

1 LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
2 JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
3 PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
4 Los Angeles, California 90067-3206
Telephone: (310) 557-2900
5 Facsimile: (310) 557-2193

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
8 MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
9 634 S. Spring St.
11th Floor
10 Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs
12

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,
25
26
27
28

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

**MENDOZA PLAINTIFFS' RESPONSE
TO TUSD THIRD SUPPLEMENTAL
NOTICE AND REPORT OF
COMPLIANCE: BEGINNING
TEACHER INVENTORY,
TECHNOLOGY INSTRUCTION
RESOURCE INDEX, AND DIVERSITY
PLAN (DOC. 2514)**

Hon. David C. Bury

1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et al.,

7 Defendants.

8
9
10
11 **INTRODUCTION**

12 In its Order dated July 16, 2020 (“July 16 Order”) (Doc. 2497), this Court issued
13 directives concerning TUSD’s Diversity Plan for Teachers and Administrators. On August
14 18, 2020, TUSD filed its Third Supplemental Notice and Report of Compliance: Beginning
15 Teacher Inventory, Technology Instruction Resource Index, and Diversity Plan (“TUSD
16 Notice and Report”) (Doc. 2514) to which Mendoza Plaintiffs respond below.
17
18

19
20 **ARGUMENT**

21 **Beginning Teacher Inventory**

22 In the July 16 Order, this Court emphasized the importance of accurate beginning
23 teacher data, and the “chronic inability of the District to report accurate data for beginning
24 teachers”, even after the District refiled beginning teacher data it said had been “carefully
25 corrected and checked.” (July 16 Order at 5:15-6:13.) In that regard, this Court
26 specifically noted that TUSD filings for the 2019-20 school year reflected seemingly
27
28

1 conflicting reports about whether there were 36 or 48 underperforming and racially
2 concentrated schools, and that this conflict reflects that “12 schools may be missing
3 sheltering/mitigation strategies” required to be provided to such schools.¹
4 (July 16 Order at 5, n.5.) Accordingly, this Court ordered that “[t]he District shall resolve
5 this data discrepancy...” and ensure proper implementation of sheltering/mitigation
6 strategies. (*Id.*)

8 Unfortunately, Mendoza Plaintiffs could find no mention of this Court’s above
9 directive in the TUSD Notice and Compliance, or any suggestion that TUSD has complied
10 with it. Given the importance of accurate beginning teacher data as highlighted by this
11 Court, Mendoza Plaintiffs respectfully suggest that what is needed is for the District to
12 expressly clarify the discrepancy identified by this Court (rather than to simply assert
13 compliance) and, for the record, refile the corrected beginning teacher data for the 2019-20
14 school year to include designation of “RC3+” schools.²

17 **Grow Your Own Program Pathways**

18 As stated in the July 16 Order, TUSD’s previous version of its Grow Your Own
19 Program (“GYOP”) plan reflected that the District has adopted generalized Grow Your
20 Own Program (“GYOP”) recruitment strategies to serve Latino and African American
21 teachers and administrators – an effort spearheaded by the Director of Diversity
22

23 ¹ This Court further suggested that the discrepancy between the number of racially
24 concentrated or underperforming schools on the one hand, and the number of such schools
25 implementing sheltering/mitigation strategies on the other, could not be explained as the
26 result of some racially concentrated schools being exempt from implementing the
27 strategies because they are “high performing.” (July 16 Order at 5, n.5. (noting the 12
28 school discrepancy and that TUSD data reflected that there existed only five racially
concentrated high performing schools exempt from sheltering/mitigation strategies).)

² The non-designation of “RC3+” schools does not extend to beginning teacher data for the
beginning of the current 2020-2021 school year.

1 Recruitment and Inclusion Programs (“Diversity Recruitment Director”). (July 16 Order at
2 9:4-8.)³ However, the District did “not really address the Special Master’s
3 recommendation that the District design pathway recruitment programs” that address “the
4 competitive application process to attend [GYOPs] like” the Leadership Prep Academy
5 (“LPA”). (July 16 Order at 9:4-8, 9:18-19.) This Court therefore ordered that proactive
6 recruitment efforts be extended to pathway positions that would make Latino and African
7 American candidates strong GYOP applicants. (*Id.* at 9:18-24 (specifically noting the
8 pathway should extend to positions cited as LPA selection criteria, including “Principal
9 designee, Dean of Students, MTSS Facilitator or Lead, or Curriculum Service
10 Providers.”).) This Court further ordered that the responsibilities of the Diversity
11 Recruitment Director, which spearheads GYOP recruitment, “be expanded to include
12 developing this pathway approach extending recruitment to these building block positions,
13 which addresses the need to make the generalized GYO programs TOCs and AOCs.” (*Id.*
14 at 10:6-9.)

18 While the District has developed what it calls a “Pathways program” for recruiting
19 Latino and African American candidates into positions that serve as pathways to GYOPs,
20 in conflict with this Court’s express order, the Diversity Recruitment Director seemingly
21 plays no role in those pathway efforts. (*See* Revised Plan for Improved Diversity Through
22 Grow Your Own Programs (“Revised GYOP Plan”) (TUSD Notice and Report, Exhibit 2
23 to Exhibit D) at 9-11). Indeed, the Director’s job description makes no reference to any
24
25

26 _____
27 ³ In the July 16 Order, this Court made reference to the “Director of Talent Acquisition.”
28 (July 16 Order at 9:6.) The title of this position changed to the “Director of Diversity
Recruitment and Inclusion Programs.” (Revised Diversity Transfer Plan for Teachers and
Administrators (TUSD Notice and Report, Exhibit 1 to Exhibit D; Doc. 2514-4) at 3.)

1 responsibility in connection with the Pathways program. (TUSD Notice and Report,
2 Exhibit 1-2 to Exhibit D.)⁴ The District has therefore failed to comply with this July 16
3 Order directive.

4 Plainly, this Court ordered that the Diversity Recruitment Director play a primary
5 role in the development of the pathway efforts because that director is responsible for
6 GYOP recruitment efforts and therefore is best positioned to develop effective pathways to
7 provide access to those very GYOPs. Thus, as it currently stands, the Pathways program
8 does not reflect the meaningful connection to GYOP access that this Court contemplated.
9 Accordingly, this Court should order that TUSD further revise the Revised GYOP Plan to
10 reflect that the Diversity Recruitment Director’s “responsibilities shall be expanded to
11 include developing this pathway approach extending recruitment to these building block
12 positions... .”⁵ (July 16 Order at 10:7-9.)

13
14
15 **Review of the Effectiveness of Diversity Efforts Since 2016**

16 Noticeably absent from the TUSD Notice and Report “narrative explanation of the
17 changes” made to the Diversity Plan for Teachers and Administrators (“Diversity Plan”)
18 (TUSD Notice and Report, Exhibit D; Doc. 2514-4), is any reference to this Court’s July
19 16 Order directive that TUSD “evaluate the effectiveness of the diversity efforts” “since
20 2016.” (July 16 Order at 12:27-28; 13:3-7.) This Court issued this directive after having
21
22
23

24 ⁴ In contrast, the Diversity Recruitment Director’s job description expressly details
25 recruitment responsibilities as they relate to GYOPs. (TUSD Notice and Report, Exhibit
26 1-2 to Exhibit D.)

27 ⁵ The District makes multiple references to “Human Resources” or “HR” (and a reference
28 to a “District Recruiter”) as bearing responsibilities in connection with the Pathways
program. To the extent those references were to the Diversity Recruitment Director,
Mendoza Plaintiffs respectfully suggest that the District should provide clarification in the
Revised GYOP Plan by making explicit references to this director.

1 recited the District’s teacher diversity efforts under the existing diversity plan and noting
2 that “SY 2019-20 [is] an especially appropriate time for the District to review the
3 effectiveness of its diversity efforts since 2016 and consider improvements for future
4 strategies.” (*Id.* at 12:27-28.)

5
6 The District has failed to comply with this directive. Indeed, the most recent
7 analysis of any staff diversity efforts in the Diversity Plan were “preliminary results of the
8 plan for SY18-19, as of **November 6, 2018**”, which had been included in past versions of
9 the diversity plan that preceded the recent July 16 Order. (Diversity Plan at ECF 37
10 (emphasis added); *see also id.* at ECF 14 (the Diversity Plan analysis “was [previously]
11 filed as ECF 2159-1, and is presented here again as [an] Exhibit... .”)

12
13 However, plainly, the evaluation of effectiveness “since 2016” that the Court
14 contemplated was to take a more comprehensive look at TUSD efforts than had already
15 been done and was to include the two school years preceding the July 16 Order which
16 TUSD’s existing analysis does not take into account. Accordingly, this Court should find
17 that TUSD has failed to comply with this Court directive and order that it comply with the
18 July 16 Order directive that it evaluate staff diversification efforts since 2016 and consider
19 future strategy improvements based on that evaluation.
20
21

22 **Administrator Diversity**

23 As Mendoza Plaintiffs have previously expressed, they agree that the +/- 15% USP
24 standard for staff diversity is not practical to apply to site-level administrator diversity in
25 light of the fact that a large number of TUSD schools have only one or two administrators.
26 They therefore remain open to an alternate standard or standards to measure and achieve
27 administrator diversity to the extent practicable. However, they object to each of TUSD’s
28

1 proposed standards for measuring administrator diversity and the plan's express "goal"
2 because they are inadequate and inconsistent with efforts to diversify administrative staff.

3 First, in the Diversity Plan,⁶ TUSD states that moving forward it "will measure
4 progress by the percentage of schools with administrative teams (two or more
5 administrators) that are diverse, meaning not all the same racial or ethnic groups."
6 (Diversity Plan at ECF 12.) Unfortunately, TUSD's proposed standard appears to
7 fallaciously equate "not all the same rac[e]" with "diverse" and loses sight of the fact that
8 the number of administrators at schools with administrative teams varies.

9
10 By way of example, under the District's proposed definition, Tucson High School,
11 which had seven administrators in 2019-20 (Diversity Plan, Exhibit 1-3 at ECF 26), would
12 be "diverse" if its administrative team became 86% White (6 of 7) and 14% Latino (1 of
13 7). Such an administrative team is not "diverse." Indeed, under TUSD's proposed
14 standard for measuring diversity, Tucson High and other schools with administrative
15 teams⁷ that currently are close to meeting the USP standard would be "diverse" even were
16 they to materially move further away from the USP definition of diversity than they are at
17 present. TUSD's proposed standard should therefore be rejected.

18
19
20
21
22 _____
23 ⁶ The Diversity Plan includes an administrator diversity chart for each of the 2016-17 and
24 2019-20 school years, but Diversity Plan statements seemingly conflict with those charts
25 and may therefore require revision. The Diversity Plan states that in the 2019-20 school
26 year, 30 schools had more than one administrator and only seven of those were
27 homogenous teams, but the administrator diversity chart reflects that those numbers are
28 actually 29 and 8, respectively. (*Compare* Diversity Plan at ECF 11 *with* Diversity Plan,
Exhibit 1-3 at ECF 24-26.)

⁷ Ironically, it is Tucson High and other schools with relatively large administrative teams
for which application of the USP's +/-15% standard would be most practicable and most
accurately reflect diversity, but which, under the TUSD proposed definition, could fall
furthest from such diversity while TUSD considers it "diverse."

1 In an effort to move resolution of this issue forward, Mendoza Plaintiffs state that
2 they would accept the District’s proposed definition of administrator diversity for schools
3 with three or fewer administrative staff members, but that the USP’s +/-15% standard
4 apply to schools with four or more administrators. (As of 2018-19, there were four such
5 schools. (Diversity Plan, Exhibit 1-3, at ECF 26.))
6

7 Second, Mendoza Plaintiffs object to TUSD’s express “goal” that 80% of schools
8 with administrator teams “reach and maintain” administrator diversity under TUSD’s
9 proposed definition because they do not believe it can accurately be described as a goal.
10 (Indeed, TUSD’s the inadequacy of the proposed “goal” is compounded by the fact that it
11 is based on TUSD’s problematic proposed diversity standard as demonstrated above.)
12 TUSD’s districtwide “goal” effectively regards one single administrator. (See Diversity
13 Plan at ECF 12 (future addition of one administrator at an otherwise “homogenous” school
14 would result in meeting the 80% “diverse” goal under TUSD proposal).) Mendoza
15 Plaintiffs respectfully suggest that it is preferable for TUSD to adopt a general “goal” of
16 maintaining schools with diverse administrative staff districtwide (according to whatever
17 measure this Court ultimately approves) than to adopt a “goal” of making a single
18 administrator appointment through which complete successful implementation of TUSD’s
19 administrator diversity plan can be claimed.
20
21
22

23 Indeed, the District’s problematic approach to measuring administrator diversity
24 and its unambitious goal are premised on what TUSD says is a “practical issue[]” that its
25 transfer program may simply “mov[e] people around” in such a way that an administrator
26 leaving a school to diversify another school will leave a vacancy at the original school and
27 may cause it to “fall[] out of balance.” (Diversity Plan at 8 (using example of African
28

1 American administrator transfer).) However, TUSD plainly overestimates challenges to
2 diversifying administrative staff because it seemingly minimizes the fact that transfers are
3 not the sole source of administrators; TUSD can recruit diversifying administrators
4 through new hires and through its GYOPs. Moreover, the TUSD discussion contemplates
5 that administrator transfers only are possible when there exists a vacancy at a school.
6 However, TUSD may, and indeed should, seek to have administrators from different
7 schools switch schools to which they are assigned if such transfers would diversify each of
8 those schools' administrative teams.
9
10
11

12 **CONCLUSION**

13 Mendoza Plaintiffs respectfully request that this Court find that TUSD is not in full
14 compliance with the July 16 Order for the reasons set forth above, and order TUSD to
15 revise the Diversity Plan to implement the July 16 Order directives as detailed above.
16
17
18
19
20
21

22 //
23 //
24 //
25 //
26 //
27 //
28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: August 31, 2020

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorneys for Mendoza Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS’ RESPONSE TO TUSD THIRD SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE: BEGINNING TEACHER INVENTORY, TECHNOLOGY INSTRUCTION RESOURCE INDEX, AND DIVERSITY PLAN** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

P. Bruce Converse
bconverse@dickinsonwright.com

Timothy W. Overton
toverton@dickinsonwright.com

Samuel Brown
samuel.brown@tusd1.org

Robert S. Ross
Robert.Ross@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

/s/ Mariana Esquer
Mariana Esquer

Dated: August 31, 2020