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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' MOTION TO STRIKE TUSD RESPONSE TO ISSUES RAISED IN SPECIAL MASTER'S REPORT AND RECOMMENDATION RE DISCIPLINE (DOC. 2427) OR, IN THE ALTERNATIVE, TO CONSIDER THEIR RESPONSE THERETO

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 **MOTION TO STRIKE**

11 This Court’s October 2, 2019 Order setting forth its case management briefing
12 schedule (Doc. 2312) plainly states with respect to September 2019 Notices of
13 Compliance, of which TUSD Discipline Notice of Compliance was one (*see*, 10/6/19
14 Order, Doc. 2123, at 150:19-23), that after the Special Master has filed his Report and
15 Recommendation “[n]o further briefing will be permitted without leave of Court.” (Doc.
16 2312 at 3:10.) Notwithstanding that clear statement and without having sought leave of
17 Court, TUSD nonetheless filed a “response” to the Special Master’s R&R re Discipline
18 (Doc. 2427.) Notably, absent an order from this Court, plaintiffs have no opportunity to
19 respond notwithstanding that the very R&R to which TUSD responds recommended to this
20 Court that such an opportunity be provided (“Discipline R&R”) (Doc. 2380 at 4:6-7).

21 Accordingly, the Mendoza Plaintiffs respectfully request that this Court strike the
22 TUSD Response to Issues Raised in the Special Master’s Report and Recommendation re
23 Discipline (“Discipline Report”) (Doc. 2427) or, in the alternative, consider their following
24 reply.
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REPLY

The District Attempts to Deflect Attention Away From the Significant Increases in Discipline in 2018-19 From the Previous School Year (2017-18) With Respect to Which the Special Master Plainly Expressed Concern by Addressing 2018-19 Discipline Rates in Relation to the 2016-17 School Year.

In his R&R, the Special Master identified the following issue and recommended that the District be ordered to respond to it: “While the [positive multi-year discipline] trends just noted are important, the number of disciplinary actions for all students increased in 2018-19 coincidental with the implementation of a new code of conduct.” (Discipline R&R at 3:4-6.) Rather than address the increases in discipline administered in the 2018-19 school year from the prior year, 2017-18 (as discussed below), the District compares the 2018-19 school year with the 2016-17 school year to declare that the “only exception” to across-the-board decreases in discipline was the increase of 262 short-term suspensions.¹ (Discipline Report at 2.)

However, as reflected in the following chart, there were significant increases in discipline in the 2018-19 school year from the prior year that necessitate explanation, that the District avoided addressing, and to which the Special Master plainly referred:

¹ Notwithstanding that the focus should be on the increase in discipline in the 2018-19 school year from the *prior* year, it is notable that the District without explanation compares 2016-17 short term suspensions *including* DAEP referrals to 2018-19 short term suspensions *excluding* DAEP referrals. (*Compare* Discipline Report at 1, and n.1 and Doc. 2305-4 at ECF 35, 37.) If one compares short term suspensions without DAEP for each of those years for an apples-to-apples comparison, the difference is 466, not 262.

The District goes on to explain that this increase was the result of a change to the Code of Conduct that replaced long-term suspensions with short term suspensions for drugs, alcohol, and fighting, and increases in drug and tobacco violations involving vaping. (Discipline Report at 2.)

Entire District Discipline From 2017-18 to 2018-19²

	Total 2017-2018	Total 2018-2019	Difference
In-School Discipline	2964	3250	+286
In-School Discipline (ISS)	480	493	+13
Short-Term Suspension (Out-of -School)	1718	2431	+713
In-School Suspension (SS)	480	493	+13
In-School Intervention (ISI)	1558	917	-641
ISS and ISI	2038	1410	-628
Short-Term (Out-of- School) Suspension (W/O DAEP)	1603	2366	+763
Long-Term Suspension (Without DAEP)	154	109	-45
DAEP Students	233	177	-56

As reflected in the chart above, the number of short term suspensions (regardless of whether DAEP referrals are included) in the 2018-19 school year from the previous school year is a number far greater than that on which the District chose to focus in the Discipline Report. Moreover, there was an increase of 286 incidents of “In School Discipline” that

² Data in this chart was pulled from Doc. 2305-4 at ECF 37-38. Mendoza Plaintiffs recognize that what appears to have been a large decrease in in-school interventions in 2018-19 may relate to increases in short-term suspensions. They respectfully submit that the District should describe how these trends relate to each other, if at all.

1 Mendoza Plaintiffs believe also warrants explanation. Separately, the District reported an
2 additional 44.5% increase in total out-of-school suspensions in 2018-19 from the previous
3 year (or a 906 suspension difference), and a 73% increase in the number of students with
4 repeat suspensions during the school year (or a 269 student difference).³ (See Appendix
5 VI-16 to TUSD Annual Report for 2018-19 (Doc. 2305-2) at 6, 18 (“[I]n 2018-19, an
6 increase in suspensions occurred reversing an overall downward trend in suspensions over
7 the last three years. The average number of students with one or more suspensions
8 increased over five years by 32 students, bringing the overall rate in 2018-19 back to the
9 2014-15 level.”; Appendix VI-22 (Doc. 2305-3) (“Discipline rates for SY2018-19 across
10 all [race/ethnic] groups increased slightly” from the previous year.))

13 Presumably, explanations provided by the District with respect to the increases in
14 short-term suspensions between the 2016-17 and 2018-19 school years also apply to some
15 extent with respect to the increases observed in 2018-19 from the prior school year.

16 However, there are three important points here.

18 First, the District significantly downplays the increases in suspensions and
19 disciplinary consequences in the 2018-19 school year from the previous year.

20 Second, the District’s response should accordingly include explanation that is
21 specific to increases in short term and total out-of-school suspensions, in school discipline,
22 and increases in students with repeat suspensions in 2018-19 from the previous year.

23 Mendoza Plaintiffs further respectfully submit that it is not enough for the District to
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27 ³ Mendoza Plaintiffs do not understand why the District seemingly reports different
28 numbers of total out of school suspensions in 2018-19 in Appendix VI-16 to TUSD
Annual Report for 2018-19 (Doc. 2305-2) at 6 as compared to Appendix VI-29 (Doc.
2305-4) of that same Annual Report.

1 provide a general explanation for increases as it did in the Discipline Report, without any
2 analysis or detailing of the number of discipline incidents attributable to any given
3 explanation.⁴ Rather, the District’s response should reflect that it is attempting to truly
4 understand and address what appears to be a reversal of progress in the area of discipline,
5 something that does not seem to have yet occurred. (*See* Exhibit A, TUSD response to RFI
6 # 2582 (“The district has not done any formal analysis but the increase in repeat offenders
7 [in 2018-19] may be related to increase in mandatory short-term suspensions for specific
8 violations.”).)

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10 Third, Mendoza Plaintiffs respectfully submit that the District should provide a
11 breakdown of students referred to PICs (Positive Intervention Centers) which it piloted in
12 2018-19. While such data is plainly implicated in assessing the District’s progress in the
13 area of discipline, that information is not reported in the 2018-19 TUSD Annual Report
14 and was not provided to the Mendoza Plaintiffs in response to their express request
15 (Exhibit A, response to RFI #2584), notwithstanding that TUSD asserts that it reviews PIC
16 referral data to ensure discipline is equitably administered (Discipline Report at 3).
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26 ⁴ Mendoza Plaintiffs believe that the District’s response under the Special Master’s
27 recommendation should reflect something similar to the explanation TUSD provided with
28 respect to the 938 one-day short-term suspensions in the 2018-19 school year: “Twenty-
five percent of [] one-day short term student suspensions were related to mediation or
drug/alcohol counseling dispositions.” (*See* TUSD’s January 10, 2020 response to RFI #
2591, attached as Exhibit A.)

1 The District Should Address What Appear to be Conflicting Statements Concerning
2 its Process to “Assess the Completeness of Discipline Reporting and Data.”

3 In the Discipline Report, the District details what it describes as its process for the
4 District-level Student Relations Department to assess the completeness of school discipline
5 reporting and data, which includes that the District reviews “[t]eachers who have
6 disproportionate numbers of discipline” and “[t]eachers who have disproportionate
7 numbers of ISI referrals”, and that these teachers then are provided extra training or
8 mentoring. (Discipline Report at 3.) However, when Mendoza Plaintiffs asked how many
9 teachers were identified as needing additional training because they disproportionately
10 refer students for disciplinary consequences and at which schools those teachers were
11 assigned, the District responded as follows: “The District reviews site reports regarding
12 where the most referrals come from... But, the reporting form does not ask for specific
13 teacher names or counts.” (Exhibit A, response to RFI #2581.) Thus, Mendoza Plaintiffs
14 do not understand how the District can review teachers who disproportionately refer
15 students to discipline if schools do not report that kind of information to it in the first
16 place.
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18 Thus, Mendoza Plaintiffs believe that the District must provide further explanation
19 concerning these seemingly conflicting statements concerning its discipline review
20 process.
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1 This District’s Assertions Concerning its Purported “Consistently Reported
2 Discipline Data” Should be Reviewed Against Mendoza Plaintiffs Prior Briefing on the
3 Issue

4 Mendoza Plaintiffs will not burden this Court with yet another explanation of why
5 the District’s assertions of having consistently reported discipline data is materially
6 misleading, and instead respectfully refer this Court to their discussion of the issue in
7 Mendoza Plaintiffs’ Response to TUSD’s Notice and Report of Compliance: Discipline
8 Progress Report, and Combined Discipline/Inclusivity Professional Learning Plan and
9 Objection to the District’s Request That it be Awarded Partial Unitary Status With Respect
10 to Section VI of the USP (“Mendoza Plaintiffs’ 9/20/19 Filing”) (Doc. 2280 at 1-6).

11 They do however note that the District notably avoided addressing the discipline
12 data reported on Attachment VI-52 of TUSD Annual Report for 2016-17 School Year
13 (Doc. 2064-6), which was filed before this Court ordered TUSD to “discontinue” its
14 “reclassification” of ISI and DAEP referrals in a manner that failed to classify them as
15 suspensions (11/7/17 Order (Doc. 2087)) and which reports lower discipline numbers than
16 the District’s subsequent reports for the *exact same school year*. (See Mendoza Plaintiffs’
17 9/20/19 Filing at 2:15-3:16.)

18 The District’s purported transparency in discipline data reporting further appears to
19 be premised on the fact that it reports through different portions and appendices of its
20 annual report sufficient data from which the Special Master and Plaintiffs could “figure it
21 out.” As detailed more fully in Mendoza Plaintiffs’ 9/20/19 Filing, such a premise
22 conflicts with this Court’s repeated order that the parties defer to the Special Master’s data
23 monitoring needs, which plainly contemplates that data should be reported in the format
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1 requested by the Special Master and/or that facilitates his review of the District's
2 compliance.

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4 **CONCLUSION**

5 For the reasons set forth above, the Court should strike the TUSD Response to
6 Issues Raised in the Special Master's Report and Recommendation re Discipline. In the
7 alternative, it should consider the Mendoza Plaintiffs' response to that response, order the
8 District to provide a response that explains with specificity increases in discipline in 2018-
9 10 19 from the *prior school year*, provide a breakdown by race/ethnicity of all students sent to
11 PICs in 2018-19, and clarify its seemingly conflicting statements concerning whether the
12 District or its Student Relations Department reviews school data on teachers who
13 disproportionately make discipline referrals.
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17 Dated: February 12, 2020

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24 /s/ Juan Rodriguez
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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' MOTION TO STRIKE TUSD RESPONSE TO ISSUES RAISED IN SPECIAL MASTER'S REPORT AND RECOMMENDATION RE DISCIPLINE (DOC. 2427) 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 12, 2020

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