District says it is proposing. Their issues are twofold:  
24

25 (1) As stated the measures need further explanation. For example, Mendoza  
26 Plaintiffs are unclear about how the achievement gap measures are to be applied. Further,  
27 they do not understand the reference to a “free & reduced lunch” component (Doc. 2422 at  
28

1 6:1) in connection with that achievement gap measure. Nor do they understand whether or  
2 to what extent there is an overlap between the school achievement profile measures and the  
3 academic growth measures proposed and, if so, what the implications of such an overlap  
4 would be.

5 (2) They do not believe the Court should be asked to act on the proposed new  
6 measures until questions like those set out above have been answered, the District's  
7 proposal has been clarified, and the plaintiffs and the Special Master have been given the  
8 opportunity to respond to the proposal.

9 Accordingly, Mendoza Plaintiffs respectfully request that the District be directed to  
10 meet with the plaintiffs and the Special Master to respond to questions about the proposal  
11 just as they met with the plaintiffs and the Special Master to discuss and answer questions  
12 about the proposed middle school reconfiguration, the proposed reopening of Wakefield as  
13 a "lab school", and the proposed JTED/TUSD jointly operated new high school before  
14 Court action was sought. Mendoza Plaintiffs believe that a subsequent District application  
15 to the Court to approve an amendment of its Comprehensive Magnet Plan then will be able  
16 to proceed in a more expeditious fashion as have its recent applications relating to school  
17 openings and reconfigurations.

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23 **Conclusion**

24 For the reasons set forth above, the Court should strike the TUSD Response to the  
25 Special Master's Report and Recommendation with Respect to the Three Year Plus PIP  
26 and Magnet Plans. In the alternative, it should consider the Mendoza Plaintiffs' response  
27 to that response, decline to amend the USP definition of an Integrated school, and direct  
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1 the District to revise and refile its proposal to amend the provisions of its Comprehensive  
2 Magnet Plan relating to academic achievement measures for magnet schools after it has  
3 met with the plaintiffs and Special Master to provide further explanation of its proposal,  
4 answer their questions, and receive their input.  
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7 Respectfully submitted,  
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9 Dated: February 10, 2020

10 PROSKAUER ROSE LLP  
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16 /s/ Lois D. Thompson  
17 *Attorneys for Mendoza Plaintiffs*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' MOTION TO STRIKE TUSD RESPONSE TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATION WITH RESPECT TO THE THREE YEAR PLUS PIP AND MAGNET PLANS (DOC. 2422) OR, IN THE ALTERNATIVE, TO CONSIDER THEIR RESPONSE THERETO** 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: February 10, 2020

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