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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,
25
26
27
28

Case No. 4:74-CV-00090-DCB

MENDOZA PLAINTIFFS' MOTION TO STRIKE TUSD NOTICE OF COMPLIANCE WITH SPECIAL MASTER'S REPORT AND RECOMMENDATION RE DIVERSITY PLAN FOR TEACHERS AND ADMINISTRATORS (DOC. 2425) OR, IN THE ALTERNATIVE, TO CONSIDER THEIR RESPONSE THERETO

Hon. David C. Bury

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

9
10 **MOTION TO STRIKE**

11 This Court’s October 2, 2019 Order setting forth its case management briefing
12 schedule (Doc. 2312) for this matter provides for no briefing after submission of the
13 Special Master’s Report and Recommendation. Notwithstanding that clear statement,
14 without having sought leave of Court or waited for the Court to rule on Mendoza
15 Plaintiffs’ response and objection (Doc. 2341) to the District’s Diversity Plan for Teachers
16 and Administrators (“Diversity Plan”) on file with the Court (Doc. 2329-1, Exhibit A) or
17 the Special Master’s related R&R, TUSD nonetheless filed a “Notice of Compliance” with
18 the Special Master’s R&R Relating to the Teacher Diversity Plan, Retention, and Grow
19 Your Own Programs (Doc. 2392) which assumes that that R&R as written and interpreted
20 by the District will become the order of this Court, thereby leapfrogging this Court’s
21 essential role. Additionally, absent an order from this Court, plaintiffs will have been
22 deprived of an opportunity to comment on what the District asserts is its plan for
23 prioritizing the recruitment and selection of teachers and administrators of color through
24 GYOP notwithstanding that this also was a Special Master recommendation included in
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1 the R&R with which TUSD says it has complied. (“DP GYOP R&R”) (Doc. 2392 at 7:3-
2 4).

3 Accordingly, the Mendoza Plaintiffs respectfully request that this Court strike the
4 TUSD Notice of Compliance with Special Master’s Report and Recommendation re
5 Diversity Plan for Teachers and Administrators (“TUSD DP GYOP Filing”) (Doc. 2425)
6 or, in the alternative, consider their following response.
7

8
9 **RESPONSE**

10 Incentives Under The District’s Diversity Plan for Teachers and Administrators do
11 not Align With the “Broad Range of Incentives Available in the Original TDP” as
12 Recommended by the Special Master

13
14 In the DP GYOP R&R, the Special Master, having reviewed the District’s Diversity
15 Plan, which contains reduced incentives for diversity transfers than was called for in the
16 original teacher diversity plan (“TDP”), recommended that “[t]he range of incentives
17 available to motivate teachers and administrators to transfer should be similar to those
18 incentives that were authorized in the initial TDP.” (DP GYOP R&R at 6:11-12.) Rather
19 than follow the Special Master’s recommendation, the District conclusorily asserts that the
20 incentives in its Diversity Plan with respect to which the Special Master made his
21 recommendation are similar to those available under the original TDP. (TUSD DP GYOP
22 Filing at 2:12-15.)
23

24
25 However, the District’s Diversity Plan does not include the following incentives
26 included in the original TDP:

- 27
28
- Reduced or modified teaching schedule (through Master Teacher Team Initiative)

- 1 • Technology Package; laptop, bag, printer (for classroom use; may be taken home
- 2 for professional use)
- 3 • Master’s degree support
- 4 • Professional Development (conferences and/or specific training)
- 5

6 (*Compare* Doc. 2329-1 at ECF 9 (Diversity Plan incentives) *with* Doc. 2329-1 at 34
7 (original TDP incentives).)

8 Mendoza Plaintiffs thus understand that the District has failed to follow the Special
9 Master’s recommendation notwithstanding its assertion to the contrary.

10
11
12 TUSD Erroneously Asserts That the Diversity Plan the Special Master Reviewed
13 and on Which he Based his Recommendation That TUSD Must Develop a Proactive Plan
14 for Prioritizing the Recruitment and Selection of Teachers and Administrators of Color
15 Through GYOP Satisfies that Very Recommendation

16 The District filed its Diversity Plan (Doc. 2329-1) on October 10, 2019. Having
17 reviewed that Diversity Plan and commented on various aspects of it (*see* DP GYOP R&R
18 at 217-3:8 (commenting on Director of talent acquisition outlined in Diversity Plan)), the
19 Special Master on December 13, 2019 recommended that the District “develop a proactive
20 plan for prioritizing the recruitment and selection of teachers and administrators of color
21 through GYOPs”, that this plan should include how the District will prepare GYOP
22 candidates “for different roles so that there is a pool of well-prepared candidates to assume
23 positions when the openings occur,” and that Plaintiffs be allowed to provide review and
24 comment on the proactive plan. (*Id.* at 5:20-23; 7:2-3.) The District did not provide the
25 recommended plan. It instead asserts that a portion of the Diversity Plan, which the
26
27 recommended plan. It instead asserts that a portion of the Diversity Plan, which the
28 Special Master plainly found to be inadequate and on which he based his recommendation

1 for a proactive GYOP recruitment plan, satisfies that very recommendation. (See TUSD
2 DP GYOP Filing at 3:6-14.)

3 Mendoza Plaintiffs therefore request that this Court order the District to file the
4 proactive plan recommended by the Special Master (including how TUSD will prepare
5 GYOP candidates for different roles and positions), and that Plaintiffs be allowed to
6 review and comment on the plan as recommended in the DP GYOP R&R.
7

8
9 While the Racial/Ethnic Composition of “LPA Applicants Selected to Participate”
10 in the LPA Program in 2018-19 is Encouraging, Whether That Program (and Other
11 GYOPs With Respect to Which TUSD is Silent) Result in the Appointment of Latino and
12 African American Administrators is Important in Measuring TUSD’s Success in
Implementing GYOPs.

13
14 In the TUSD DP GYOP Filing, the District reports with respect to its “2019-20 SY
15 L[eadership] P[rep] A[cademy] Applicants Selected to Participate” that 43% are African
16 Americans and 30% are Hispanic.¹ (TUSD DP GYOP Filing at 5.) While this data is
17 encouraging, the racial/ethnic composition of participants who complete the program and
18 who subsequently are able to obtain administrative positions with the District is important
19 in measuring TUSD’s success with this GYOP. (See 4/22/19 Order (Doc. 2217) at 13:6-8
20 (finding that to “satisfy the USP” “TUSD GYOPs must be specifically aimed at growing
21 Teachers of Color (TOC) or Administrators of Color (AOC).”))
22

23
24 Moreover, the results of the District’s efforts to make all other GYOPs (with respect
25 to which the District is silent), including the Make the Move and Arizona Teaching
26

27 ¹ Mendoza Plaintiffs assume that data concerning “applicants selected to participate” is
28 identical to the individuals who are in fact now participating in the Leadership Prep
Academy (“LPA”).

1 Fellows programs, grow TOCs and AOCs also are highly important in measuring the
2 District's compliance and implementation of the USP and Special Master's
3 recommendation, particularly because during the life of the USP, GYOPs have not served
4 their purpose. (*Id.* at 12:15-16 (“Over the past six years, the District has indiscriminately
5 grown as many White administrators as it has grown administrators of color.”).)
6

7 Thus, that the District currently has a larger total representation of African
8 American and Latino participation in one of its several GYOPs² than it has had in the past
9 six years during which GYOPs failed to grow TOCs and AOCs does not reflect that it now
10 has successfully implemented GYOPs.
11

12 13 **CONCLUSION**

14 Mendoza Plaintiffs respectfully request that this Court strike the TUSD DP GYOP
15 Filing (Doc. 2425) or, in the alternative, consider their response set forth above, order the
16 District to file the proactive plan for prioritizing the recruitment and selection of teachers
17 and administrators of color through GYOPs, and that Plaintiffs be allowed to review and
18 comment on that plan.
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27 ² Mendoza Plaintiffs note that while the percentage of total African American and Latino
28 participants in the LPA appears to be higher than in past years, the percentage of Latino
participants in the program has actually decreased. (*Compare* TUSD DP GYOP Filing at
5:3 (30% Latinos in 2019-20) *with* Doc. 2298-1 at IV-40 (36% Latinos in 2018-19).)

Dated: February 14, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' MOTION TO STRIKE TUSD NOTICE OF COMPLIANCE WITH SPECIAL MASTER'S REPORT AND RECOMMENDATION RE DIVERSITY PLAN FOR TEACHERS AND ADMINISTRATORS (DOC. 2425) 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 14, 2020