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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,  
Plaintiffs  
  
and  
United States of America,  
Plaintiff-Intervenor,  
  
v.  
Tucson Unified School District, et al.,  
Defendants,  
  
and  
Sidney L. Sutton, et al.,  
Defendants-Intervenors,

No. CV-74-00090-TUC-DCB  
(Lead Case)

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Maria Mendoza, et al.,  
Plaintiffs,  
  
and  
United States of America,  
Plaintiff-Intervenor,  
  
v.  
Tucson Unified School District, et al.  
Defendants.

No. CV-74-0204-TUC-DCB  
(Consolidated Case)

**ORDER**

## Introduction

1  
2 It seems fitting that this Order addresses what might be considered the foundational  
3 origins of the Unitary Status Plan (USP): The Student Support Services Departments  
4 (SSSDs), AASSD and MASSD, and Culturally Relevant Curriculum (CRC). This case,  
5 originally filed in 1974, resolved by a post-Judgment Settlement Agreement entered in  
6 1978, remained pending in this Court for 30 years until 2008, when this Court issued an  
7 Order of unitary status which was subsequently reversed by the Ninth Circuit Court of  
8 Appeals. When remanded, the Parties entered into the 2013 Consent Decree: The Unitary  
9 Status Plan (USP). Since then, the Court has tracked the District's endeavors to implement  
10 the programs and strategies adopted in the USP.

11 Recently, the Court has issued a series of Orders reviewing the District's compliance  
12 with directives issued on September 6, 2019, for attaining unitary status under the USP.  
13 This is the last Order in that series, with the Court's attention turned to the USP § V.E,  
14 Student Engagement and Support, specifically the engagement strategy of using socially  
15 and culturally relevant curriculum (CRC), USP § V.E.1a-b(ii), and the requirement that the  
16 District "continue to fund and sustain Support Services for African American Students  
17 Achievement, USP § V.E.7, and Support Services for Latino Students Achievement, *id.* §  
18 8. Both the CRC and the SSSD provisions in the USP harken back to the approximately  
19 30-years of TUSD operations under the 1978 Settlement Agreement.

### 1. Student Support Services Departments: AASSD and MASSD

21 During those 30 years, several SSSDs were established in TUSD, including the  
22 African American Student Services Department (AASSD), Native American Student  
23 Services (NASS), and Asian Pacific Student Services (APASS). The student support  
24 services for Mexican American students was best known as MAS, the Mexican American  
25 Studies program. The MAS minority-studies curriculum became so controversial that it  
26 was banned by A.R.S. § 15-112, which was eventually struck down in relevant part as  
27 unconstitutional in *Acosta v. Huppenthal*, 2013 WL 871892 (Ariz. March 8, 2013).<sup>1</sup> The

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28 <sup>1</sup> Affirmed in relevant part by *Arce v. Douglas*, 793 F.3d 968, 986 (9<sup>th</sup> Cir. 2015).

1 Parties' commitment to both minority-student support departments and minority studies  
2 are reflected in the USP provisions now being reviewed by the Court.

3 This history is important because the Special Master recommends that, post-unitary  
4 status, AASSD and MASSD, if not eliminated, should be structured very differently than  
5 the Defendant, the TUSD School District (the District), proposes. The Court directed the  
6 Special Master to draft operating plans for AASSD and MASSD after his repeated  
7 objections and assertions that these departments are duplicative of services which are being  
8 more effectively provided by other departments and on-site at schools. The Court called  
9 for further briefing of the roles and responsibilities for these departments given the  
10 substantial changes made in TUSD under the USP. (Order (Doc. 2359)).

11 While this Court may be inclined to agree with many of the Special Master's  
12 recommendations, it agrees with the District that its "commitment to providing extra  
13 support and enrichments for students of certain racial and ethnic groups is beyond  
14 question." (TUSD Response to R&R (Doc. 2411) at 2.) The Court defers to the District's  
15 experience, including its report that the fears expressed by the Special Master are not  
16 supported by its past experience. The District further believes, as follows:

17 . . . that valuable, important and worthwhile direct services can be provided  
18 to students, families and teachers by these departments, focusing on those  
19 who need it most, as provided in the District's post-unitary operating plans.  
20 The District believes that the ability to deliver those direct support services  
21 in a culturally responsive way as done by these departments is important, and  
22 that the value of the direct services provided by these departments is not  
23 limited to those circumstances where schools cannot provide the same  
24 services. The staff of these departments have not experienced issues with  
25 teachers or other professionals in the District not taking "advice" from them,  
26 as theorized by the Special Master. These departments are well respected  
27 within the District for professional, culturally relevant skill sets and  
28 connections to the communities they serve.

(TUSD Response to R&R (Doc. 2411) at 2-3.) According to the District, most services  
provided by the departments are not even of the same type provided elsewhere in the  
District; some services may be of the same type but replace services provided by other  
departments, in a more culturally responsive way for African American and Latino  
students. *Id.*

1           The Court also agrees with the District that post unitary status, “the particular  
2 support services provided, the manner in which they are provided, and the structure of the  
3 departments providing them, are all matters which, by definition in a post-unitary status  
4 [world], are committed to the sound judgment of District’s educators and its elected  
5 Governing Board.” *Id.* This review is not, however, being made post-unitary status. The  
6 Court is considering the District’s proposed post-unitary status plans for AASSD and  
7 MASSD operations in the context of determining whether they exhibit a commitment by  
8 the District to maintain, post-unitary status, the integrity of the USP. Accordingly, the  
9 Court turns to the merits of the District’s arguments against the Special Master’s  
10 recommendations for the SSSDs. The District believes that elimination of functions and  
11 services from the AASSD and the MASSD in the Special Master’s recommendations will  
12 not necessarily have the effect of “saving” money as contended by the Special Master  
13 because the interconnectedness of USP operations means responsibilities are sprinkled  
14 between school-sites and departments, including AASSD and MASSD, depending on the  
15 District’s determination on the most effective point of delivery, so if the Court were to  
16 order a function removed from the student support departments, the District would likely  
17 need to move the function and personnel to another department. (TUSD Response to R&R  
18 (Doc. 2411) at 3.)

19           The District has designed the SSSDs’ operating plans for both AASSD and MASSD  
20 to “have parent and community outreach program specialists as an actual field position  
21 (conducting outreach and empowerment for African American and Hispanic families), not  
22 merely doing research on best practices and advising other departments.” *Id.* Under the  
23 Special Master’s design, the discipline/behavioral support program specialists, “who  
24 provide direct services in each department would likely need to be moved to the Student  
25 Relations Department . . .[;] the academic intervention specialists would likely need to be  
26 moved to the Curriculum and Instruction Department.” *Id.* at 4.

27           In summary, the District asserts there is no cost savings with the Special Master’s  
28 changes to AASSD and MASSD. It will continue to pay for student support services but

1 get less bang for their buck because direct services will be provided by departments without  
2 the expertise and/or ability to perform culturally relevant outreach or to be culturally  
3 responsive in delivering academic and behavioral student support services.

4 Admittedly, all TUSD professional staff are trained in culturally relevant pedagogy.  
5 The Special Master reports that “[v]irtually all of the functions of the PS [Program  
6 Specialists] are the responsibility of other staff members throughout the District.” (R&R  
7 (Doc. 2347) at 4.) He asks: Would it not be more productive to devote resources to  
8 enhancing the capability of the people already responsible for meeting the needs of the  
9 students with whom the PS would work?” *Id.* at 4-5. He describes it as “particularly  
10 nonsensical” to believe “that there is a need for another staff person to enhance culturally  
11 relevant course teaching and curriculum. The CRPI<sup>2</sup> department, which is responsible for  
12 ensuring the integrity and quality of culturally relevant courses, is extraordinarily well  
13 staffed (better than any other District’s support for curriculum development and  
14 implementation) and can provide support for numerous teachers throughout the District.”  
15 *Id.* at 5.

16 The Special Master recommends that if the AASSD and MASSD are to provide the  
17 requisite level of professional expertise capable of advising teachers and administrators,  
18 their qualifications must increase to at least eight master-level or higher new equity  
19 specialists. As noted by the District, this would drive up AASSD and MASSD program  
20 costs and not be a cost savings at all. The Court adopts the District’s position that AASSD  
21 and MASSD professional staff, who provide direct student services need only be equally  
22 qualified to their professional counterparts providing these same student support services  
23 at school-sites and other departments. To be clear, AASSD and MASSD staff providing  
24 direct academic student support services shall be certified teachers and those providing  
25 behavioral counseling shall be certified as well. Career counselors should be equally  
26 qualified regardless of whether they work on-site or at AASSD or MASSD, and so on.

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28 <sup>2</sup> Culturally Relevant Pedagogy and Instruction Department.

1 AASSD and MASSD professional staff are also required to have culturally relevant skill  
2 sets and connections to the communities they serve.

3 The Special Master is correct that the District's other department and school-sites,  
4 especially the CRPI department, has expertise in delivering culturally relevant student  
5 support services, especially direct academic support. The District's behavioral and  
6 disciplinary strategies are equally supported by experts in the Student Relations  
7 Department. Program expertise tracks across the USP, including as examples the  
8 following: Advanced Learning Experiences (ALE) Department; Assessment and  
9 Evaluation Department; Dropout Prevention and Graduation (DPG) Department;  
10 Language Acquisition Department (LAD); Magnet Department; Multi-cultural  
11 Department; Multi-tier System of Supports (MTSS) Program, and Student Relations  
12 Department, and the SSSDs (AASSD and MASSD). (Executive Summary (Doc. 2384) at  
13 3-4.)

14 The Court concludes that the District has the ability in-house, through these various  
15 departments, to train AASSD and MASSD professional staff in the same way they conduct  
16 professional development district-wide for all professional staff in the delivery of USP  
17 strategies. There is no reason why AASSD and MASSD staff, just like on-site teachers,  
18 counselors, and administrators, cannot look to other TUSD departments for program  
19 specific training in CRPI, CRC, MTSS, PBIS, Restorative Practices, discipline and dropout  
20 prevention strategies, etc. *See e.g.*, (MASSD Plan (Doc. 2151-2 at 15 (including District  
21 Department trainings from ALE, CTE, FACE, LAD, GATE, CRPI)); (AASSD Plan (Doc.  
22 2151-1) at 9 (same)). In other words, AASSD and MASSD staff shall be equally qualified  
23 to their on-site or other departmental peers, including being equally trained in the expert  
24 delivery of the USP strategies relevant to their areas of specialty. What AASSD and  
25 MASSD bring to the table is equally qualified professionals, **who have culturally relevant**  
26 **skill sets and connections to the communities they serve.**

27 The Court has reviewed the various responses from the District, the original AASSD  
28 and MASSD operating plans, and the revised plans, which this Court finds are not

1 replacement plans but serve to explain the interconnectedness of the AASSD and MASSD  
2 services with other department services and school-site student support services. The Court  
3 finds that the revised operating plans address the Court’s inquiry as to whether there was  
4 duplication of services, and the District did not intend any substantive differences between  
5 the two. The Court explains this conclusion in respect to each operating plan below. The  
6 Court adopts the original AASSD Operating Plan (AASSD Plan) (Doc. 2151-1) and  
7 MASSD Operating Plan (MASSD Plan) (Doc. 2151-2) at 1), as clarified by the revised  
8 operating plans (Doc. 2265), supported by the MASSD 2018-19 Reorganization Plan  
9 ((Doc. 2151-2) at 20) and AASSD 2018-19 Restructuring Plan ((Doc. 2276) at 27.)

10 As explained in the MASSD 2018-19 Reorganization Plan, the department is  
11 shifting away from the current deficit-based ideology of identifying student deficiencies  
12 (i.e. low achievement in reading and math test scores, low attendance, behavior issues, etc.)  
13 which justify outcome inequalities like standardized test-scores or disproportionate  
14 discipline and use academic or behavioral strategies to address these deficiencies. Instead,  
15 MASSD Program Specialists should maximize the access and use by Latino students of  
16 the research-based practices that exist in the District, which are aimed at increasing student  
17 success in school and enhancing academic achievement. (MASSD Reorganization Plan  
18 ((Doc. 2151-2) at 22-23.) This is mirrored in the AASSD 2018-19 Restructuring Plan,  
19 drafted by Trayben and Associates, “[AASSD should] “shift[] direction from 100% direct  
20 services to a balance between direct services to students and direct support for departments  
21 and schools by building instructional capacity of teachers and other support staff. Some  
22 direct services will continue at targeted schools, using asset-based approaches designed to  
23 meet students where they are through culturally responsive practices.” (Fisher Objection,  
24 AASSD Restructuring Plan (Doc. 2276) at 27.)

25 Trayben and Associates, the District’s expert hired pursuant to the suggestion and  
26 recommendation of the Fisher Plaintiffs,<sup>3</sup> explained: “AASSD supplement[s] educational

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28 <sup>3</sup> The District conducted the comprehensive review of the AASSD structure during  
2018, “using a consultant suggested and approved by counsel for the Fisher Plaintiffs.”  
(TUSD Response (Doc. 2314) at 3.)

1 services that should be provided by the District, not supplant them.” (Fisher Objection,  
2 AASSD Restructuring Plan (Doc. 2276) at 38.) “However, because of the “lack of African  
3 American teachers, counselors, [and] principals . . . in the District” . . . “compared to the  
4 majority of the AASSD staff [being] African American, the AASSD affords African  
5 American “students an opportunity to learn from individuals of the same ethnicity which  
6 can have a significant impact on student learning through supplemental services.” (Fisher  
7 Objection, AASSD Restructuring Plan (Doc. 2276) at 38.) “Current research finds support  
8 for the positive impact African American teachers have on African American student  
9 achievement.” *Id.*

10 The AASSD and MASSD operating plans strike a balance between the deficit-based  
11 direct-services approach, which limits the reach of the Student Support Departments, with  
12 an asset-based approach, which extends it. For example, in 2017-18 “MASSD’s 7 Student  
13 Success Specialists committed to serving as many of the 29,949 students as possible with  
14 a 4,007 to 1 ratio.”<sup>4</sup> (MASSD Reorganization Plan ((Doc. 2151-2) at 22-23.) Whereas,  
15 there were only approximately 4,869 African American students enrolled in TUSD. (NC:  
16 Discipline Disaggregated by Race for 2017-18 (Doc. 2266-3) at 22.) These comparisons  
17 and the difference in demographics between Latino students being a minority-majority and  
18 African America students being only about 10 % of the total student population, with even  
19 less representation as teachers and administrators, explain why the MASSD and AASSD  
20 operating plans strike the balance differently. These differences do not, however, carryover  
21 to other MASSD and AASSD operating plan components, which the Court directs the  
22 District to make uniform, as follow.

23 Both operating plans shall include the progress monitoring provisions from the  
24 MASSD Plan, § III Data Driven Progress Monitoring, ((2151-2) at 17); (2265-2 at 14), as  
25 expressly described in the MASSD 2018-19 Reorganization Plan ((2151-2) at 25),  
26 including the designation of a Research Project Manager from the District Assessment &

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27  
28 <sup>4</sup> An exaggeration exists because not all Latino or Africa American students need student support services.



1 Evaluation Department, with monitoring and assessment of effectiveness of positions and  
2 alignment with job responsibilities based on data by school and individual students served.  
3 *See* (Fisher Objection, AASSD Restructuring Plan (Doc. 2276) at 8 (requesting evaluation  
4 data for 2018-19 to show what services were provided at what schools and the number of  
5 students served; requesting information on how the effectiveness of AASSD was  
6 measured)).

7 Like it did for MASSD, the District shall form the AASSD Reorganization Planning  
8 Committee (the Committee), including a Fisher Plaintiff representative, a member of the  
9 Special Master’s Implementation Committee, and District leadership involved in AASSD  
10 operations. (TUSD Response (Doc. 2322) at 5 (describing formation of Committee and its  
11 development of the MASSD 2018-19 Reorganization Plan, with input from a panel of  
12 experts).

13 The lines of communication described for the Director of AASSD shall be the same  
14 for the Director of MASSD: “The department director reports directly to the Assistant  
15 Superintendent for Curriculum and Instruction, who in turn reports to the District  
16 Superintendent.” (AASSD Plan (Doc. 2265-1) at 2), *cf.*, (R&R (Doc. 2403) at 5  
17 (recommending Director report to Senior Director for Equity who, in turn , would report  
18 to the Assistant Superintendent for Curriculum and Instruction). Both Directors shall  
19 “[p]rovide regular updates to the superintendent, governing board and community.”<sup>5</sup>  
20 (AASSD Plan (Doc. 2151-1) at 4.)

21 Both departments shall follow the annual monitoring and assessment provisions,  
22 pursuant to the MASSD Operating Plan, Section III, Data Driven Progress Monitoring.  
23 This year the departments shall each prepare a status report reviewing the 2018-19 Strategic  
24 Plan to identify any modifications and adjustments in operations made in SY 2018-19 or  
25 SY 2019-20 and include a 2020-21 Strategic Plan. The status report shall be finalized to  
26 reflect the [o]ngoing monitoring and assessment to determine the effectiveness” of the  
27 2020-21 operations and include a draft updated operating plan which reflects the directives

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28 <sup>5</sup> This shall include posting on the District’s website

1 made by this Court in this Order and any other operational changes deriving from the  
2 annual review process. These materials shall be provided to the AASSD and MASSD  
3 Reorganization Planning Committees, respectively, for further review and comment  
4 regarding revisions. Subsequently, the District shall update the MASSD and AASSD  
5 Operating Plans, with the Directors presenting the updated operating plans in his/her  
6 regular update to the superintendent, governing board and community, depending on  
7 whether this year's review is in late winter or early spring.

8 SSSDs' staff, who are providing direct student support services, actually or on  
9 paper, shall have professional qualifications equal to their professional counterparts  
10 providing these same student support services at school-sites and other departments,  
11 including requisite certifications, and shall be equally trained with these peers regarding  
12 the delivery of services pursuant to USP strategies relevant in their areas of specialty. This  
13 latter requirement shall apply to all AASSD and MASSD staff, even those not providing  
14 direct student support services. This training shall be a top priority. This directive overrides  
15 any "related field" or "alternative experience" provisions which are to the contrary. For  
16 example, both operating plans provide: Behavioral Specialists "must hold a Bachelors  
17 degree in education, counseling, African American [Mexican American] studies, or a  
18 related field. (AASSD Plan (Doc. 2151-1) at 7); (MASSD Plan (Doc. 2151-2) at 6).  
19 Pursuant to the directives in this Order, only a licensed counselor would have the  
20 qualifications to address Tier 2 and 3 behavioral issues for at-risk students.

21 The Court finds that it is unnecessary for the District to immediately file revised  
22 operating plans. The District shall consider the directives in this Order as binding during  
23 this year's operations and for purposes of the annual review (winter or early spring) of the  
24 2020-21 MASSD and AASSD operations, including preparing the Status Reports, 2020-  
25 21 Strategic Plans, and updating the AASSD and MASSD Operating Plans, as described  
26 below more fully for each department.

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1           A. MASSD

2           The Mendoza Plaintiffs had no substantive objections to the District’s originally  
3 filed MASSD Plan (Doc. 2151-2) but filed an objection to the Revised MASSD Plan.  
4 (Mendoza Response (Doc. 2168)). The Plaintiffs complain that “[t]he revised plans reflect  
5 some evolution since the original filing, based on experience in the interim.” (Mendoza  
6 Response (Doc. 2287) at 4 (quoting (R-MASSD Plan (Doc. 2265-1) at 2). The Plaintiffs  
7 believe that the District made material changes to the organization and work of the MASSD  
8 and fails to explain how those changes relate to MASSD’s efforts to implement the 2018-  
9 19 Strategic Plan or whether it made these substantive changes pursuant to the monitoring  
10 and assessment provisions required by both the original and revised MASSD plan.  
11 (Mendoza Response (Doc. 2287) at 4-5.)

12           The Plaintiffs compare the Revised MASSD Plan, which reflects that each of the  
13 eight Program Specialists are assigned to provide direct student support services, to the  
14 original MASSD Plan, which called for only two of the eight Program Specialists to be  
15 providing direct services: the two Academic Empowerment & Engagement Program  
16 Specialists being certified teachers qualified to “actually instruct” and the Social-  
17 Emotional & Behavioral Support Program Specialist being a licensed Social Worker.  
18 (Mendoza Response (Doc. 2287) at 6) (relying on original MASSD Plan (Doc. 2151-2) at  
19 12)). The Plaintiffs complain that in the Revised MASSD Plan the District ignores the  
20 differences in qualifications between the eight Program Specialists and has them delivering  
21 both direct academic and behavioral services while carrying out other responsibilities.  
22 (Mendoza Response (Doc. 2287) at 6.) If true, this is contrary to MTSS, which recognizes  
23 separate and distinguishable needs between academic and behavioral interventions.  
24 (Mendoza Response (Doc. 2287) at 6-7.) Plaintiffs complain that the Revised MASSD  
25 Plan in comparison to the original MASSD Plan is vague in respect to development and  
26 implementation of individual student plans and completely omits the roles of the  
27 Department Director and Program Coordinator. (Mendoza Response (Doc. 2287) at 7-10.)  
28 The Plaintiffs charge that the District has stepped back from its commitment, memorialized

1 in detail in the MASSD 2018-19 Strategic Plan for reorganization, pursuant to the MASSD  
2 2018-19 Reorganization Plan, from being a “deficit-based” model to taking an “asset-  
3 based” approach to student support services. (MASSD Reorganization Plan (Doc. 2151-2)  
4 at 21); (MASSD Plan (Doc. 2265-2) at 17).

5 Both the Plaintiffs and the District explain that the Court misunderstood the status  
6 of MASSD as being stagnate and stuck in the past. Instead, the District formed the  
7 Reorganization Planning Committee (the Committee), including a Mendoza Plaintiff  
8 representative, a member of the Special Master’s Implementation Committee, and District  
9 leadership involved in SY 2017-18 operations. (TUSD Response (Doc. 2322) at 5.) This  
10 Committee developed the MASSD 2018-19 Reorganization Plan, with input from a panel  
11 of experts. *Id.*

12 In a nutshell, as the Court understands it, the Committee advised that a more  
13 comprehensive and integrated outcome-based service model will best support students,  
14 which can provide targeted areas of support – reflected by the Program Specialist positions.  
15 The Committee intends for MASSD to shift away from the current deficit-based ideology  
16 of identifying student deficiencies and addressing those deficiencies through Student  
17 Success Specialists and, instead, MASSD will focus on an asset-based approach by  
18 Program Specialists to increase access for Latino students to the research-based practices  
19 that exist in the District, which are aimed at improving student success in school and  
20 enhancing academic achievement.

21 The District responds to the Mendoza Plaintiffs’ concerns by reemphasizing its  
22 strong support of this new trajectory for MASSD and expressly commits to adhering to the  
23 MASSD 2018-19 Reorganization Plan, and the expressly referenced SY 2018-19 Strategic  
24 Plan. (TUSD Response (Doc. 2322 at 2, n.1) (explaining the Strategic Plan can be found  
25 attached to the Mendoza Objections (Doc. 2287-1) and was simply a filing decision to not  
26 attach it to the MASSD Reorganization Plan).

27 MASSD’s new goals, include implementing strategies as follows: 1) asset-based  
28 support services integrated with culturally responsive strategies to improve student

1 achievement and educational outcomes; 2) a systemic approach of support for  
2 administrators and teachers to incorporate asset-based and culturally responsive strategies  
3 within all facets of Mexican American/Latino students' educational experiences; 3)  
4 represent the interests of Mexican American/Latino students and parents in District  
5 decision-making; 4) expand extensive, integrated, collaborative partnerships at the local,  
6 state and national level to support MASSD goals; 5) foster Mexican American/Latino  
7 students and parents engagement in collaboration with FACE, site administrators, the  
8 CRPID, and District Leadership; 6) monitor academic success indicators district-wide to  
9 recommend interventions as needed; 7) target CRC classrooms to utilize AVID strategies  
10 to build positive, trusting relationships for students' academic and social support; 8) utilize  
11 EBAS to regularly review the effectiveness of MASSD organization, positions, plan, and  
12 operations to determine effectiveness and potential revisions to services and plans for  
13 individual students and the overall operation of MASSD. (MASSD Plan (2151-2) at 16.)

14 The District explains that the Revised MASSD Plan was responsive to the Court's  
15 directive to revise the operating plans to make it clear that there were no duplications of  
16 services occurring between MASSD and other departments and because the Revised  
17 MASSD Operating Plan reflected actual "day-to-day" 2018-19 MASSD operations.  
18 (TUSD Response (Doc. 2322) at 3 (admitting revised operating plan reflects existing  
19 "MASSD functions, employee duties, relationships with other departments; intended  
20 expression of long-term strategy for MASSD remains the province of the 2018-19 Strategic  
21 Plan)). The District reports it was harder than anticipated to shift away from direct services  
22 because of the community's long history of reliance on MASSD for these services. "The  
23 MASS Department expects a gradual release of direct student interventions through the  
24 MTSS model by all Program Specialists to be fully implemented either by the end of SY  
25 2019-20, or early 2020-21." (TUSD Response (Doc. 2322) at 5) (emphasis added).

26 The Court finds that the Revised MASSD Operating Plan addressed the Court's  
27 inquiry as to whether there was duplication of services. Both the original and revised  
28 MASSD plans reflect an operational structure that ensures direct-services remain the

1 primary responsibility of the District's schools and departments, with MASSD taking a  
2 targeted approach in providing support services and, whenever possible, taking an asset-  
3 based approach to maximize the efficacy for Latino students of the research-based practices  
4 that exist in the District. The Court finds the District did not intend any substantive  
5 difference between the revised and original MASSD operating plans. The Court attributes  
6 differences to the stylistic limitations of the bullet-point format used in the original plan  
7 and the more explanatory nature of prose, which was used in the presentation of the  
8 revision.

9 Accordingly, the Court adopts the MASSD Operating Plan as originally filed on  
10 December 6, 2018 ((Doc. 2151-2) at 3), as clarified by the Revised MASSD Operating  
11 Plan ((Doc. 2265-2) at 2), and adopts the 2018-19 Reorganization Plan ((2251-2 at 20);  
12 (2265-2 at 16)), referencing the 2018-19 Strategic Plan (2287-1).

13 To clear up any confusion which may have been caused by the Court's delay in adopting  
14 the District's MASSD Operating Plan, the 2018-19 Reorganization Plan, and referenced  
15 2018-19 Strategic Plan, especially in relation to the annual monitoring and assessment  
16 provisions, pursuant to the MASSD Operating Plan, Section III, Data Driven Progress  
17 Monitoring, the District shall prepare a status report for the 2018-19 Strategic Plan to  
18 reflect the [o]ngoing monitoring and assessment to determine the effectiveness" of the  
19 2018-19 MASSD operations and also the SY 2019-2020 operations, and identify any  
20 modifications and adjustments in operations made in SY 2019-20. The District shall  
21 prepare a 2020-21 Strategic Plan.

22 The MASSD Operating Plan calls for an annual (late winter or early spring)  
23 MASSD staff meeting, with the Assistant Superintendent of Curriculum and Instruction,  
24 to assess the support services, outcomes, and areas for improvement, and to consider  
25 operational changes for the following year. (MASSD Plan (Doc. 2151-2) at 18.) This  
26 year's meeting shall be memorialized in the Status Report and a draft updated MASSD  
27 Plan, reflecting the directives made by this Court herein and any operational changes  
28 deriving from the annual review process. These materials shall be provided to the

1 Reorganization Planning Committee for further review and comment regarding revisions.  
2 Subsequently, the District shall update the MASSD Operating Plan. The Director of  
3 MASSD shall present the updated MASSD Operating Plan in his “regular update to the  
4 superintendent, governing board and community” either at the end of SY 2020-21 or the  
5 beginning of SY 2021-22, whichever deadline coincides with this year’s annual (winter or  
6 spring) review. (AASSD Plan (Doc. 2151-1) at 4.)

7 Prior to issuance of the updated MASSD Operating Plan, the directives in this Order  
8 are binding, including MASSD’ staff, who are providing direct student support services,  
9 actually or on paper, shall have professional qualifications equal to their professional  
10 counterparts providing these same student support services at school-sites and other  
11 departments, including requisite certifications, and shall be fully trained to be experts in  
12 the delivery of services for USP strategies relevant in their areas of specialty.

13 B. AASSD

14 Like the Mendoza Plaintiffs, the Fisher Plaintiffs did not object to the District’s  
15 originally filed AASSD Plan (Doc. 2151-1), and but for the concerns of the Special Master,  
16 the AASSD Plan would likely have been adopted by the Court. Like the Mendoza  
17 Plaintiffs, the Fisher Plaintiffs filed an objection to the Revised AASSD (Doc. 2265-1).  
18 Whereas the Mendoza Plaintiffs complained of diversions between the revised and the  
19 original plans, the Fisher Plaintiffs charged that AASSD operations for at least five years  
20 have failed to produce any evidence that its operations serve to improve the achievement  
21 gap between White and African American Students. (Fisher Objection, AASSD  
22 Restructuring Plan (Doc. 2276) at 6.) The Fisher Plaintiffs complain that Defendants fail  
23 to present any data indicating what assessment results were used to design the AASSD  
24 reorganization, and there is no information on how the effectiveness of the department’s  
25 programs and services will be measured. *Id.* at 7.

26 The Fisher Plaintiffs complain that they have repeatedly asked the District to  
27 develop an academic achievement plan for African American students, but instead of  
28 creating such a plan, the District continues to operate the AASSD without any specific

1 strategies to narrow the achievement gap or reduce discipline disparities. *Id.*

2 The Fisher Plaintiffs ignore USP § V.E, Student Engagement and Support, and its  
3 strategies including using culturally relevant curriculum and pedagogy to engage minority  
4 students, USP § V.E.1, and to continue to support AASSD to provide culturally relevant  
5 student support services, *id.* § V.E.2-7. The Fisher Plaintiffs ignore the ALE provisions,  
6 USP § V.A, and the Family Engagement and Community Outreach (FACE), USP § VII.  
7 The Fisher Plaintiffs ignore USP § VI, Discipline, provisions which call for a graduated  
8 system of student behavior policies and discipline practices with the overall goal of creating  
9 inclusive and supportive environments in District schools aimed at keeping students in  
10 school and learning. In short, the Fisher Plaintiffs ignore that USP, which includes the  
11 academic achievement plan and disciplinary revisions they claim the District has failed to  
12 provide. As this Order, and the other recently issued Orders tracking the District's  
13 endeavors pursuant to the USP, reflect, the District has developed and implemented plans  
14 pursuant to the USP provisions aimed at improving academic achievement for African  
15 American students. It has completely redesigned its disciplinary strategies. (Order (Doc.  
16 2502)). Accordingly, the Court rejects this objection.

17 As directed above, the data and monitoring provisions contained in the MASSD, which  
18 clearly provide the type of assessments regarding the effectiveness of the SSSDs that the  
19 Fisher Plaintiffs seek for AASSD, shall so apply.

20 This leaves the Fisher Plaintiffs' invocation of expert, Dr. Gwen Benson of Trayben  
21 and Associates, an organization the District utilized as an expert to "examine the district's  
22 systems, services, and processes to close the achievement gap between Anglo and African  
23 American Students." (Fisher Objection, Attach. 2: Trayben and Associates' Report (Doc.  
24 2276) at 21.) Especially relevant here, Trayben and Associates prepared a 2018-19 AASSD  
25 Restructuring Plan (Doc. 2276) at 27). The Court treats this like the MASSD 2018-19  
26 Reorganization Plan and gives it the same weight and authority. In comparing the Trayben  
27 AASSD 2018-19 Restructuring Plan with the District's AASSD Plan (2151-1), the two are  
28 substantively identical and almost verbatim identical in the tasks and responsibilities of the



1 recommended AASSD staff positions. *Compare:* (Fisher Objection, AASSD  
2 Restructuring Plan (Doc. 2276) at 27); (AASSD Plan (2151-1)). The Court finds that the  
3 Revised AASSD Plan addressed the Court's inquiry as to whether there was duplication of  
4 services. Both the original and revised AASSD plans reflect an operational structure that  
5 ensures direct-services remain the primary responsibility of the District's schools and  
6 departments, with AASSD taking a targeted approach in providing support services and,  
7 whenever possible, taking an asset-based approach to maximize access and use of the  
8 research-based practices that exist in the District for African American students. The Court  
9 finds that there was no substantive difference between the revised and original AASSD  
10 plans. Accordingly, the Court adopts the original AASSD Plan, filed on December 6, 2018,  
11 (2151-1) as clarified by the Revised AASSD Plan (2165-1), and adopts the AASSD 2018-  
12 19 Restructuring Plan ((Doc. 2276) at 28).

13 Like the MASSD 2018-19 Reorganization Plan, the AASSD Restructuring Plan  
14 includes a 2018-19 Strategic Plan of sorts in Table 1: Measurement Plan including Tasks,  
15 Responsibilities and Timelines by Task (Fisher Objection, AASSD Restructuring Plan  
16 (Doc. 2276) at 28-29) and an Implementation Chart, *id.* at 37-38, which are sufficient for  
17 the District to prepare a Status Report and 2020-21 Strategic Plan, as described above for  
18 MASSD. As the monitoring and review provisions provided for MASSD operations have  
19 been deemed herein to apply to AASSD, so too shall this Court's directives for this year's  
20 annual review of MASSD apply to AASSD. The District shall form an AASSD  
21 Restructuring Planning Committee identical to the MASSD Reorganization Planning  
22 Committee, including a Fisher Plaintiff representative, a member of the Special Master's  
23 Implementation Committee, and District leadership involved in AASSD operations.<sup>6</sup>

24 This year's meeting shall be memorialized in the Status Report, a 2020-21 Strategic  
25 Plan, and draft updated AASSD Plan, reflecting the directives made by this Court herein

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26  
27 <sup>6</sup> The Court does not repeat every directive given for MASSD here to avoid the risk  
28 of leaving something out or creating confusion with differing language. The Court intends  
that procedural provisions, especially those relating to program development, review,  
monitoring, and revisions shall be the same for MASSD and AASSD.

1 and any operational changes deriving from the annual review process. These materials shall  
2 be provided to the AASSD Reorganization Committee for further review and comment  
3 regarding revisions. Subsequently, the District shall update the AASSD Plan. The Director  
4 of AASSD shall present the updated AASSD Plan in his “regular update to the  
5 superintendent, governing board and community” either at the end of SY 2020-21 or the  
6 beginning of SY 2021-22, whichever deadline coincides with this year’s annual (winter or  
7 spring) review. (AASSD Plan (Doc. 2151-1) at 4.)

8 Prior to issuance of the Updated AASSD Operating Plan, the directives in this Order  
9 are binding, including AASSD staff, who are providing direct student support services,  
10 actually or on paper, shall have professional qualifications equal to their professional  
11 counterparts providing the same student support services at school-sites and other  
12 departments, including requisite certifications, and shall be fully trained experts in the  
13 delivery of services, pursuant to the USP strategies, relevant to their areas of specialty.

14 C. English Language Learners (ELL)<sup>7</sup> students and Family and Community  
15 Engagement (FACE) Department.

16 Lastly, the Mendoza Plaintiffs’ object to “ the failure of the AASSD and MASSD  
17 Operating Plans to adequately address targeted support of ELL students and engagement  
18 of their families.” This objection should have been raised in respect to the original filings  
19 because if anything, the record is clearer now than it was then as to the roles and  
20 responsibilities for these departments, especially for the SSSDs’ role in relation to ELL  
21 students. Since then, the Court called for a Revised Family and Community Engagement  
22 (FACE) Plan to clarify the interrelationships between it and other departments, especially  
23 MASSD and AASSD. (Order (Doc. 2386)). The District filed the Revised FACE (Doc.  
24 2391) on December 3, 2019. The Court also called for similar revisions to be made to the  
25 ELL Action Plan for dropout prevention, which was filed on August 30, 2019. (ELL Plan:  
26 Graduation and Dropout Prevention (Doc. 2261)). The District filed the Executive  
27

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28 <sup>7</sup> Now English Learner (EL) students

1 Summary (Doc. 2384) on December 1, 2019. All these subsequent filings help to clear up  
2 the confusion created by omissions in the SSSDs' operating plans.

3 What becomes clear from reviewing all these documents together is that the SSSDs  
4 play supplemental roles but have two primary responsibilities. First, they provide direct  
5 student support services, both academic and behavioral, targeted to at-risk African  
6 American and Latino students, including ELL students, and conduct outreach to the  
7 families of such students related to these direct student support services. Second, these  
8 departments provide culturally responsive outreach to maximize the efficacy<sup>8</sup> for African  
9 American and Latino students, including ELL students, of District programs designed to  
10 improve academic achievement, including other non-AASSD/MASSD student support  
11 services.

12 The Revised FACE Plan relied on the revised MASSD and AASSD Plans, which as  
13 described by the District, reflected the 2019 operations, not the operations represented in  
14 the 2018-19 Reorganization and Restructuring Plans. Admittedly, as noted above, the  
15 revised plans represented the historical use of SSSD staff to provide direct services, not the  
16 asset-based new roles reflected in the original plans which were aligned with the  
17 Reorganization and Restructuring Plans. As also noted above, the District "expects a  
18 gradual release of direct student interventions through the MTSS model by all Program  
19 Specialists to be fully implemented either by the end of SY 2019-20 or early 2020-21."  
20 (TUSD Response (Doc. 2322) at 5.) The FACE reliance on the Revised MASSD and  
21 AASSD Plans perpetuates the old direct-service provider approach. Fortunately, however,  
22 the interrelationship between FACE and the SSSDs is limited to their outreach roles and  
23 responsibilities and does not involve direct, academic or behavioral, student support  
24 services. The FACE Plan must track the directives in this Order and MASSD and AASSD  
25 plan updates.

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26  
27  
28 <sup>8</sup> The Court uses the term "efficacy" to mean "to increase access, participation and  
success" for African American or Latino, including ELL students, in an opportunity or  
service afforded all students in TUSD. (Executive Summary (Doc 2384-1) at 24.)

1           The FACE for the ELL Action Plan Graduation and Dropout Prevention (Doc.  
2 2391) at 131), the ELL Action Plan: Graduation and Dropout Prevention Plan (Doc. 2261-  
3 1) make it clear that roles and responsibilities being performed by MASSD and AASSD  
4 are considered interrelated to and supplemental to those departments' operations. This is  
5 certainly true in the context of providing asset-based student support services, which by  
6 definition means that AASSD or MASSD look to another department or school-site staff  
7 to provide the requisite, academic or behavioral, direct student support service.

8           The Multi-Tiered System of Supports (MTSS) "is an umbrella framework that uses  
9 positive interventions and supports responsive to student needs. Every student receives  
10 core classroom instruction (Tier 1). Some students need supplemental instruction (Tier 2),  
11 most often in small groups. A fewer number of students need more intensive interventions  
12 and supports (Tier 3)." (Executive Summary (Doc. 2384-1) at 23.) The District requires all  
13 schools to have MTSS teams. These teams are responsible for developing support plans for  
14 high-risk students, with AASSD and MASSD "provid[ing] supplemental, supportive, and  
15 additional services in this area." (Executive Summary (Doc. 2384-1) at 23.)

16           The Language Acquisition Department has primary responsibility for ELL student  
17 support strategies, and the Refugee Services Department provides supplemental in-class  
18 support for ELL students in sheltered classes and at elementary schools with high refugee  
19 populations. (Executive Summary (Doc. 2384-1) at 23.)

20           AASSD and MASSD "currently provide direct student services, providing  
21 supplemental academic and behavioral interventions "in coordination" with the MTSS and  
22 behavioral teams at schools." (Executive Summary (Doc. 2384-1) at 23.) The Program  
23 Specialists devote time to more asset-based tasks, as follows: 1) to increase access,  
24 participation and success in ALE opportunities; to ensure college and career readiness, and  
25 3) to engage and reach out to the larger community, including outreach support work for  
26 programs and events sponsored by other departments. (Executive Summary (Doc. 2384-1)  
27 at 24.)

28

1           While the Court was able to discern AASSD and MASSD’s asset-based  
2 responsibilities from the operating plans, the important gatekeeping role played by MTSS  
3 was omitted. In the MASSD, MTSS was mentioned three times. The Behavioral Specialist  
4 was described as working with the school behavioral team in connection with Tier 2 and  
5 Tier 3 behavioral intervention and “coordinating” with the MTSS team. (R-MASSD (Doc.  
6 2265-2) at 10.) The Academic Empowerment & Engagement Specialist “conduct[s]  
7 individual academic mentoring for students, consult[s] targeted MTSS teams in academic  
8 interventions using asset-based strategies and facilitate[s] academic goals.” (R-MASSD  
9 (Doc. 2265-2) at 8.) The Certified Academic Tutors are described as tutors for grades 3-8  
10 for math and English Language Arts (ELA). (R-MASSD (2265-2) at 11.)

11           In the AASSD Plan, MTSS is more frequently mentioned but similarly the  
12 gatekeeper role of MTSS is obfuscated. The Behavioral Specialist, who delivers Tier 2  
13 and 3 behavioral interventions “coordinates with MTSS team to ensure any ongoing  
14 academic interventions are consistent with the behavior plan.” (R-AASSD (Doc. 2265-1)  
15 at 4.) The Response to Intervention Specialists (RtI Program Specialists), certified teachers,  
16 “who frequently provide interventions themselves,” coordinate with the MTSS team or  
17 lead, but AASSD develops the academic intervention plan for African American students  
18 not scoring proficient in math or ELA, and the RtI Program Specialist coordinates with  
19 MTSS to schedule the academic student support intervention. (R-AASSD Plan (Doc. 2265-  
20 1) at 5-6); *but see* (Executive Summary (Doc. 2384-1) at 23) (describing MTSS as  
21 responsible for developing support plans for high-risk students, and turning to AASSD and  
22 MASSD, social workers, and the Dropout Prevention Department to assist in implementing  
23 the individual support plans). Likewise, AASSD Program Specialists work with schools’  
24 MTSS and guidance resources to develop a high school graduation plan for 9<sup>th</sup> graders who  
25 performed below grade level on AZMerit and/or did not pass all core subjects in the 8<sup>th</sup>  
26 grade. (R-AASSD (Doc. 2265-1) at 6.) “The success coach serves as an interconnected  
27 resource in MTSS academic and PBIS behavioral interventions for African American  
28 students.” (R-AASSD (2265-1) at 9.)

1 For ELL students, the FACE Section of the Dropout Prevention and Graduation  
2 Plan (FACE: DPG Plan (Doc. 2391-1) at 127) and the FACE section of the ELL Action  
3 Plan: Graduation and Dropout Prevention (ELL DPG Plan: FACE (Doc. 2391-1) at 131),  
4 reflect that FACE is primarily responsible for outreach, but generally passes this primary  
5 responsibility over to the SSSDs, which are responsible for conducting this targeted  
6 outreach to families with struggling Latino and African America students, including ELL  
7 students. *See*: (FACE: DPG Plan (Doc. 2391-1) at 128 (describing Type 2 Family  
8 Engagement as being responsibility of AASSD and MASSD “in conjunction with site  
9 administrators, FACE and others); ELL DPG Plan: FACE (Doc. 2391-1) at 132 (“[w]hen  
10 the MTSS team (including language acquisition teachers for ELL students) determines that  
11 interventions or family engagement may be of benefit, one of the student services  
12 department may already be involved in family outreach. If not, the language acquisition  
13 department may either engage in its own direct outreach, or request the appropriate student  
14 services become involved, connecting the family to the educational team.”) Both FACE  
15 sections of the DPG Plan and the ELL Action Plan: DPG reflect a coordination of support  
16 services for at-risk students on-site by the MTSS team. *See*: (FACE: DPG Plan (Doc. 2391-  
17 1) at 128 (apply MTSS mode of operations and using the Student Equity and Intervention  
18 Request for Service form); ELL DPG Plan: FACE (Doc. 2391-1) at 132) (MTSS team  
19 identification of at-risk ELL student triggers involvement by language acquisition  
20 department, if student services department not already involved).

21 Summarizing the above, the Executive Summary describes the primary  
22 responsibility for direct academic student support services for ELL students as falling to  
23 the Language Acquisition Department, with AASSD and MASSD playing a supporting  
24 role to provide culturally relevant outreach to engage ELL families, generally, and to  
25 specifically provide family outreach for families with at-risk ELL students.

26 In contrast to this patchwork of clarity, the MASSD Plan provides for the Parent  
27 Outreach and Empowerment Program Specialist to conduct and coordinate outreach for  
28 other departments to Mexican America/Latino families “either to promote attendance at

1 events sponsored by those departments, or for direct targeted outreach to families (such as  
2 families of ELL students).” (R-MASSD (Doc. 2265-2) at 5.) The Academic Empowerment  
3 and Engagement Program Specialists “assist sites with ELLs in integrating supports to  
4 ensure an asset-based approach in classrooms.” *Id.* at 8. For African American ELL  
5 students, the AASSD Plan provides for the Program Specialist to conduct direct outreach  
6 “in response to particular requests from other departments, such as the Language  
7 Acquisition Department, regarding ELL matters (both struggling students and ELL  
8 targeted events).” (R-AASSD (Doc. 2265-1) at 7.)

9 In summary, other department plans reflect, where MASSD and AASSD plans do  
10 not, the gatekeeper role played by MTSS for direct student support services and the targeted  
11 leadership role played by MASSD and AASSD in family engagement and outreach to  
12 families with at-risk Latino and African America students, including ELL students.

13 There is no reason why the Court or anyone else should have to ferret out the  
14 gatekeeping role of the MTSS team in relationship to AASSD and MASSD’s direct student  
15 support responsibilities or the role the SSSDs play in family outreach and engagement for  
16 at risk students, including ELL students. These relationships reflected in the FACE Plan  
17 and ELL Plans should be mirrored in the MASSD and AASSD operating plans. The Court  
18 understands the advantage of retaining flexibility to secure the best student support services  
19 for each student, but the downside to unfettered flexibility is the risk of a lack of  
20 accountability stemming from a lack of clarity in roles and responsibilities. The Court finds  
21 that MTSS gatekeeping responsibilities ensure the respective departments work effectively  
22 and efficiently together and reduces the potential for run-around and lack of accountability.  
23 Within the parameters of AASSD and MASSD operations, the MTSS gatekeeping role  
24 shall be recognized.

25 Clarity in roles and responsibilities is especially important for the roles and  
26 responsibilities of the Program Specialists. As of now, the SSSDs operating plans fail to  
27 even identify which Program Specialists are responsible for working with at-risk ELL  
28 students and their families. It is not enough that “[a]ll Program Specialists are able to

1 support students and parents in both English and Spanish.” (TUSD Response (Doc. 2322)  
2 at 9.)<sup>9</sup> It seems like it should go without saying that it takes more to meet the needs of ELL  
3 students than providing USP strategies in Spanish. While ELL students are unable to  
4 communicate fluently or learn effectively in English and, therefore, require specialized or  
5 modified instruction in the English language, it cannot be ignored that their language  
6 acquisition issues arise because they come from non-English-speaking homes and  
7 backgrounds, i.e., immigrant heritages. In other words, the culturally relevant skill sets and  
8 connections to communities differ for ELL students from those applicable to Mexican  
9 American, Hispanic American, Latino American, or African American students because  
10 they are affiliated with foreign cultures. The USP approach of sprinkling ELL across the  
11 USP by applying strategies to African American and Latino students, “including ELL  
12 students,” creates a propensity to ignore their cultural uniqueness. The Court finds that the  
13 AASSD and MASSD Operating Plans shall include an ELL Plan addendum to address  
14 program distinctions necessary to support culturally relevant family outreach and  
15 engagement and any student support services being provided to at-risk ELL students.

16 For this year’s annual review, the Court calls the District’s attention to the FACE  
17 provisions for at-risk students, including ELLs. (Dropout Prevention and Graduation Plan:  
18 FACE Strategies (Doc. 2391) at 127); ELL Action Plan: Dropout Prevention and  
19 Graduation Plan, FACE Strategies ELL Plan: FACE (Doc. 2391) at 131; (Doc. 2261-1 at  
20 7), and the Executive Summary (Doc. 2384). The 2020-21 Strategic Plans shall include  
21 preparation of the ELL Student Addendums, which shall become part of the updates to the  
22 MASSD and AASSD Operating Plans.

### 23 Conclusion

24 Rather than requiring the District to immediately revise the SSSD operating plans,  
25 the Court directs the District to consider the directives in this Order as binding during this  
26 year’s operations and for purposes of the 2020-21 annual review (winter or early spring)

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27  
28 <sup>9</sup> The District’s Response fails to address the language needs of Black ELL students,  
which the Court assumes is the primary responsibility of the Language Acquisition  
Department.



1 of the SSSD operations, including preparing the Status Reports for AASSD and MASSD  
2 and the respective 2020-21 Strategic Plans, until the updated AASSD and MASSD plans  
3 are finalized.

4 2. Plans for Culturally Relevant Curriculum (CRC); CR Professional Learning and  
5 Multicultural Curriculum

6 As mentioned at the beginning of this Order, the District has been a vanguard in  
7 offering minority-study courses going back some 30 years. Pursuant to USP § V.E, the  
8 District was charged to develop and use strategies designed to change the educational  
9 expectations for African American and Latino students by adopting a culturally responsive  
10 teaching method, Culturally Relevant Pedagogy and Instruction (CRPI), to encourage and  
11 strengthen participation and success of African American and Latino students. USP §  
12 V.E.1.a. This section mandated that the District use several strategies, including courses of  
13 instruction centered on the experiences and perspectives of African American and Latino  
14 communities, Culturally Relevant Curriculum (CRC). USP § V.E.1.b.

15 The District presents the CRC Status Report ((Doc. 2259-1) at 9-13), including “The  
16 Way Forward: 5-Year Plan” ((Doc. 2259-1) at 15-18); the CR Professional Learning Plan  
17 ((Doc. 2259-2) at 2-8), including CRPI Framework for Student Academic Achievement  
18 ((Doc. 2259-2) at 9-16), and the Multicultural Curriculum (Doc. 2259-3). The Status  
19 Report reflects the growth of CRC as follows: SY 2015-16 (1243 students); SY 2016-7  
20 (2424 students); SY 2017-18 (4126 students), and SY 2018-10 (6184 students). (CRC  
21 Status Report (Doc. 2259-1) at 9.) The purpose of culturally relevant education is to  
22 increase student engagement to improve academic performance and create inclusive school  
23 environments to reduce disciplinary and other behavioral sidetracks from education.

24 CRC courses use specialized curriculum designed with a particular cultural  
25 perspective, African American or Mexican American, such as courses that teach literature  
26 through Hispanic authors or courses that teach U.S. history through the African American  
27 experience. CRC courses are offered as alternatives to standard core courses that students  
28 may elect to take instead of the standard course. In this way, the CRC literature class

1 replaces the general 11th grade literature class or CRC history replaces the general U.S.  
2 history class. CRC courses are different from efforts to infuse the general curriculum with  
3 multicultural elements. At the elementary school level, CRC teachers infuse culturally  
4 relevant elements into the general curriculum in their classes, but at the middle and high  
5 school levels CRC is designed specifically for the course and focuses on a single cultural  
6 viewpoint. (CRC Status Report: Overview (Doc 2259-1) at 2 n. 1.)

7 CRC courses are one part of TUSD's overall culturally relevant educational  
8 approach, CRPI, which under the USP is a comprehensive across-department and school-  
9 site broad range of culturally responsive practices for teachers, counselors, administrators,  
10 etc. In short, CRPI is a culturally responsive pedagogy for all professional staff dealing  
11 with all students in respect to all issues.

12 For reasons explained below, the Court agrees with the Plaintiffs' objections to the  
13 CRC Plans. *See*: (Mendoza Response (Doc. 2286), (Fisher Response (Doc. 2276) at 4-5),  
14 (R&R (Doc. 2374) at 5) (recommending that the District "present evidence . . . that the  
15 training of administrators to evaluate the CRP competencies of teachers is effective).

16 A. CRC Plan: Status Report

17 The District failed to include the current status of the CRC courses, i.e., "a list of  
18 CR courses in schools at this particular moment in time." (TUSD Response (Doc. 2324) at  
19 4.) This has been remedied to some extent with the Response, Exhibit A (2324-1), which  
20 reflects one CR course for ELA and one for Social Studies per middle school grade at each  
21 middle and K-8 school, except for Hollinger K-8 which has three humanities courses, one  
22 for each grade 6-8. The status report does not reflect whether these middle school CRC  
23 courses are from an African American or Mexican American perspective. Without  
24 explanation, there are no CRC courses at Bormann K-8, Safford K-8, or Wakefield MS and  
25 none at Meredith K-12.

26 In addition to there being no CRC courses at Meredith K-12 in the high school  
27 grades, there is no reflection of any CRC courses at University High School. The Court  
28 knows that there is one AP CRC course at University High School. The Court assumes this

1 AP CRC is the only CRC course offered there. The other high schools, generally, offer  
2 CRC courses in American History, Government, and English. The English CRC courses  
3 are offered in the 11 and 12 grades. The Court assumes the History and Government CRC  
4 courses are offered in the 9 and 10 grades. It looks like there is one CRC course offered at  
5 each school per grade per semester. In response to the Fisher Plaintiffs' inquiry regarding  
6 a pilot CRC, African American perspective, at Cholla High School, it is an English CRC  
7 for grade 11. There appears to be approximately 10 more CRC offerings from the Mexican  
8 American perspective than African American, but all high schools, except Rincon High  
9 School, have African American perspective CRC courses.

10 The attachment to the District's Response is the status of the current CRC program  
11 from which the District shall measure growth going forward. The District shall revise it to  
12 address the omissions and assumptions referenced here.

13 B. The Way Forward: CRC and Instruction Over the Next Five Years (CRC: 5-  
14 Year Plan)

15 The District believes that rapid growth and enrollment in CRC courses is past, and  
16 “[f]urther expansion of staff and resources will depend on increased need determined by  
17 student demand and enrollment in CR courses. “ (Status Report (2259-1) at 15.) It is  
18 “committed” to supporting those courses currently being offered at the current staff levels  
19 and with instructional resources necessary for their success. *Id.* “The district hopes to  
20 expand into content areas, grade levels and viewpoints when feasible based on student  
21 interest.” As the Court understands the District's Status Report, it intends to maintain CRC  
22 courses at the current level. There is no objection, except for the general objection  
23 discussed below that the District is failing to make data-based programmatic decisions.

24 The Court's Order (Doc. 2474) directing revision to the ALE Policy Manual,  
25 however, creates an exception to the District's minimalistic approach to growth because  
26 the Court ordered expansion of AP CRCs. The District has been ordered to clarify a phased-  
27 in timeline (plan) for offering at least one CRC AP course at every high school and at least  
28 one CRC AAC at every middle school.” (Order (Doc. 2474) at 17.) The District has also

1 been instructed to determine whether the dual-purpose, AP/Dual Credit, course design  
2 might apply to CRC AP courses as well. The CRC 5-Year Plan shall be revised, pursuant  
3 to the directives issued by the Court for revision of the ALE Policy Manual.

4 The District shall also revise the CRC 5-Year Plan to reflect the status of offered  
5 CRC courses at UHS. The District shall revise the CRC 5-Year Plan to reflect the status of  
6 offering CRC courses at Meredith K-12, Borman K-8, Safford K-8, and Wakefield Middle  
7 School.

8 The Mendoza Plaintiffs assert that the CRC materials fail to reflect the  
9 interconnectedness between the CRPI Department and other departments, especially  
10 MASSD and AASSD. The Court finds that pursuant to the directives above in the SSSD  
11 section of this Order, professional learning for CRPI ((Doc. 2259-2) at 2) shall be provided  
12 to the MASSD and AASSD Program Specialists and Behavioral Specialists to ensure their  
13 expertise in CRPI, including CRC instruction, as relevant to their areas of specialty. The  
14 Revised 5-Year Plan shall reflect this new role for the CRPI Department.

15 It is clear to this Court that the CRPI Department plays the leadership role and has  
16 primary responsibilities for all CRPI related areas, including CRC courses. All other  
17 departmental interconnectedness is covered by the reference in the CRC, Overview: “The  
18 CRPI Department (a) develops new CR course content (working with outside experts and  
19 internal District experts), (b) works with school administrators and teachers to offer new  
20 courses at schools and expand the number of sections of existing schools, and (c) works  
21 with the student services departments, the Family and Community Engagement  
22 Departments, the Language Acquisition Department and Communications in outreach to  
23 students and to families, to promote the benefits of culturally relevant courses.” (Status  
24 Report (Doc. 2259-1) at 3.)

25 There were no objections to the roles and responsibilities performed by the CRPI  
26 Department, except for the Special Master’s recommendation that the District be required  
27 to present evidence that the training of administrators to evaluate the CRP competencies of  
28

1 teachers is effective. (R&R (Doc. 2374) at 5.) The District shall tender such evidence to  
2 the Special Master, which he shall review and, subsequently, approve.

3 The Special Master also recommends that the District present evidence to support  
4 its claims that non-academic benefits flow from CRC, especially CRPI. (R&R (Doc. 2374)  
5 at 5.) The request for evidence is expanded on by the Fisher Plaintiffs, who seek data  
6 reflecting reduced discipline incidents and improved academic achievement, including data  
7 evincing higher attendance, GPAs, test scores, and graduation rates and decreased  
8 discipline. (Fisher Response (Doc. 2276) at 4-5.) The District responds that "[t]here is no  
9 dispute that the District's program for culturally relevant curriculum and instruction is  
10 extraordinarily successful. It is likely the strongest such program in the entire country, and  
11 regularly held up as a model for other districts." (TUSD Response (Doc. 2324) at 2.)  
12 Additionally, the District relies on comments from the Special Master that "'TUSD may  
13 be the only school district to make CRP integral to its conception of effective teaching  
14 regardless of the subject being taught.'" (TUSD Response (Doc. 2324) at 2 n.1 (quoting  
15 ECF 2096 at 48)). "The Special Maser reported that the CRPI Department's culturally  
16 relevant course program 'has been shown to make a significant difference in academic  
17 performance.'" *Id.* (quoting Order (Doc. 2213) at 5.)<sup>10</sup>

18 The Status Report reflects that the District has commissioned a standing National  
19 Panel of Experts in Culturally Responsive Education for advice on the latest cutting-edge  
20 CRPI research, and the District consults with additional experts when necessary. In short,  
21 the District works with "premier scholars and practitioners in the fields of critical  
22 multiculturalism, culturally relevant and responsive education." (Status Report (Doc 2259-  
23 1) at 10.)

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26 <sup>10</sup>The Court actually referenced the Special Master's objection to the costs for the SSSDs  
27 as being too much, especially because the "only research-based program that has been  
28 shown to make a significant difference in academic performance being carried out by the  
Culturally Responsive Pedagogy and Instruction (CRPI) Department." (Order (Doc.  
2213) at 5.)

1           The CRPI Department, itself, is becoming a leader in the field and for the last four  
2 years has held an Annual Summer Institute for Culturally Responsive Education (SICRE),  
3 hosted at the University of Arizona and drawing renowned scholars to present keynote  
4 lectures over the three-day conference. Nearly 300 District certified staff members,  
5 including administrators, attended in 2019 and took advantage of the workshop sessions.  
6 (Status Report (Doc. 2259-1) at 13.) CRPI staff also attends, and has presented at, the  
7 American Educational Research Association Annual Conference in New York City. *Id.* In  
8 short, as the Court noted in the section above addressing AASSD and MASSD, the CRPI  
9 Department has extensive in-house expertise.

10           This brings the Court to the Status Report, the 5-Year Plan, Section E, Continued  
11 Improvement in Data Collection and Analysis, and the assertion which is in contention  
12 here, as follows:

13           While there are numerous qualitative measures to assess the effectiveness of  
14 the CR initiative, the long-term impact of culturally responsive practices  
15 emerge (sic) in the quantitative data. The data points that often reflect the  
16 impact of CR include but are not limited to; higher attendance rate, increased  
GPA, higher graduation rates, increased college-going rates, reduced  
incidents of student discipline, and increased scores on standardized and  
benchmark tests.

17 (Status Report, 5-Year Plan (Doc. 2259-1) at 17.)

18           The District explains that the limitation in assessing the “CR initiative” lies in the  
19 difficulty in disaggregating the various elements comprising this approach. (Status Report:  
20 5-Year Plan (Doc. 2259-1 at 17-18.) The Court has experienced firsthand the difficulty in  
21 addressing the far reaching and interconnected USP strategies, one of which is CRPI,  
22 including CRC, and the various behavioral strategies like restorative practices, FACE,  
23 MASSD and AASSD, etc.—all strategies intended to lead to improved performance. The  
24 District explains: “While isolating the cause and effect connection with specific aspects of  
25 this approach is difficult, research shows that these approaches are effective in increasing  
26 student achievement and significantly reducing the ‘achievement gap.’” (Status Report: 5-  
27 Year Plan 2259-1 at 18.)

28

1 First and importantly, CRC and CRPI are different strategies, with CRPI  
2 interconnected and related to CRC in the same way that CRPI is related to other USP  
3 strategies and programs. In other words, CRPI is an umbrella covering all pedagogy,  
4 including CRC. Given the admitted lack of data-based evidence regarding program  
5 efficacy, the Court must rely on the Special Master's statement: "A rigorous study of the  
6 academic benefits of CRC courses was undertaken by established scholars and published  
7 in the leading education journal. There have [been] other studies that attest to the academic  
8 benefits of culturally responsive pedagogy." (R&R (Doc. 2374) at 5.) The Court accepts  
9 that the CRC and CRPI provisions in the USP are research-based strategies for improving  
10 academic achievement, but that does not mean that the District can bypass data driven  
11 analysis regarding the effectiveness of both. Like its mandated implementation of CRPI  
12 and CRC, the USP also mandated that both programs be monitored for effectiveness, USP  
13 § V.G, Reporting, and USP § X.A, Evidence Based Accountability System (EBAS.)

14 Difficulty analyzing the effectiveness of CRPI is not an excuse for not assessing the  
15 effectiveness and impact of the CRC courses. Without this analysis, the decision to not  
16 continue the aggressive expansion of CRC courses is not data-based, but rather is an  
17 arbitrary determination based on how many students may want to take CRC courses. It is  
18 important to know how many students need to take these courses based on the effectiveness  
19 of CRC courses to improve academic achievement. CRC data shall be analyzed now for  
20 program effectiveness.<sup>11</sup> The CRC data and report shall be included in the District's 2020-  
21 21 Annual Report (2020-21 DAR). The 5-Year Plan, Section E, shall be revised  
22 accordingly, to reflect this review and analysis to be conducted and reported this year.

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24 <sup>11</sup> The District Status Report included Section 5, Assessment of Program  
25 Effectiveness, which assessed program effectiveness in a number of ways: feedback from  
26 CRC teachers indicating areas of strength and weaknesses; teacher and student surveys  
27 reflecting program satisfaction with content, and Master Teacher observations of CRC  
28 teachers' use of culturally relevant pedagogy. (Status Report (Doc. 2259-1) at 11.) This is  
not the data-driven analysis needed to provide an evidentiary basis to support the  
effectiveness of CRPI and/or CRC to improve academic achievement, such as: "higher  
attendance rates, increased GPA, higher graduation rates, increased college-going, reduced  
incidents of discipline, and increased scores on standardized and benchmark tests." (Status  
Report: 5-year Plan (Doc. 2259-1) at 17.)

1           The District has now been operating CRPI for several years under the USP, and has  
2 a very experienced and expert CRPI Department, which should be able to develop an  
3 appropriate study to mirror the other allegedly existing research-based study of the  
4 effectiveness of CRPI, at least in the context of improving academic achievement. If the  
5 CRPI Department needs additional expertise, there is the standing National Panel of  
6 Experts in Culturally Responsive Education, or any other experts.<sup>12</sup> The District needs to  
7 act immediately to develop a data-driven research-based methodology for assessing the  
8 effectiveness of TUSD's CRPI, including CRC. The 5-Year Plan, Section E, shall reflect a  
9 schedule for conducting this analysis, including review of the existing data being gathered  
10 to ensure it satisfies study parameters and the anticipatory "long-term" time for operations,  
11 prior to final analysis, with final analysis occurring within the next five years.

12           **Accordingly,**

13           **IT IS ORDERED** that the recommendations in the Report and Recommendations  
14 Re: AASSD and MASSD (Doc. 2347, 2404) are not adopted by the Court.

15           **IT IS FURTHER ORDERED** that the Court adopts the MASSD Operating Plan  
16 as originally filed on December 6, 2018 (MASSD Plan (Doc. 2151-2) at 3), as clarified by  
17 the Revised MASSD Operating Plan (Doc. 2265-2 at 2), and adopts the 2018-19  
18 Reorganization Plan ((Doc. 2251-2 at 20); (Doc. 2265-2 at 16)), referencing the 2018-19  
19 Strategic Plan (2287-1).

20           **IT IS FURTHER ORDERED** that the Court adopts the AASSD Operating Plan,  
21 filed on December 6, 2018, (Doc. 2151-1), as clarified by the Revised AASSD Plan (Doc.  
22 2165-1), and adopts the AASSD 2018-19 Restructuring Plan ((Doc. 2276) at 28).

23           **IT IS FURTHER ORDERED** that the District shall consider the directives in this  
24 Order as binding during this year's operations and for purposes of the annual review  
25 (winter or early spring) of the 2020-21 MASSD and AASSD operations, including  
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27           <sup>12</sup> See Cabrera, N., Milem, J., Jaquette, O., Mar, R. (2014). Missing the (Student  
28 Achievement) Forest for All the (Political) Trees: Empiricism and the Mexican American  
Studies Controversy in Tucson. *American Educational Research Journal*, 1035. (Status  
Report, Framework for Student Academic Achievement (Doc. 2259-2) at 15.)



1 preparing the Status Reports for AASSD and MASSD, the respective 2020-21 Strategic  
2 Plans, and binding until the updated AASSD and MASSD Operating Plans are finalized,  
3 which shall be no later than SY 2021-22, depending on whether this year’s annual review  
4 is in the winter or spring.

5 **IT IS FURTHER ORDERED** that AASSD and MASSD operate within the  
6 parameters of MTSS, with MTSS having a gatekeeping role for the delivery of direct  
7 student support services for at-risk African American and Latina students, including ELL  
8 students.

9 **IT IS FURTHER ORDERED** that the 2020-21 Strategic Plans for AASSD and  
10 MASSD shall include ELL Addendum provisions.

11 **IT IS FURTHER ORDERED** that the Special Master’s Report and  
12 Recommendation Re: CRC Plans (Doc. 2370, 2374) is adopted: the District shall provide  
13 to the Special Master evidence that the training of administrators to evaluate the CRP  
14 competencies of teachers is effective, which training he shall approve, and subsequently,  
15 the District shall file a Notice of Compliance no later than the end of SY 2020-21.

16 **IT IS FURTHER ORDERED** that within 30 days of the filing date of this Order,  
17 the District shall revise the CRC: 5-Year Plan ((Doc. 2259-1) as described herein for the  
18 following:

- 19 a. To include the status “listing of CR courses in schools at this particular moment  
20 in time,” revised to address omissions and assumptions.
- 21 b. To comply with the directives issued by the Court for the ALE Policy Manual  
22 for a plan and timeframe for offering at least one CRC AP course at every high  
23 school and one CRC AAC at every middle school.

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- c. To revise Section E, Continued Improvement in Data Collection and Analysis, for a CRC efficacy report this year to be included in the 2020-21 DAR and for a CRPI efficacy study within the next five years.

Dated this 14th day of August, 2020.



David C. Bury  
United States District Judge