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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 RESPONSE REGARDING OBJECTIONS TO**
2 **SPECIAL MASTER’S REPORT AND RECOMMENDATION ON THE**
3 **DISTRICT’S SUPPLEMENTAL PETITION FOR UNITARY STATUS**

4 Overview

5 Many of the objections to the Special Master’s Report and Recommendation essentially
6 argue that the District has not been as successful as one would hope in implementing efforts to
7 satisfy the requirements of the USP. But this seems insufficient to deny unitary status. There is
8 always more one could do. The rule the Court should apply is whether the District has made a
9 good faith effort to satisfy the provisions of the USP and whether there are strategies that the
10 District did not employ that have a high possibility of success. When the plaintiffs (or the Special
11 Master) criticize efforts by the District, they would seem to have the responsibility of identifying
12 alternative strategies that the District could feasibly implement. But the plaintiffs suggest few
13 such alternatives. Where they do, the Special Master will address these proposals.

15 In this response to objections by the parties to Special Master’s Report and
16 Recommendation relating to unitary status for the District, the Special Master will not address
17 objections related to advanced learning experiences, professional learning for technology and
18 dual language because the Court has recently issued orders relating to these aspects of the USP
19 that were filed after the Special Master’s Report and Recommendation and the subsequent
20 objections by the parties to that Report and Recommendation. In addition, the Special Master
21 will not address portions of the Special Masters Report and Recommendation dealing with
22 multicultural curricula, the ELL action plan for dropout prevention and extracurricular activities
23 because there are no objections to the Special Master’s Recommendations for these sections of
24 the USP.

26 This response to objections by the parties to the Special Masters Report and
27 Recommendation dealing with the District’s petition for unitary status makes only one change to
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1 the recommendations made in the Report and Recommendation – that being the definition of
2 integration. There is new information in this Report so as to clarify the meaning of some
3 elements of the Report and Recommendation and point out inaccuracies in some of the
4 objections.

5
6 In its objections to the Special Masters Report and Recommendation, the District believes
7 that none of the Recommendations of the Special Master should be conditions for unitary status.
8 At the same time, the District agrees to implement all but one of the Special Master’s
9 recommendations, so the Special Master does not engage those particular recommendations. The
10 one issue to which the District explicitly objects to the content of the Special Master’s
11 recommendation involves the roles of “Specialists” who would staff the Mexican American
12 Student Support Department (MASSD) and the African American Student Support Department
13 (AASSD). The Mendoza plaintiffs have a similar objection to the Special Master’s
14 recommendations so the concerns of the District and the Mendoza plaintiffs are dealt with in the
15 first subsection of this Response to the Objections to the Special Master’s Report and
16 Recommendation dealing with the District’s petition for unitary status.
17

18 The Court has recently ordered the development of academic criteria for maintaining or
19 gaining magnet status. This directive was addressed by the Special Master in his May 22, 2020
20 Report and Recommendation (ECF 2468). But, since the R&R was prepared and objections
21 submitted by the parties, the District and the Special Master have analyzed how different
22 combinations of criteria would affect the current magnet schools with state grades of C and D.
23

24 The Court ordered that the magnet schools would be required to have a grade of A or B
25 either assigned by the state or they would have to meet TUSD Magnet Merit criteria, yet to be
26 determined. When the Special Master and the District tested different sets of criteria, they found
27 that it was complicated to develop some of the measures that took into account the socioeconomic
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1 characteristics of the schools, in no small part because there is so much variation in the number of
2 students who are receiving free and reduced meals. Because of this complexity and because the
3 plaintiffs have not had the opportunity to comment on the Special Master's proposal, the Special
4 Master is submitting a separate Report and Recommendation on academic criteria for magnet
5 schools.

6
7 **Objections by Two or More of the Parties.**

8 The Achievement Gap

9 There is no question that there is an achievement gap between white students on the one
10 hand, and African American and Latino students on the other. This is a national phenomenon.
11 The issue is whether the District has undertaken practicable efforts to improve achievement of
12 African American and Latino students. Almost all research on student achievement
13 acknowledges that less than half of the variation in student achievement is typically accounted for
14 by policies, practices and programs over which educators have some control. This means that in
15 order to determine whether the District has done what it can to improve the achievement, it is
16 important to take into account the effects of influences on student learning beyond the school that
17 students attend. Indeed, one leading researcher studying the achievement gap suggests that we
18 call it "the poverty gap" so as to keep in perspective how powerful factors external to the school
19 are on student achievement.
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22 The Mendoza plaintiffs argue that the Special Master is proposing that the only measure
23 student achievement gaps be among students who receive free or reduced lunch. But that is not
24 the case and the analysis of the achievement gaps the Special Master undertook in his Report and
25 Recommendation is meant to demonstrate that with respect to influences over student learning
26 about which the District has control, the gap is much narrower than is suggested by looking at all
27 students at once. Exhibit 1 shows that the achievement gap is much wider among students who do
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1 not receive free and reduced meals and the reason for this is that there is much greater variation in
2 family income among students of different races who do not receive free and reduced lunch.

3 The Mendoza and Fisher plaintiff's clearly wish to use the achievement gap as a criterion
4 for whether (1) magnet schools should retain their magnet status and (2) the District should
5 receive unitary status. The Special Master's analysis in his Report and Recommendation
6 indicates why that might be inappropriate given that there are other substantial influences on
7 student learning. But in addition, two of the six C schools that the Court has identified as needing
8 to meet equivalent standards as those schools that receive a grade of B from the state would have
9 too few African-American or white students to provide a reliable measure of the achievement
10 gap. Further, in some magnet schools, the achievement gap is so large that it would be almost
11 impossible for the school to eliminate the achievement gap. Specifying a target less than
12 elimination of the achievement gap runs the risk of seeming arbitrary. Moreover, other measures
13 of student achievement proposed by the Special Master are highly correlated with differences in
14 the achievement gap from school to school.

15 It's important to note that for the last three years for which there is student achievement
16 data from state tests, the percentage of African-American and Latino students who are achieving
17 at a proficient level has increased.

18 Responsibilities of Specialists in the Student Support Departments

19 In its Order dealing with the reorganization of the student services departments, the Court
20 tasked the Special Master to "...develop the African American Student Support Department and
21 the Mexican American Student Support Department plans" "and to determine why and how the
22 departments" "... moved from the recently filed 2018-19 plans, which seem stuck in the past, to
23 the future. For this answer the Court looks to the Special Master."
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1 In developing the essential elements of the plans that he outlined in his Report and
2 Recommendation, the Special Master sought as much common ground as possible. The functions
3 of the student support departments have been in contention for several years and it seems to make
4 sense to build on what agreement there is. In this regard, there is more agreement among the
5 Mendoza plaintiffs and the District than there is with the Fisher plaintiffs.¹
6

7 There appear to be five issues in contention: whether there is duplication of functions,
8 whether the mission of the two departments is too similar to be responsive to the different needs
9 of African American as compared to Latino students; the extent to which the departments should
10 be providing direct services to students and teachers; whether the department staff should be
11 located in schools or in a central location; and the qualifications of the core staff of Specialists.
12

13 1. Duplication

14 This concern is more relevant to the overall question of whether the departments are
15 needed in the first place. But, since that issue has been resolved by the Court, there is no need to
16 belabor this matter.² In his recommendations, the Special Master urges that the specific
17 responsibilities when each of the broad functions of the specialists should be resolved when it is
18 determined who will be hired for these positions – which seem to overlap in some cases – and as
19 specific needs are identified when positions are filled and the detailed work of the departments
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23 ¹ Fisher plaintiff lacked confidence in the AASSD and have a comparatively narrow vision of the
purposes of the department which they believe should focus on discipline and academic achievement.

24 ² While the Mendoza plaintiffs and the District claim there is no duplication of actions on the part
25 of the student support specialists in their relationships with the departments that have related
26 responsibilities, they may be talking about a program specialist working with the same students with
27 whom the staff of the core department are working. It is hard to read the descriptions of responsibilities
28 without coming to any different conclusion. For example, the Mendoza plaintiffs say that the program
specialists are **not** doing work that the staff in the relevant departments “...might not be fully competent.
Rather, they are adding their areas of expertise to that of others in the district to maximize programs,
services and activities available to [the district] students.” (ECF 2476, p.43).

1 are resolved by the District as the student support departments are operational.³

2 2. Similarities

3 As noted, of the general domains outlined by both the Mendoza plaintiffs and the District,
4 six of the eight positions identified by each appear to be quite similar. The Special Master
5 recommended that within these broad definitions of responsibilities, the specifics would be
6 developed as the staff of the department is selected and its work is initially implemented. For
7 example, MASSD staff is to be bilingual, implying that a significant amount of their work would
8 have to do with English language learning and communication with families and communities. In
9 other words, there is no need to develop job descriptions in great detail since the functions to be
10 performed for students and families with different needs would dictate responsibilities. Indeed,
11 some of the job descriptions urged by the Mendoza plaintiffs are so broad that it is unlikely that
12 any individual could actually perform those activities. Moreover, student needs are not neatly
13 compartmentalized and cross training among staff would seem essential. For example, discipline
14 problems and student achievement are often highly related. The functionality of the two student
15 support departments would seem to depend on flexibility and the capacity for adaptation in
16 response to student needs.
17

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19 3. Direct Services

20 The Mendoza and Fisher plaintiffs, as well as the District, see the Specialists providing
21 services to individual students, as well as to individual educators and counselors. It is
22 inconceivable that one or two staff members of the student support departments³ will have an
23 impact on student learning when serving thousands of students who they would be meeting with a
24 few hours each course. In other words, the idea of the Specialists in the student support
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27 ³ The USP specifies that the superintendent has the authority to organize the work of District staff.
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1 departments should provide direct services to students is unrealistic on its face. It also tests
2 credulity that individual staff members of the student support departments could significantly
3 improve teacher performance when they themselves need not have credentials superior, much less
4 equal, to those professionals with whom they would be working (neither the Mendoza plaintiffs
5 or the District require all Specialists to have a degree in education or training in behavioral or
6 social sciences.
7

8 4. Location of Staff

9 The Mendoza plaintiffs and the District proposed that staff be housed in specific schools
10 where issues are particularly relevant to the mission of the Specialist involved. But there are
11 several problems with this proposal. First, problems in particular schools change, which would
12 presumably have Specialists moving around. Second, problems that students have are not, as
13 noted, neatly defined so that the opportunity for Specialists to consult with one another seems
14 essential. Third, it is almost certain that housing staff serving the whole District in a particular
15 school is unlikely to yield the balanced priority based allocation of the Specialists' expertise.
16

17 5. Qualifications

18 The Court has ordered that the Specialists who serve teachers and administrators in the
19 core departments should have credentials equivalent to those with whom they will be working
20 hand-in-hand. But the proposals by the Mendoza plaintiffs, while they require a bachelor's
21 degree, do not require education training or certification related to the roles they are to perform.
22 For example, in both of the two departments people who major in African American studies or
23 Mexican American studies would not have the needed qualifications to provide instructional
24 support and guidance to teachers. In neither case would the individuals have necessarily taken
25 even a single course in education as a requirement. The Special Master recommends that the
26 Court be clear that the individuals serving in the two student support departments have relevant
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1 educational backgrounds. These may not be education courses in every case but they should
2 involve a degree in a relevant field, such as social psychology for positions involving counseling.

3 Mitigating Conditions for Beginning Teachers

4 The Mendoza and Fisher plaintiffs have raised a question with regard to the need for
5 support within the budget for so-called mitigating factors for teachers who are serving in schools
6 that are racially concentrated or serve students achieving below the District average. While
7 virtually all schools with teachers in the first and second years teaching in racially constituted or
8 low performing schools implemented one or more mitigating strategies identified from research,
9 these mitigating strategies were funded at the school level by reallocating resources. The Special
10 Master consulted with the authors of the research that was used by the District and was told that it
11 was very uncommon for districts to implement the mitigating strategies even though anecdotal
12 information suggested that they were productive. But it is also true that very few districts provide
13 the level of mentoring support provided to beginning teachers in TUSD. The authors of the
14 research on which the District relied suggested that one or more of the mitigating strategies may
15 be more effective than the additional mentoring now provided.

18 When one considers the entire array of support for professional learning that is provided
19 in TUSD – included mentoring, seventh period days, and Wednesday afternoon time for school
20 level professional development – it appears that the District makes a more substantial investment
21 in professional learning than most other school districts. Given that there is little evidence of the
22 relative efficacy of these various investments – which involve millions of dollars – it is the view
23 of the Special Master that the District should have the discretion to rethink these investments so
24 as to maximize their impact on student learning.

26 It appears that there is some confusion over the definition of the beginning teacher. In
27 most districts, beginning teachers are defined as those who had not taught before. TUSD
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1 apparently defines beginning teachers as those who have just started to teach at TUSD, even
2 though they may be experienced. The Special Master recommends that henceforth the provisions
3 of the USP relating to support for beginning teachers apply to teachers who have not taught
4 before. This recommendation is not intended to prohibit the District from providing extra support
5 to those who had not previously taught in TUSD.
6

7 **Concerns of the Fisher Plaintiffs**

8 Alleged Neglect of African American and Latino students

9 The Fisher Plaintiffs claim that the Special Master and the District – in developing
10 priorities for policies, learning opportunities and resource allocation – do not take into account the
11 particular needs of African American and Latino students. In their objections to the Special
12 Masters Report and Recommendation, they focus on what they perceive to be the neglect of
13 African American students. However, the opposite is true. In virtually every action advocated by
14 the Special Master and supported by the District, African American and Latino students are
15 favored.
16

17 For example, Exhibit A of the Special Master’s Report and Recommendation (ECF 2468-
18 1) identifies several policies that are particularly important to the academic achievement of
19 African American students, including targeted culturally relevant academic intervention
20 programs, and innovative behavioral interventions to prevent or reduce disciplinary incidents to
21 help keep African American students in their regular learning environments. The District has also
22 designed its Reading Recovery program to target specifically African American students as much
23 as possible. Additionally, locating cluster and self-contained GATE courses in schools that serve
24 higher numbers of African American and Latino students; providing all students with multiple
25 opportunities to take classes that include culturally-relevant curriculum and culturally-responsive
26 pedagogy; and expanding AVID to schools with higher African American and Hispanic
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1 populations are strategies that the District and Special Master prioritized that particularly benefit
2 African American and Latino students.

3 Whenever a question arises with respect to the allocation of resources, efforts are made to
4 ensure that schools in which African American and Latino students have the highest enrollment
5 receive the relevant resources (e.g., technology). The Fisher plaintiffs do not identify a single
6 example of policies and practices that do not place African American and Latino students first in
7 line for receiving the benefits of these actions.
8

9 The Mendoza plaintiffs do not make a similar criticism of how the USP has been
10 implemented. Indeed, with respect to the student support departments, the budget proposed by
11 the District has significantly more per student investment for African American students than is
12 the case for the much more numerous Latino students.

13 African Students

14 *The Fisher plaintiffs assert that the Special Master suggests that students from Africa*
15 *should not be part of the USP.* The Special Master is unaware of having made any such
16 statement. It is true that most African students have very different personal and cultural
17 experiences than most black students born in America.
18

19 Mandatory Reassignment of the District's Best Teachers

20 *The Fisher plaintiffs argue that the District should assign its best teachers to schools*
21 *servicing the lowest achieving students and until they take such action, the District should be*
22 *denied unitary status.*
23

24 The Fisher plaintiffs are quite right that the most effective strategy for improving low
25 achieving students of all races would be to reassign teachers who have been shown to be the most
26 effective to schools serving lowest achieving students. However, in the context of developing the
27 school level teacher diversity plan, the parties agreed, without exception, that teachers would not
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1 be reassigned without their permission. The reason for this is the likelihood that this would result
2 in the District's best teachers leaving the District and, given the teacher shortage, it would be
3 difficult to replace these teachers with persons of potential effectiveness. One might propose that
4 financial incentives could bring about voluntary movement, but the experience in the District with
5 the teacher diversity plan suggests that a limited number of teachers, regardless of their
6 effectiveness, are interested in moving to new schools even with a financial incentive of \$5,000 a
7 year. Research on such incentive programs elsewhere is mixed, but in general the findings are
8 that even with \$10,000 on the table, teachers will move initially but will leave their new schools
9 within three years.

11 The "Discipline Gap"

12 The fact that there remains a discipline gap, otherwise known as disproportionality, with
13 regard to African American students as compared to white and Latino students is acknowledged
14 by all parties and the Special Master. Such disproportionality is a national phenomenon.

15 Most studies of disproportionality deal with black-white differential suspension rates.
16 Among the most important reasons for this is that suspensions often result in students losing time
17 from their classes which they don't easily make up. While black-white disproportionality is the
18 case in TUSD, the District has substantially reduced the so-called discipline gap and the gap is
19 smaller than the average disproportionality rate in most school districts. Moreover, the District
20 has recently adopted an option of allowing students and families to accept counseling in lieu of
21 suspension out of school which resulted and a 29% reduction in the number of days that African
22 American students were out of school for disciplinary reasons.

23 There are a number of studies that have sought to explain the black-white
24 disproportionality related to suspensions. Almost certainly, implicit bias is part of the
25 explanation. However, the representatives of the Department of Justice have looked at whether
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1 students of different races receive different penalties for the same offense and concluded that they
2 found no evidence of such discrimination.

3 Role of Consultants

4 The Fisher plaintiffs assert that because the Special Master uses a statistician to ensure the
5 quality of quantitative analyses, the District should not receive unitary status. The District
6 supported the hiring of the statistical consultant to work with the Special Master in order to
7 ensure that the work of the Special Master was accurate in much the same way that the District
8 agreed to support a statistician to examine the statistics related to the achievement gap at the
9 request of the Fisher plaintiffs.
10

11 Rigor of CR Courses

12 *The Fisher plaintiffs claim, based on the opinions of two students and a counselor, that*
13 *CRC lack rigor.* However, the responsibility of specially trained mentors of teachers of CRC
14 courses include maintaining fidelity of the CRC curriculum. Fisher plaintiffs provide no
15 examples of the comparative rigor of CR courses as compared to conventional courses for which
16 the CR courses are equivalents.
17

18 GATE

19 *The Fisher plaintiffs claim that GATE programs in which participation has increased*
20 *recently are not taught by GATE qualified teachers and are not legitimate advanced learning*
21 *experiences.* This is not correct. All GATE teachers are fully credentialed as GATE practitioners
22 or are in the process of completing GATE training. GATE training is the same as all in all GATE
23 programs. The curriculum in GATE programs is the District curriculum, but more rigorous and it
24 is the same in all GATE programs, whether self-contained cluster, etc.
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1 **Objections by the Mendoza plaintiffs**

2 Proof of Efficacy

3 Many of the objections by the Mendoza plaintiffs include, but are not limited to, an
4 assertion that unitary status should not be awarded until the efficacy of particular actions to which
5 the District commits itself is demonstrated. This stipulation means that for most of the recent
6 actions or those to which the District is committed in the future, unitary status could not be
7 approved for at least two more and likely three years. Most program evaluators argue that the
8 first year of implementation is not a good indicator of the potential of any initiative (the
9 “implementation dip”). And, almost certainly, one or more of the new initiatives will fall short of
10 its goals. We might expect the Mendoza plaintiffs to argue that until those goals are reached,
11 whatever they may be, unitary status should not be granted. The Special Master believes that if
12 recent and future proposals by the District have been shown to be effective elsewhere, in parts of
13 the District or involve intentional improvements to current practices, that this should satisfy the
14 Court that the District is acting in good faith and therefore warrants unitary status.

15 The Definition of Integration

16 The Mendoza plaintiffs have objected to the Special Master’s proposed changes in how
17 integration is defined. It appears that the only reason for this objection is that it would “change
18 the goal posts.” But it is easy enough to report the District’s progress with respect to the current
19 definition as well as the revised definition.

20 The Special Master initially proposed that the definition of integration involve no more
21 than 70% of one race, and other races would be plus or minus 25% of the students of each race at
22 the four levels of grade structure within the district. He offered the alternative of plus or minus
23 20%. In applying these definitions, it turns out that schools that have as few as seven percent of
24 white and/or black students would be deemed integrated because of the small numbers of black
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1 and white students. Therefore, the Special Master recommends that the District’s proposal – to
2 have two racial groups of 25% or more, but no group of more than 70% – would best describe
3 schools in which students would have a substantial opportunity to interact in positive ways with
4 students of different races.

5
6 Clearly, the definition that the Special Master now proposes puts the District’s progress in
7 a better light than if integration were defined more narrowly. But more importantly, many
8 schools that are not defined as integrated currently are in fact places where students would have a
9 much greater opportunity to learn from and with students of different races than they would in
10 several schools now defined as integrated. Further, the future of the District is strengthened by
11 being seen as a place where students of different races learn together and develop the
12 understanding and skills that come from such experiences. It would be sad if going forward, the
13 District is unable to more accurately characterize itself as a learning environment that promotes
14 interracial understanding and collaboration.

15
16 In their argument for maintaining the way integration is defined in the USP, the Mendoza
17 plaintiffs draw attention to the fact that aside from magnet schools, the District has not been able
18 to integrate racially concentrated schools. This reality is evidence of the influence of location on
19 school choice and the concern families have about their children attending a school in which the
20 culture of the school and peer relationships are shaped by students of the dominant race in that
21 school.

22
23 The Mendoza plaintiffs point out that “stereotype threat” influences student choices. But
24 it is also true that the social myths that result in stereotyping also affect integration.⁴ In short, it is

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26 _____
27 ⁴ Stereotype threat occurs when the behavior of individuals is shaped by a belief that the
28 characteristics of one’s group is correct (e.g., girls are not good at math). Stereotype threat is most often
an explanation for why individuals back away from difficult problems because they internalize the myths
that comprise stereotypes – about race, gender, religion, etc.)

1 extraordinarily difficult to integrate racially concentrated schools especially when racially
2 concentrated schools are located in racially concentrated neighborhoods.

3 Site Level Teacher Diversity

4 The Mendoza plaintiffs believe the District should not receive unitary status because the
5 Special Master, in implementing the Teacher Diversity Plan (TDP), now renamed the Teacher
6 and Administrator Diversity Plan (TADP) exercised some discretion in determining which
7 schools were in need of greater teacher diversity.
8

9 The basic purposes of TDP at the school level are: (1) to provide students the opportunity
10 to learn from teachers of different races, and (2) to have faculty in the school who have diverse
11 experiences and perspectives from whom their professional peers can learn and who will facilitate
12 problem solving, especially being responsive to and motivating students from different cultural
13 and racial backgrounds. The Special Master reasoned that in schools that had a relatively diverse
14 faculty with respect to white, African American and Latino teachers but fall slightly short of the
15 criteria for diversity, the goals of teacher diversity could be achieved by counting other teachers
16 of color – Native American, mixed-race and Asian-Pacific backgrounds.
17

18 The Special Master was transparent about his actions to count teachers of color other than
19 African American and Latino teachers in determining that a school faculty is racially diverse.
20 This practice was implemented from the first year of the TDP plan in 2016-17 and every year
21 thereafter. The plaintiffs did not object. Only now, when the unitary status is at issue, do the
22 Mendoza plaintiffs determine that the Special Master acted inappropriately. Their objection to
23 the variations from the formulas specified in the USP is not rooted in any claims about how the
24 Special Master determined the broader conception of diversity undermines the attainment of the
25 goals of the teacher diversity plan. There are no issues of discrimination or inequity in the
26 Special Master's actions.
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1 The District has struggled to achieve the goals of the teacher diversity plan even though
2 substantial financial incentives – \$5,000 a year – were offered to teachers who voluntarily moved
3 to another school to enhance the diversity of that school’s faculty. Indeed, over 100 teachers have
4 transferred from one District school to another over the past four years under this incentive
5 program, substantially improving site level diversity but not meeting the goals set by the Teacher
6 Diversity Plan. Had the Special Master not acted as he did in implementing the Teacher Diversity
7 Plan, the District would have had even more difficulty in implementing and achieving the goals
8 of the USP.

9 10 School-level Administrator Diversity

11 *The Mendoza plaintiffs assert that the Special Master did not examine school level*
12 *administrator diversity.* That is not correct. But the Special Master concluded, as did the
13 District, that using the same formula that was used for teacher diversity is not workable because
14 of the small number of administrators in most schools. And trying to specify particular numbers
15 where two or more administrators are in a given school, the Special Master was advised by the
16 Department of Justice that this was not appropriate because it created the appearance of a quota.
17 The Mendoza plaintiffs argue that surely the parties could find a solution. However, the District,
18 Special Master and the Department of Justice were unable to do so and no proposal was
19 submitted by the Mendoza plaintiffs. The Special Master concluded that one might best approach
20 this problem on a case-by-case basis.

21 22 Grow Your Own Programs

23 Because of the difficulty of recruiting and retaining African American and Latino
24 teachers, the District has implemented programs for prospective teachers and prospective
25 administrators. The Mendoza plaintiffs argue that the District’s efforts have been inadequate, at
26 least with respect to administrators. They assert that the only program that the District has is the
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1 Leadership Prep Academy, which has only recently had a significant number of participants who
2 are African American and Latino.

3 However, the Leadership Prep Academy is not the only way that teachers can become
4 school administrators. The District has cooperative programs with the University of Arizona,
5 Grand Canyon University and Northern Arizona University, through which teachers can become
6 qualified to hold administrative positions in Arizona school districts. These cooperative programs
7 involve tuition subsidies and the District has agreed to provide tuition assistance to a select
8 number of the most promising candidates for leadership positions among those who participate in
9 the Leadership Prep Academy.
10

11 In addition, there is a more informal path to the leadership, overseen by the Director of
12 Talent Acquisition, Recruitment and Retention, by which potential candidates are proactively
13 identified and are provided with opportunities to demonstrate capabilities for leadership.
14

15 An employee of the District need not attend the Leadership Prep Academy or any other
16 formal program in order to be appointed as an assistant or principal.

17 In implementing strategies for “growing your own leaders,” the District identified what
18 other Districts are doing in this regard and reviewed the literature.

19 As they have with most of the elements of the USP with which they have reservations, the
20 Mendoza plaintiffs asked that the Court not award unitary status until the effectiveness of the
21 leadership development strategies used by the District can be demonstrated. This would stretch
22 out the time under which the District was supervised by the Court because the placement of
23 individual administrators is dependent on a number of different variables including vacancies, the
24 race of the candidates, and the particular school level in which a prospective candidate would
25 work.
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1 This is particularly true given that the District already does a better job of attracting and
2 retaining administrators of color that most of its peers. The District substantially exceeds state
3 and national state averages for percentages of African American and Hispanic administrators.
4 Based on population alone, the District's administrators are more than double the Tucson area
5 percentage of African Americans, and equal to the Tucson area percentage of Hispanics.

7 The Walk-through Protocol

8 One of the ways that principals and others responsible for supervision (such as the director
9 of magnet schools) engage in regular oversight of teaching effectiveness and the full range of
10 actions that take place in schools is what is called the walk-through protocol (WTP). Supervisors
11 use this instrument to record their observations of individual teachers or groups of teachers or
12 other actions that affect the learning opportunities of students in the school. The Mendoza
13 plaintiffs argue that the Special Master did not provide adequate information about how this
14 instrument was used. Their conclusion in this respect is correct. However, during the fall term of
15 2019, members of the Implementation Committee observed how the WTP was being used and
16 concluded that this approach to supervision was utilized more or less effectively. Some schools
17 were better than others but, overall, the instrument served its purposes.

19 Culturally Responsive Pedagogy

20 The Mendoza plaintiffs identify actions the District is taking to strengthen culturally
21 responsive pedagogy. These steps include improving the training of those school administrators
22 to evaluate teachers and adding staff to provide additional support to design culturally responsive
23 behavioral and academic interventions. The Mendoza plaintiffs argue that the steps show the
24 inadequacy of culturally responsive pedagogy. The Special Master views this as evidence that the
25 District is committed to improve culturally responsive pedagogy, a task that will be and should be
26 unending.
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1 Data on Recidivism

2 The Mendoza plaintiffs argue that the only evidence provided by the District related to
3 recidivism deals with fighting and drug offenses. This is true because the Special Master
4 requested such information as a way of assessing whether the District strategies for using
5 counseling in lieu of suspension was effective. The evidence provided by the District indicates
6 that it is effective and therefore significantly reduces the number of days that students are out of
7 school for disciplinary reasons.

8
9 Best Practices File for Discipline

10 The Mendoza plaintiffs indicated they had not had a chance to critically examine the file
11 of best practices relating to discipline that the District had been ordered to prepare. The initial
12 version of this best practices file was limited to procedures. Recently, the Special Master and a
13 member of the Implementation Committee responsible for discipline concerns had the
14 opportunity to examine the file. While it is still a work in progress, and hopefully will continue to
15 be, the current file which is accessible to all teachers and administrators, identifies resources from
16 the Internet as well as short videos of District staff describing how they handle particular
17 disciplinary infractions. Since most school districts do not have such a best practices file, there
18 are not comparisons that could be used to assess what TUSD has developed thus far. The Special
19 Master believes that the District's work is satisfactory and responsive to directions by the Court.

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21
22 Assertions Related to Excessive Disciplining

23 In the Special Master's Report and Recommendation. The Special Master observes that
24 the District has no idea about over-disciplining at the classroom level and the way he presents that
25 information suggests that this applies to all types of disciplinary action. Special Master's lack of
26 clarity in this regard does require correction. The Special Master is referring to actions by
27 individual teachers that are dealt with at the school level, but not reported to the central office.
28

1 The reason this information is not reported is because the District believes this would lead to
2 underreporting. The Special Master recommended that each school report the nature and
3 frequency of over disciplining without identifying the teacher's name so that the District could
4 develop professional learning experiences for teachers when the nature of the problem warrants
5 District level approaches. The District has agreed to collect such information. The District does
6 monitor actions by school administrators through their regular auditing process.
7

8 Alleged Understaffing in the Technology Department

9 In the Special Master's recommendations with respect to the role of specialists in the
10 student support departments, the Special Master proposes to add two staff people to assist in
11 efforts to ensure that African-American and Latino students are able to engage in virtual learning
12 that will be required because of the COVID-19 pandemic. The Mendoza plaintiffs take this as
13 evidence that the District has not provided adequate support for technology facilitated learning.
14 One might argue that additional staffing could be productively added to almost all departments of
15 the District. There is no issue of discrimination here. In fact, it increases the targeted support for
16 African American and Latino students in a timely way.
17

18 Framework for Planning

19 The Mendoza plaintiffs, as did the Special Master, objected to the inadequacy of the plans
20 developed by the District for school improvement. The Mendoza plaintiffs also questioned why
21 the essential elements of Professional Learning Communities (PLC) is proposed as the framework
22 for school improvement plans. The Special Master makes this proposal not to limit what the
23 school plans include but to ensure that they do include the fundamentals of strategic planning that
24 can guide action. These fundamentals not only give direction to strategic action, they provide
25 benchmarks for monitoring and accountability.
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, 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