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

24 Roy and Josie Fisher, et al.,  
25 Plaintiffs,  
26 v.  
27 Tucson Unified School District No. 1, et al.,  
28 Defendants.  
29 Maria Mendoza, et al.,  
30 Plaintiffs,  
31 v.  
32 Tucson Unified School District No. 1, et al.,  
33 Defendants.

4:74-cv-0090-DCB  
(Lead Case)

4:74-cv-0204 TUC DCB  
(Consolidated Case)

34 **DISTRICT REPLY TO MENDOZA PLAINTIFF OBJECTIONS (2516)**  
35 **TO THE DISTRICT'S THIRD SUPPLEMENTAL NOTICE AND REPORT OF**  
36 **COMPLIANCE RE BEGINNING TEACHER INVENTORY, TECHNOLOGY**  
37 **INSTRUCTION RESOURCE INDEX, AND DIVERSITY PLAN (2514)**

1 Subject to and without waiving its objections previously stated, the District hereby  
2 replies to the Mendoza Plaintiff’s objections (ECF 2516) to the District’s Third  
3 Supplemental Notice and Report of Compliance related to the Beginning Teacher  
4 Inventory, the Technology Instruction Resource Index, and the Teacher Diversity Plan  
5 (ECF 2514).

6 **A. Beginning Teacher Inventory**

7 The Court’s Order was clear: “All **future** Beginning Teacher Inventories shall be  
8 the same format as the 1st & 2nd [Yr] Teachers Inventory by site 11/5/19 (Doc. 2423-1),  
9 including the ‘RC3+’ classification,” and TUSD “ shall run the Beginning Teacher  
10 Inventory **for SY 2020-21** and provide it to the Plaintiffs and the Special Master” (Order  
11 of 07/16/20, ECF 2497 at 21:4-11). The District submitted the SY2020-21 inventory as  
12 directed. Nothing more was ordered; nothing more need be provided.

13 **B. Pathways Program**

14 The District developed a detailed, aggressive, strategic plan to put prospective  
15 African American and Latino staff members onto a pathway towards a future leadership  
16 position. In response, Mendoza Plaintiffs assert – against the plain language in the plan  
17 – that the District’s Diversity Recruitment Director plays no role in this program because  
18 the job description does not explicitly mention the program. Mendoza Plaintiffs clearly  
19 missed the explicit language on page 3 of the Revised Diversity Transfer Plan for  
20 Teachers and Administrators, indicating that the “Director’s responsibilities are expanded  
21 to include developing and implementing the proactive Pathways program that extends  
22 recruitment to pathway positions for teachers and administrators of color” (ECF 2514-4

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1 at 7).<sup>1</sup> The Mendoza plaintiffs’ request for the District to revise the plan to include  
2 language that is already included should be denied.

3 **C. Diversity Within School Administrative Teams**

4 Again, 55 of TUSD’s 85 schools have only one administrator. Of the remaining  
5 30 schools, **twenty-three** (77%) have a diverse, non-homogeneous administrative team.  
6 In total, seven TUSD schools have a homogeneous administrative team (8% of all  
7 schools, or 23% of TUSD schools with two or more administrators). To allay Mendoza  
8 Plaintiffs’ concerns about the difference between “non-homogeneous” and “diverse,” the  
9 District reiterates that all seven schools are within one administrator of complying with  
10 the 15% rule.

11 The Mendoza Plaintiffs’ description of TUSD’s goal as “unambitious” is blind to  
12 the plain reality: TUSD does not have a significant – and certainly not a constitutional –  
13 problem with administrative diversity. It suggests that whatever the state of diversity, the  
14 Court should order more. This makes no common sense, and it is simply not required as  
15 a matter of constitutional law or under the USP. The Mendoza Plaintiffs suggestion that  
16 TUSD “should” (presumably under compulsion by federal court order) simply seek to  
17 have administrators “switch schools” if such transfer would diversify each of those  
18 schools’ administrative teams demonstrates an utter unawareness of the practicalities of  
19 what goes into the hiring and retention of administrators in two and three person  
20 administrative teams. Administrators apply for a position at a particular school; they are  
21 not required simply “to switch” schools at the District’s request, and they would leave the

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23 <sup>1</sup> Having stated that the Director is responsible for implementing the program, the District had  
24 no need to further specify that the Human Resources staff referenced multiple times in the  
25 description of the plan included the Director. In case there is still any doubt: the Director is  
included in the references to HR staff in the description of the plan.

1 District in droves if the District tried to institute such a practice. In reality, the fit of an  
2 administrator at any particular site involves complex issues of compatibility, experience,  
3 skill, knowledge, or familiarity with a school's particular programs or offerings, not to  
4 mention each school's unique academic or behavioral needs. Given the small size of  
5 administrative teams at most schools, and the District's undeniable overall diversity as to  
6 its administrative staff, the District submits that the District's goal of 80% non-  
7 homogeneous teams is more than proper in the circumstances.

8 **D. Teacher Diversity Plan**

9 The Mendoza Plaintiffs claim that the District failed to comply with an order to  
10 review the effectiveness of the Teacher Diversity Plan. But the order makes it plain that  
11 the District **has already done** that which the Mendoza plaintiffs claim has yet to occur.  
12 In its July 16 order, the Court stated that SY 2019-20 was an "especially appropriate  
13 time for the District to review the effectiveness of its diversity efforts since 2016 and  
14 consider improvements for future strategies. **The District has done this** by adopting the  
15 Proactive Transfer Plan and hiring the Director of Talent Acquisition." [ECF 2497 at  
16 12-13.]

17 Moreover, contrary to the Mendoza Plaintiffs' claim, the District has in fact  
18 recently analyzed the results of the TDP, long after their claim that it has not been  
19 analyzed since November, 2018:

20 1. As directed by the Court, the District's Notice of Compliance filed on  
21 August 18, 2020 (ECF 2514) included a report showing the final results of the TDP **as**  
22 **of the beginning of the current school year (SY2020-21)** for the original 2016-17  
23 target transfer schools (ECF 2514-4, p. 16), and included the following discussion of the  
24 program and analysis:

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1 The District analyzed the path of the original cohort, which received a three-  
2 year stipend. Of the 24 Teacher Diversity Plan (TDP) teachers who  
3 completed the three-year commitment, 21 continued at their receiving school  
4 into the fourth year, despite no longer receiving a stipend. The three who did  
5 not stay left the District altogether for reasons unrelated to the school or the  
6 program (they did not merely transfer back to their original school, or move  
7 to another District school to get another stipend for another three year  
8 period).

9 The District draws three conclusions from this result, and from the operation  
10 of the program over the last three years, of importance to the design of the  
11 program on a going forward basis.

- 12 • First, the current stipend level is not so high that expiration of the stipend  
13 leads to mass departures from the target school after the expiration of the  
14 stipend period.
- 15 • Second, and relatedly, the three year commitment appears to be sufficient  
16 for teachers to establish roots at the school.
- 17 • Third, the continuous existence of the program is not leading to instability  
18 or gaming of the system through successive transfers. None of the teachers  
19 left to get another stipend; there does not seem to be any “revolving door”  
20 effect caused by the program.

21 The District is encouraged by this data and these conclusions. However, the  
22 District is cognizant of the importance of leadership and faculty stability.  
23 Accordingly, the District will continue to monitor that potential movement  
24 and search for appropriate responses to ensure stability in District schools.

25 [ECF 2514-4, page 6, August 18, 2020.] This latter analysis was conducted less than a  
year ago, after the results of last year’s efforts were tabulated.

2. On October 31, 2019 (again, less than a year ago and including results  
from four years of operation of the TDP) the District comprehensively analyzed the  
effectiveness of the TDP as follows, noting that **the program had successfully  
persuaded over 100 teachers to transfer** to a school to improve diversity:

The District notes that the most intensive period for recruiting for the transfer  
program each year is in January through March, when teachers and  
administrators make the decisions either to remain at their particular school  
for the following year, or to transfer to a different school. Because following-  
year teaching contracts are signed by the end of March each year, most  
teachers have made decisions for the following year by the end of March.  
Accordingly, the new recruiting plan, while implemented immediately, will  
have its first year of measurable impact in SY2020-21.

1           ....

2           In addition to the widespread communication to teachers about the  
3           availability and benefits of the Teacher Diversity Plan (as had been used in  
4           each prior year of the plan), the District focused on communicating with  
5           principals regarding the status of their faculty diversity and assisting them in  
6           identifying the areas needing improvement. The HR Department created a  
7           “USP 15% Recruitment Tool” that is an online tool for principals to manage  
8           the diversity of their staffs. This readily available tool informs the principal  
9           of the current status of the school’s diversity as related to grade level average  
10          and highlights any area that needs improvement. (Exhibit A: USP  
11          Recruitment Tool Sample). Additionally, shortly before the first job fair,  
12          the HR Department sent e-mails to schools that were out of compliance with  
13          the diversity goals and followed up with additional updates during the hiring  
14          season. (Exhibit B: HR e-mail).

15          This additional effort appears to have paid off. In prior years, the numbers  
16          of teachers who joined the program each year began at 44 in SY2016-17  
17          (significantly higher than the target number of 20-25 teachers), again hit the  
18          target in SY2017-18 with 22 teachers joining the program, but fell off in the  
19          third year (SY2018-19) to only 4 teachers joining the program. However,  
20          with the new methods employed in early 2019, the results for SY2019-20  
21          rebounded: 31 teachers joined the program for SY2019-20.

School Year	Number of Teachers Joining the Program
SY 2016-17	44
SY 2017-18	22
SY 2018-19	4
SY2019-20	31

22          ....

23          Contrary to the argument by plaintiffs, through this transfer program and  
24          efforts to improve diversity through new hires, the District has made steady  
25          progress at improving diversity. Merely counting the number of schools who  
26          meet the 15% rule masks progress towards diversity; as reported previously,  
27          many schools are within one or two teachers of meeting the 15% rule, and  
28          these schools can thus bounce in and out of compliance from year to year.

29          [ECF 2352, p. 3-4.] The District respectfully submits that this meets the requirements  
30          of the Court’s orders.<sup>2</sup>

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<sup>2</sup> In addition, the District has, since 2016, regularly reported the TDP and its results and effectiveness, and the consideration of improvements for future strategies, in each of its annual reports (and in multiple filings on the issue of teacher diversity). *See e.g.* 2016-17 DAR, ECF 2057-1 at 130; *see also* 2017-18 DAR (reporting that “[d]uring spring 2018, the District analyzed the results of the TDP and determined to continue the plan again in SY2018-19. The District

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**Conclusion**

For the foregoing reasons, the District respectfully urges the Court to overrule the Mendoza Plaintiffs’ objections and approve the District’s Notice of Compliance with its

**DATED** this 8<sup>th</sup> day of September, 2020.

Respectfully submitted,

/s/ P. Bruce Converse

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decided that, in addition to offering incentives to teachers to move to target schools, the District would continue offering the annual incentive to teachers who moved in prior years, to incent them to stay at target schools”(ECF 2124-1 at 40); *and see* 2018-19 DAR, ECF 2298 (reporting that each year, TUSD “analyzes the distribution of teachers and other certificated staff to determine whether there are racial or ethnic disparities...” and that TUSD revised the plan “with various updates” in December 2018 and then “modified the plan in May 2019” (ECF 2298-1 at 44).

**CERTIFICATE OF SERVICE**

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I hereby certify that on the 8<sup>th</sup> day of September, 2020, I electronically transmitted the attached foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ P. Bruce Converse