2017 WL 3503671
Only the Westlaw citation is currently available.
United States District Court, D. Arizona.

Roy and Josie FISHER, et al., Plaintiffs,
v.
UNITED STATES of America, Plaintiff-Intervenor,
v.
Anita Lohr, et al., Defendants,
and
Sidney L. Sutton, et al., Defendants-Intervenors,
Maria Mendoza, et al., Plaintiffs,
United States of America, Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.,
Defendants.

CV 74-90 TUC DCB, CV 74-204 TUC DCB
|
Signed 06/15/2017

Attorneys and Law Firms

Kristian Harrison Salter, Rubin Salter, Jr., Law Office of Rubin Salter Jr., Tucson, AZ, Juan Rodriguez, Matthew David Strieker, Cynthia Valenzuela Dixon, Thomas A. Saenz, Educational Fund (MALDEF), Jennifer L. Roche, Lois D. Thompson, Proskauer Rose LLP, Los Angeles, CA, for Plaintiffs.

P. Bruce Converse, Paul Kipp Charlton, Steptoe & Johnson LLP, Phoenix, AZ, Samuel Emiliano Brown, Todd A. Jaeger, Tucson Unified School District, Tucson, AZ, for Defendants.

SPECIAL MASTER'S ANNUAL REPORT

Willis D. Hawley, Special Master

Introduction

*1 The Special Master is required by the Court to submit an annual report to the Court on the status of this case, hereafter called the SMAR. The observations in this report are based on data provided by the District, the plaintiffs and the Implementation Committee, whose members are experienced educators and who are knowledgeable about the District.

The Implementation Committee (IC) reports directly to the Special Master and its members are appointed by the Court. Whenever feasible and appropriate, this Report draws on information provided in the District's Annual Report (DAR). The DAR provides the District staff, the plaintiffs and the public with extensive information about progress it determines is being made in implementing the Unitary Status Plan (USP). The DAR is 450+ pages and includes several thousand pages of appendices.

The DAR, understandably, focuses on progress that it is making in its efforts to implement the USP. While acknowledging that progress is being made in the number of ways, the SMAR focuses on work that remains to be done. This report does not question every instance in which the District is not meeting specific goals or effectively addressing every requirement set forth by the USP, the Court or agreed-upon action plans. Rather, it seeks to focus on the challenges most in need of attention in the District's pursuit of unitary status.

As does the DAR, this report largely limits its content to the 2015-16 fiscal year. Only when more recent information informs a particularly important issue are comments made relating to progress—or the lack thereof—during the first half of the 2016-17 fiscal year.

Overview
The general purpose of desegregation cases is to seek remedies that would eliminate or reduce significantly the vestiges of past segregation and discrimination. A primary instrument for achieving this broad goal is the integration of schools and classrooms and it is also important in this case. However, school integration in and of itself is a limited remedy because, while it creates opportunities to learn that cannot otherwise be experienced, the quality of

education that students receive depends on numerous factors. This case has long addressed a broad range of potential remedies. The USP, in addition to strategies to promote and sustain integration, includes provisions to provide student with transportation; increase the diversity and effectiveness of teachers and school administrators; strengthen and enrich the curriculum and increase access to advanced learning experiences; develop safe, productive, inclusive and supportive school environments; provide services to students with special needs; meaningfully engage families; ensure equity in facilities and technology-facilitated learning resources; provide students with extracurricular activities; and create information systems and budgetary processes that facilitate accountability and effective management.

The USP requires that the Special Master report to the Court as to whether the District should receive unitary status—that is, to be released from direct Court supervision—during the fall term of 2017. The Special Master may recommend that the Court retain supervision over some aspects of the USP while providing partial unitary status to the District with respect to others. The District may petition the Court for unitary status at any time for all or some of the parts of the USP. This 2016 SMAR focuses attention on the implementation of provisions of the USP that may appear to have fallen short of the progress the District had hoped to make at this point in time. Emphasis on these issues should not, however, imply anything about the possible recommendations the Special Master would make to the Court in the fall or about any issue as to which District may feel it should be granted partial unitary status.

Uneasy Collaboration
*2 The USP is a "consent decree"—the parties all agreed to its provisions prior to Court approval. While the parties have worked together over time, it is not surprising that after more than 40 years of contention, efforts at collaboration were not always productive. Among the USP's many provisions, is Section I.D.1 which mandates: *"... for all new or amended plans, policies and procedures, or other significant changes contemplated to this order, the District shall solicit input of the Special Master and the plaintiffs and submit such items for review before they are put into practice or use."*

This provision is a source of continuing conflict among

the parties about which issues require review and comment and which actions the District can take without consulting. This is not simply a debate over prerogatives; the consultation process is time-consuming and the District sometimes argues that the delays invested in providing information the plaintiffs and the Special Master believe are essential to making informed comments impede the effective implementation of the District's work on the USP. Not surprisingly, the review and comment process ends up with unresolved differences that need to be resolved by the Court. Among the matters that the plaintiffs and the Special Master believe should have been subject to the provisions of Section I.D.1 before the District took action during 2015-16 are:

• The reduction of support for first year teachers working in schools where students are performing below the District average.

• Giving priority to the children of District employees in determining who will be admitted to oversubscribed schools although an agreement among the parties conditioned such preferential treatment on the effects of student selection on integration.

• District changes in policies and practices affecting how discipline is administered, the meaning of "suspension," and what students rights to due process are when suspension is involved.

• Changes in the Facility Condition Index.

• A proposal for federal funding to improve the effectiveness of magnet schools in promoting integration.

Integration
The USP sets forth a definition of integration that was approved by all of the parties, including the District. That definition requires that no integrated school can be more than 70% one race, and the percentage of students from other races in the school may not be more than 15% plus or minus the proportion of the District students in four levels of schooling (elementary, middle, K-8, and high). The USP provides that no student may be required to go to any given school for the purposes of integration. In other words, desegregation strategies in TUSD must be voluntary for families and students.

Granting that TUSD faces demographic and geographic difficulties, including state policies that promote charter schools and cross-District enrollment, relatively little progress has been made in integrating schools over the last four years in which the USP has been in place.

District-wide, almost half of the District's students attend schools that are 70% or more of a single race. That percentage has changed little since the 2014-15 school year. In 2014-15, 19.3% of the District students attended the 18 integrated schools in TUSD. In 2016-17, 17.7% of students attended the 17 integrated schools. Thirty-five schools were racially concentrated in 2013-14. Thirty-four schools were racially concentrated at the beginning of the 2016-17 school year.

*3 A primary tool for integration are magnet schools. The District had 19 such schools, 13 of which were not integrated in 2015-16—that is, they were "racially concentrated." Even though these magnet schools did not meet the criteria established for maintaining them as magnet schools, the District has opposed every effort to remove magnet status from the schools that are not achieving the fundamental purpose of magnet status. Aside from an application for federal support that was mandated by the USP, no new magnet schools have been proposed. The request for federal funding was not successful.

It would be difficult to build a case that the District has worked to integrate its schools. Consider:

> • The District frequently hires consultants to help it with important initiatives (*e.g.*, dropout prevention, discipline and dual language). But it did not hire a consultant to help its development of a proposal for federal funding of magnet schools.
> • In its marketing efforts to advise families about the choices they can make among schools—including video, handouts, text on the website—there has been no mention until 2016-17 of the significant research showing that attending an integrated school provide students with important learning opportunities they would not otherwise have.[1]

> • As a result of demands by the plaintiffs and pursuant to a requirement approved by the Court, the District finally launched an "Integration Initiative" in the spring of 2016—more than three years after the approval of the USP.

• The staff member heading up the Integration Initiative reports to the Director of Operations whose primary responsibilities deal with facilities and transportation. Given that magnet schools are fundamentally education programs the success of which are important to the attainment of unitary status, one might have expected the person responsible for the integration initiative to report to the District leaders on the academic side.

• In its annual report, the District asserts that changes in the grade structures at Borman and Drachman enhanced integration. However, the racial composition of Borman changed little and the changes at Drachman resulted in greater racial concentration.

• The position of Director of Magnet Schools, which is provided for in the USP, was left unfilled for half of the 2015-16 school year. When a new director was appointed during the fall term of 2016-17, that position was redefined from full-time to half-time. When the plaintiffs and the Special Master objected to this violation of provisions of the USP, the District removed the half-time appointee and replaced him with an interim director.

Transportation
The District is implementing the transportation provisions of the USP satisfactorily.

Enhancing the Diversity and Effectiveness of the Professional Staff

Overall Diversity

Across the District
From 2013-14 to 2016-17, there has been little change in the proportion of white, African American and Latino members of TUSD's professional staff. Table 4.1 covers the two most recent years and shows that the only

instances of noticeable change is an increase in African American site administrators and a decrease in the proportion of non-site Latino administrators (*e.g.,* central office administrators). This report focuses on the District's efforts with respect to teachers and principals across the District.

Table 4.1 Racial Composition of TUSD Professional Staff

Position	Year	White		African American		Latino	
		N	%	N	%	N	%
Classroom Teachers	2015-16	1596	66%	76	3%	658	27%
	2016-17	1603	65%	72	3%	678	28%
Site Administrators	2015-16	63	48%	9	7%	57	43%
	2016-17	59	45%	13	10%	54	42%
Non-site Administrators	2015-16	32	57%	10	18%	14	25%
	2016-17	26	59%	8	18%	9	20%
Other Certified Staff	2015-16	263	65%	17	4%	107	26%
	2016-17	323	66%	21	4%	125	26%
Total	2015-16	1954	65%	112	4%	836	28%
	2016-17	2011	65%	114	4%	866	28%

Within School Diversity

*4 The USP requires that each school should have a racially diverse faculty—defined as no more than 15% plus or minus the District average at each grade structure level. Until 2016, the District did not have a specific plan for achieving this goal. Setting aside some schools because of their special missions, the District was ordered by the Court to implement this provision of the USP no later than 2017-18 in 26 schools that did not meet the diversity criteria. The District was able to "integrate" the faculty at 11 of these schools in 2016-17.

Classroom Teachers

The racial composition of the teaching corps is particularly important because teachers, among all other school influences on student achievement, have the most effect.

The District is not alone in its difficulty in increasing the diversity of its teachers. There is a nationwide shortage of teachers, particularly African American and Latino

teachers. The District has undertaken all of the actions identified in the USP for which it should be responsible as well as actions laid out in the more detailed Action Plan approved by the parties and the Court.

Most strategies that have been found to be effective in recruiting and maintaining a qualified force of teachers fall into five categories:

1. Financial and other incentives

2. Collaboration with colleges and universities

3. So-called "grow your own" programs that assist uncertified personnel to secure a teaching credential or to be certified in a hard to recruit field.

4. Reductions in attrition

5. Strong support for beginning teachers especially teachers serving students in schools where most students come from low income families and communities.

TUSD has used all of these strategies and increased its investments in them in 2015-16. For example, in 2015-16 the District used three times as many financial stipends as it did the year before.[2]

Enhancing the Qualifications of Uncertified and Hard-to-Recruit Personnel

Programs that give employees an opportunity to improve their skills and their salaries and benefits are commendable human resource strategies. But the program the District calls "Make the Move" involves a very small number of individuals and does not appear to be recruiting enough African American and Latino candidates to increase the diversity of the teaching staff. Of the 13 participants in the Make the Move program starting in the fall 2016, ten were white, two were African American and one was Latino.

Reducing Attrition

Reducing attrition means, of course, that the number of new and well-qualified teachers the District needs is

reduced accordingly.

The proportion of certified staff who leave the District is not high in comparison to other urban districts. Over the three years ending in 2015-16, the yearly average was exactly the same for African American and Latino staff—slightly over 12%. Professional staff members who are white had a somewhat higher rate of attrition. It is not unusual for rates of attrition to vary from year to year, especially when the number of individuals is small. In 2015-16 the African American rate of attrition tripled over the previous year, a fact worth further inquiry.

The DAR includes some good news and some bad news about attrition. In one survey of teachers, well over 90% said that they did not intend to leave TUSD. But in a survey of beginning teachers, 35% indicate that they do not intend to continue their employment in the District.

Enhancing Teacher Effectiveness

Support for Beginning Teachers
*5 As noted above, one way to reduce attrition is to provide support to beginning teachers. Support for beginning teachers not only reduces attrition but it also enhances teacher effectiveness. In TUSD, and in many Districts, beginning teachers are disproportionately assigned to schools that serve students who are underachieving and this disadvantages lower achieving students.

TUSD has a well-designed research-based program for beginning teachers. But, the District acknowledges that in 2015-16 it did not have enough mentors to support beginning teachers to the extent called for by its own plan. Moreover, almost one-third of first and second year teachers did not attend professional learning opportunities facilitated by mentors. On average, first year teachers met significantly less often with the mentors than one and a half to two and a half hours a week. At the heart of effective mentor programs are face-to-face in-classroom interactions but it appears that beginning teachers are spending relatively significant time in seminars and small group experiences. More than 20% of principals have little interaction with the mentors and this reality undermines the ability of the principals to support their

beginning teachers.[3]

Contrary to the intent—if not the letter—of the USP, a large proportion of beginning teachers were assigned to schools that are racially concentrated and/or to schools at which the average student is achieving below the District level. This practice results in significantly reducing the learning opportunities of students who need highly qualified and experienced teachers most. And it is a practice in which the District regularly engages. In 2016-17, the percentage of first year teachers who were assigned to teach in racially concentrated and/or lower achieving schools was 80 percent. In 2015-16, the proportion of beginning teachers placed in racially concentrated and lower achieving schools was over 70 percent.[4]

Culturally Responsive Pedagogy and Teacher Evaluation
TUSD is one of the few Districts in the country that has made a District-wide commitment to culturally responsive pedagogy (CRP). CRP is an approach to teaching that takes into account and makes effective use of students' racial, ethnic, cultural and linguistic backgrounds. It is often thought of as a strategy unique to students of color, but it has been shown to be effective with all students because all students bring with them to school the knowledge, values and experiences that they learn in their families and communities.

The USP puts considerable emphasis on CRP but it is difficult to know how effective the District is in improving teachers' capability to integrate CRP with their more conventional instructional strategies and the ways they relate to students and families.

*6 Based on the District's descriptions of how it enhances teachers' capabilities with respect to CRP, it appears that the District has treated CRP as a set of practices that are distinct from subject matter content. Teachers do not teach culturally responsive pedagogy; they use culturally responsive pedagogy to teach all types of subject matter whether it be social studies, math, science or language arts.

One way to know whether teachers are becoming increasingly competent with respect to CRP might be to look at how teachers are rated on the teacher evaluation instrument, an innovative research-based protocol for

observing teacher behaviors developed in part by a panel of experts and by TUSD teachers. However, the District provides no evidence about how proficient teachers are with respect to CRP and there are reasons to believe that even if it did, the ratings would be problematic.

Any rating instrument is only as good as the effectiveness with which it is implemented. Teacher ratings are undertaken by principals and assistant principals in most cases. In general, principals and assistant principals often do not have the time, expertise or inclination to provide valid assessments. This is likely true in TUSD. In TUSD, less than 2% of teachers are rated as in need of an improvement plan. This, of course, raises questions about how useful the evaluation of teachers would be as an indicator of how to improve teacher effectiveness.

Efforts by the Special Master to have ratings undertaken by specially trained evaluators, even on a pilot basis, were strongly opposed by the teachers' union and by District leaders. The Special Master requested a small sample of the summary evaluations that principals shared with teachers. Only a small percentage of the feedback that teachers were given had anything to do with instruction, much less culturally responsive pedagogy.

Professional Development

The primary strategy that all Districts use to improve teacher effectiveness is professional development. The USP recognizes that teaching is the most powerful influence that schools can have on student learning and therefore places a great deal of emphasis on professional development.

Just as it is difficult to know how effective the District is in preparing teachers to engage in culturally responsive pedagogy, it is difficult to know whether professional development in general is changing teacher practices, much less improving student achievement.

Most research on professional development indicates that it is not very effective. There are many reasons for this not the least of which is that, like most Districts, much of the professional development funded by the District takes place in formal training programs where trainers present evidence and examples of effective practices. These lessons may or may not be practices that the teachers need to improve.

Best practice in professional development involves identifying teacher strengths and weaknesses, specifically addressing the weaknesses they have, and using teachers' strengths to facilitate the learning of their colleagues. This kind of personalized, job-embedded professional learning is an approach advocated by most researchers and by the national organization of professional development experts, Learning Forward. The District professes to have adopted the standards of Learning Forward. But a survey administered to over 75% of the teachers in the District analyzed by the Special Master suggests that more traditional approaches to professional development characterize much of the District's efforts to improve teacher proficiency.

*7 A key to implementing the Learning Forward approach is to have solid and valid information about teacher strengths and weaknesses. For reasons discussed with respect to CRP having to do with the expertise and commitments of the evaluators, it is not likely that the District's teacher evaluation instrument can provide the information necessary to effectively target professional development on teachers learning needs. But another reason why information about teacher proficiency is difficult to secure in TUSD is that there are a number of different ways that teachers' proficiency is measured, in addition to the teacher evaluation instrument. These various protocols use different terms to describe the same behaviors. When teachers are being asked to undertake an extensive array of ambiguously defined instructional practices, it is difficult to know what priorities should be set and it is likely that differentiation among practices is difficult to determine.

While we cannot know from available evidence whether professional development is effective in TUSD, we can know—with reasonable accuracy—how many hours teachers spend learning particular topics. Based on the summary description of who receives what professional development, it appears that the District satisfies the letter of the provisions of the USP. But this does not mean that the considerable investment being made in professional development is very productive.

Enhancing the Diversity and Effectiveness of Administrators

<u>Diversity</u>
As Table 4.2 shows, between 2014-15 and 2016-17, there was little change in the proportion of Latino school administrators. However, the number of African American school level administrators increased from 8 to 13, a significant change. The number of Latino administrators varied from year to year.

4.2 Number and Percentage of Site Administrators by Race/Ethnicity*

SCHOOL YEAR	White		African American		Hispanic / Latino	
	N	%	N	%	N	%
2014-15	62	49%	8	6%	54	43%
2015-16	63	48%	9	7%	57	43%
2016-17*	59	45%	13	10%	54	42%

*Preliminary data for SY 2016-17 was taken November 1, 2016.

The District is implementing two programs to enhance the diversity and effectiveness of school administrators; the Leadership Prep Academy and a Masters in school administration program in collaboration with the University of Arizona.

The Leadership Prep Academy (LPA)
From 2013-14 to 2015 16, 36 participants in the LPA were appointed to the position of principal or assistant principal. 20 of these appointees were white, one was African American and 14 were Latino.

University of Arizona Master Program
There are 14 participants of this program. Nine are white, five are Latino and none are African American.

<u>First Year Principals</u>
The job of school principal is demanding and complicated. Not surprisingly, first year principals are typically less effective than their more experienced peers. For that reason, the USP requires the District to make every effort to avoid assigning first year principals to schools that are racially concentrated or/and schools where students are achieving below the District average. If the District finds that it is not practicable to meet this requirement, the superintendent must specifically approve the appointment. In 2014-15, the District had 20 first year principals, seven of them were serving in racially concentrated and lower achieving schools. In 2015-16, the District had six first year principals, three of whom were assigned to racially concentrated and lower achieving schools.

When the District assigns first-year teachers and first-year principals to the same school where students are achieving below the District average, this significantly undermines the educational opportunities of the students in those schools.

<u>Enhancing Principal Effectiveness</u>

Professional Learning Communities
The USP was adopted in February 2013. The District began to seriously implement the PLC concept in 2015-16.[5] Meaningful change in schools depends on enhancing the capacity of staff to engage in relevant improvement and this, in turn, means changes in behaviors are necessary in most cases. This means that the effective implementation of PLCs requires effective professional development at the school level. This is likely to require deemphasizing District-wide development and finding ways to provide opportunities for collaborative problem-solving and learning together how to work together and implement improvements.

*8 TUSD schools vary a great deal in the extent to which they are effectively implementing PLCs. Overall, the implementation appears to be moving forward at increasing speed. The most successful PLCs are those in which the principals take a more direct role in fostering and facilitating change.

Professional Development for Administrators

Throughout the year, administrators experience numerous professional learning opportunities. In most cases, these opportunities seem to take place in classroom settings and much of what is covered involves information about administrative processes. During many of the sessions, multiple topics are discussed making it difficult to determine how much time is spent on a particular focus, such as increasing teacher effectiveness.

Arguably, the most important professional learning principals receive is that dealing with the role they play in improving instruction. Since the importance of CRP is emphasized in the USP, the training principals receive about CRP seems worthy of brief examination. Of all the topics that are covered in administrator training sessions, CRP (and instruction in general) get relatively little attention. The content of CRP-related training, like that experienced by teachers and discussed above, is poorly aligned. CRP is defined differently in different training sessions, curriculum and instruction are conflated, and topics putatively dealing with teaching sometimes deal only marginally with instruction.[6] Even the diagrams used illustrate "the CRPI Model" and the "Key Tenets" of that model use different terms.

There are no systematic studies undertaken by the District to determine whether these experiences result in improved leadership. As noted above, the District has made a major investment in the development of PLCs at the school level. Anecdotal evidence from members of the Special Master's Implementation Committee suggests that the training accompanying these efforts is facilitating implement implementation of the PLCs.

Quality of Education

While the entire USP deals with the quality of education, this section of the SMAR focuses on improvement in the quality of instruction, curriculum enrichment and student engagement.

Graduation Rates, Retention in Grade and Absenteeism

Graduation rates in TUSD are increasing for African American and Latino students and the differences in the graduation rates of students of different racial backgrounds are declining. The District's graduation rates for African American and Latino students, as well as English language learners, were higher than those of the state. The dropout rate is lower than the state rate and the graduation rate for TUSD is higher than the state rate. However, the District fell short of achieving the ambitious goals for drop-out rates set with the plaintiffs for African American students, Latino students and English language learners.

When students are retained in grade, this is not only an indication of poor performance; it is also a predictor of later dropouts or failures to graduate. The District retention rate in third and eighth grade—key benchmarks—is substantially lower than that of most urban districts. The District agreed with the plaintiffs to a plan to further decrease the retention rate. These goals were achieved by African American students for the third and eighth grades. While the District achieved its ambitious retention goals for Latino students in the eighth grade, it did not achieve the goals it pursued for third-grade Latino students.

*9 Attendance rates are a good predictor of students' academic performance. Between the 2012-13 school year and the 2013-14 school year, attendance rates for all students decreased slightly—less than one percent.

Dual Language

The District has been slow to act on actions by the court to increase the opportunities for students to participate in dual language programs. After an internal assessment of the quality of dual language programs in TUSD, District leadership focused on improving existing programs while adding one new program at Bloom Elementary. The key to effective dual language programs is the quality of instruction students receive. In 2015-16, the District enhanced professional development for dual language teachers and introduced initiatives to recruit more bilingual teachers. These initiatives including partnerships with the University of Arizona, financial incentives and tuition reimbursement for teachers who want to upgrade their qualifications and skills. In addition, the District employed a nationally prominent consultant to work with the District and to set future directions.

Between 2013-14 and 2015-16, there were small increases

in enrollment of white, African American and ELL students but the number of Latino students decreased by over 200 students. A significant number of Latino students enrolled in dual language programs were reclassified as English proficient in 2013 and in 2014-15 but dropped to 25% when the state increased the cut score for English proficiency in 2015-16.

Advanced Learning Experiences

The USP calls on the District to increase the participation rate of all students, but especially African American and Latino students, in Advanced Learning Experiences (ALE). ALE include a broad range of courses that include gifted and talented programs, international baccalaureate programs, middle school courses for high school credit, high school courses for college credit, Advanced Placement courses, University High School, and courses to improve the likelihood of student success in the most rigorous of the District's courses.

Despite the fact that the position of Director of Advanced Learning experiences went unfilled for a significant period of time during the school year, the District made substantial progress in increasing the percentage of Latino students who met the goals agreed upon by the District and the Special Master.[7] However, in only two of the 15 ALE studied, did the District achieve the goals set for African American students.

In an important initiative, the District established its first "open access" self-contained GATE program. This GATE program was implemented at Tully Elementary School and was open to students regardless of their scores on the traditional GATE admission test. The District is proposing to implement an open access middle school in 2017-18.

In 2014-15, UHS altered its admission processes with the goal of increasing admission of African American and Latino students. These efforts initially increase the number of African American and Latino students enrolled in UHS but since this initial effort the number of African American students has stabilized while the number of Latino students enrolled in UHS has increased.

Support for Struggling Students

*10 The District implemented a Multitiered Student Support (MTSS) program in schools where a substantial number of students were struggling. This program emphasized the importance of using data on student performance to provide students who need extra support relevant resources and to help teachers meet the needs of underperforming students. As might be expected, the initial success of this initiative varied markedly from school to school.

The District sought to support students who were at risk of dropping out and who were habitually absent by making home visits by ancillary staff (*e.g.*, family and community liaisons, counselors in specialists). This strategy can be effective but in elementary schools, home visits by teachers are often more productive.

The District provides numerous programs to support struggling students. However, evidence on the effectiveness of most of these programs is not presented in the DAR. An exception to this generalization is the demonstrated success of the credit recovery program.

Multicultural Curricula and Resources

The District made significant investments in multicultural resources and the development of curriculum maps that teachers could use in enriching their courses. The power of curricula in enhancing student learning depends significantly on how effectively teachers use these resources and implement strategies implicit in the curriculum maps. It appears that much of the training teachers receive in this regard has to do with the selection of materials. More important than this training is the development of teacher capacity to employ culturally responsive pedagogy.

Culturally Relevant Courses

Student enrollment in culturally relevant courses and modules in grades five through twelve increased significantly in 2015-16. A problematic issue with respect to CRC courses is whether teachers who are beginning to offer such courses are receiving sufficient training and mentoring to effectively implement these courses and

modules. How these courses are taught is critically important to what students learn not only about the content they study, but what they learn about themselves, their families and their communities.

The Coherence of Equitable Policies and Practices

Perhaps more than any other urban school system, TUSD is engaged in pioneering work to make concerns about equity integral to every policy and practice that shapes the learning opportunities and outcomes of all students, regardless of their race, cultural background, or English language capability.

Because TUSD is out in front of most of the nation's school districts with respect to its focus on equity and because experts differ in the language they use to define key concepts, TUSD has taken on a daunting challenge. The effectiveness of TUSD's efforts to ensure that concerns about equity are embedded in all the things it does depends on the coherent of these efforts.

In its work to promote the commitment of teachers, administrators and other staff, the District has engaged some consultants and fostered the use of some materials that undermine coherence in curriculum, instruction and character development. This can result in the introduction of ideas and practices not supported by research and that conflict with the District's core policies and practices. Too often, consultants not only failed to reinforce what teachers and administrators are being trained to do in implementing the USP, they complicate the challenges TUSD is wrestling with because they introduce ideologically grounded "imperatives" and pop-psychology.

*11 In the absence of coherence in (a) curriculum and instruction and (b) strategies for promoting social and emotional learning, teachers, administrators and other professional staff are likely to feel overwhelmed and conflicted about priorities. Coherence can be facilitated by using consultants sparingly and the messages of outside "experts" and the materials to be used by students are carefully vetted. And, most important, coherence depends on the extent to which core concepts related to equity that drive policies and practices in TUSD are aligned with one another. The District has developed numerous guidelines and checklists for determining whether staff are implementing policies and practices.

The District needs to examine these to determine whether the messages are aligned (because sometimes they are not) and to simplify the measures being used (because sometimes they are too complex).

Discipline

Overall

Throughout the United States, school districts are reducing suspensions in light of research that suspensions undermine academic achievement and do little to improve student behavior. This recognition has led districts—including TUSD—to work on preventative strategies (such as PBIS) and restorative practices and to place greater emphasis on social and emotional learning. The District has made considerable progress in reducing the number of disciplinary actions in 2015-16 in comparison to previous years. The explanations for this progress are identified in the District's annual report.

The District provides data to the plaintiffs and the Special Master in four categories: in-school discipline, in-school suspension, short-term out of school suspension and long-term out of school suspension. There has been a dramatic drop in the amount of overall disciplinary action as a percentage of action compared to total students between 2014-15 and 2015-16; 43.3% to 29.7%. There were about 710 fewer students in TUSD in 2015-16 than there were in 2014-15, but there were 7,547 fewer disciplinary actions in 2015-16 than in the previous year. The biggest changes were in in-school suspensions—a drop of 78%—and long-term suspension—a drop of a little over 50%. The drop in in-school suspensions is due in part to the changes in the GSRR that allowed in-school suspensions for level III offenses or above.

This drop in the number of suspensions has led to some conflict between the plaintiffs and the District with respect to a provision of the USP that seeks to minimize exclusionary discipline, defined by the plaintiffs as the removal from regular classroom. The District, on the other hand, seeks to define exclusionary discipline as a long-term out of school but no other form of suspension including DAEP (District Alternative Educational Program) even though students are removed from their regular classrooms. In any event, it is clear that many

fewer students are being suspended than has been the case in the past, an outcome all of the parties endorse.

Discipline problems in TUSD get a considerable amount of attention in the media but it is important to recognize that discipline problems in a small number of schools account for very large proportion of the disciplinary problems throughout the District.

Disproportionality

The Special Master, with the help of the Implementation Committee, is required by the USP to monitor the overall level of discipline action as well as disproportionality. Disproportionality is defined as the percentage of disciplinary actions as compared to the percentage of students of specific races. The extent of disproportionality for African American students is greater in all four discipline categories. This is not the case for white or Latino students except in 2012-13, when Latino students were more likely to be suspended than their representation in the total student body. Disproportionality for African American students is evident whether the data being examined deal with the total number of incidents or the number of times a given student is disciplined. While disproportionality for African American students in TUSD remains a substantial reality, the number of incidents involving African American students declined more than for white and Latino students.

DAEP

*12 As noted above, there was a substantial drop in long term out of school suspensions. One reason for this is the establishment of the DAEP. DAEP was fully implemented in 2015-16. Information provided in the DAR indicates that students who participated in DAEP, rather than being sent home, where many would have received little supervision, resulted in higher student achievement of those students and a lower rate of subsequent long-term suspension.

A Greater Focus on School Climate and Instruction?

The reasons for student misbehavior in school are many. Some students bring the stresses and trauma they experience in homes and communities with them to school. But a significant number of students who misbehave in school do so because they are not engaged or because they are being asked to learn things for which they feel they are not provided adequate support. To put this another way, disciplinary training in TUSD focuses extensively on what to do when discipline problems arise. This is quite common in other districts as well. It is sensible, of course, to prepare teachers and administrators with information about how to respond to misbehavior, but it may be that too little attention is paid to how teachers and site level administrators and other staff can create positive school climates that place a high value on learning. For example, what instructional strategies and curricula are correlated with low levels of discipline in classrooms and schools. In other words, even greater progress might have been made in reducing the overall level of disciplinary action had the District placed greater emphasis on creating climates of civility and facilitated instructional strategies that more fully engaged students in active learning.

PBIS

As noted, to take a more proactive approach to discipline, the District has been placing greater emphasis on positive behavioral interventions and support (PBIS)—a series of strategies and practices that are aimed at preventing student misbehavior. When the USP was drafted, it reflected the District's practice of providing schools the option of focusing on PBIS or restorative practices. Gradually, the District has come to see PBIS as fundamental. Despite greater emphasis being placed on PBIS by District leadership, it was not until the fall term of 2016 that the District developed a protocol or set of guidelines that spelled out the essential elements of PBIS that would serve as a tool for developing effective PBIS programs and assessing whether PBIS was being comprehensively implemented.

Training Strategies

Earlier in this report when discussing professional development, it was suggested that much of professional

development could be improved. It was argued that when groups of teachers or administrators are being taught the same thing regardless of whether this is what they need to learn that such professional development is not likely to be effective. This approach to professional development appears to characterize how training for discipline is carried out as well.

In testifying to its commitment to the PBIS, the District says that 122 hours of restorative practices and PBIS training was offered during the 2015 school year. There are more than 85 schools in TUSD and about 3,000 professional staff. These numbers raise questions about the adequacy of training for PBIS and about the strategies being used.

A striking example of how professional development is implemented in TUSD is reflected in the fact that only 49 teachers out of 2,700 were identified as teachers who needed additional training regarding discipline. Not only is this an extraordinarily low number of teachers who are in need of additional specific support, the professional development provided these teachers was performed over one day tellingly by the "Showing and Telling Consultants." One of the ways that teachers disparage much of the professional development they receive is that they characterize it as sit and get (*i.e.*, "show and tell").

Best Practices
*13 Section VI.F.3 of the USP requires the District to develop a best practices file or library. For whatever reason, the District has not developed such a resource and has instead shared ideas at meetings of administrators or at school visits. These approaches mean that there is no way that effective practices can be readily shared across schools over time. What is needed is a process for documenting how particular misbehaviors can be effectively addressed, evidence of the positive effects of these practices, how the practices can be implemented, and who in TUSD would be helpful in promoting this practice. These effective practices can be coded to the GSSR list of disciplinary violations.

Corrective Action Plans

When schools are recurrently involved in excessive discipline actions and/or disproportional administration of discipline, they are required to develop corrective action plans the Special Master and the Implementation Committee have reviewed these plans. Some are comprehensive and detailed. Others are little more than plans to plan. This problem might be remedied if exemplary corrective action plans were made available for use by other school teams through the best practices resource.

Guidelines for Student Rights and Responsibilities (GSRR)
At the beginning of the 2015-16 school year, the District recognized the need to revise the GSRR—the document that defines violations and appropriate responses to these offenses. As of **May 2017**, no changes in the GSRR had been approved by the Governing Board.

Meaningful Family Engagement
The District has increased opportunities for families by opening four family centers throughout the District. These centers provide a number of services to families that are described in detail in the DAR. The Centers are located throughout the District with attention to the importance of making them accessible to low income families.

The District has increased visits to family homes. Almost all of these visits are meant to help families address difficulties their students may be having in school. This is important work. However, some Districts have found it productive to facilitate teacher visits to families to learn from these families how they can best facilitate the learning of their children. Further information is needed in order to know how family liaison staff communicates with teachers about teachers' students. Learning from families during parent-teacher conferences about what might motivate or impede student learning can improve teaching and student outcomes. Home visits also (1) break down concerns some families, may have based their own unhappy school experiences about whether their child will receive the support they need and (2) counter the reticence some families, especially immigrant families may have about candid interactions with teachers. Much

of the District's approach to family engagement is what is called a one-way bridge and current thinking calls for a two-way approach, a genuine partnership between the school and the home to facilitate learning both in the home and in school.

One strategy to utilize might be selecting and utilizing family mentors at both the school and classroom level to both encourage engagement and involve families in decision making and instructional activities.[8]

Family engagement through parent-teacher organizations, school advisory councils or other formal arrangements appears to be uneven across the District and the DAR provides little information about the status of this two-way form of family engagement. While differences in the vitality of family engagement do vary by school, it does not appear that the racial composition of the schools where family engagement is more robust is significantly different than the racial composition of schools with less assertive family involvement. But, as noted, better evidence in this regard is needed.

*14 The District employs numerous community liaison persons whose role includes bridging the gap between schools, families and communities. Many of these positions have gone unfilled. The District should ensure that full time community liaisons are in place in at least all racially concentrated as well as schools in which achievement levels fall below the District average.

The District appears to have developed a significant number of partnerships with organizations of different types throughout Tucson. More information on the functions and the results of these partnerships would be useful.

The Director of Family Engagement for the District is an enthusiastic supporter of family engagement and the four District family centers. A District-wide impact will require real changes in family engagement practices at the school and classroom level. This will require both senior administration and principal involvement to ensure practices occur at the teacher level.

Extra-curricular Activities
It appears that the District is implementing the provisions of the USP with respect to extracurricular activities in a

satisfactory way. This does not mean that extracurricular activities in the District are necessarily robust or that a valid argument for greater investments couldn't be made. That said, the District has taken some steps in training the supervisors of extracurricular activities (which, for purposes of the USP, include athletic activities, fine arts and clubs) and student leaders that exceed what is done in many districts.

The District provides students with after-school tutoring in academic subjects. The District has moved gradually toward providing such tutoring support by certified instructional personnel. In 2016-17, all students in after-school tutoring programs will be tutored by a certified instructor or by tutors who are closely supervised by certified instructors.

The District provides free transportation to students who participate in extracurricular activities, including tutoring, in schools that are integrated and magnet schools. The logic of this policy is that one of the ways integration in the District is promoted by the District is to encourage families to attend a school other than the one closest to their "neighborhood school." Many students in such schools therefore live more distant from their school than those who attend a school within their home school boundary.

After a review of revised extracurricular activities data provided by the district after submission of the DAR, it appears that extracurricular activities participation increased from 2013-14 to 2015-16. The District observes that this increase is due both to increases in offerings as well as better record-keeping. In general, total percentages of participation across ethnicities, remained relatively constant.

Equitable Facilities and Technology-Facilitated Learning Resources

Facilities
The quality of the District's facilities differs significantly from school to school throughout the District and the learning environment in some schools is substandard. Given the substantial decreases in state funding in recent years, upgrading facilities to even minimally satisfactory

levels will require a bond issue.

While many schools require improvements that would address the needs of schools with low ratings on the FCI and the ESS, it does not appear that the quality of school facilities varies significantly by the proportion of students of different races in a school. In the last year, the District has significantly increased student access to learning technologies throughout the District, especially in magnet schools and those that are racially concentrated. Access to computers, whiteboards and other hardware in schools appears equitable (*see* discussion of technology below).

*15 The formula for the Facilities Condition Index (FCI) was unilaterally altered during the 15-16 school year without plaintiff input. In order to compare year to year changes, the District should return to the originally agreed-upon FCI formula delineations. If the District believes that changes in the weights assigned within the FCI index are needed, such proposals should be submitted to the plaintiffs and the Special Master for review and comment.

In order to ensure the FCI and ESS are utilized and updated regularly, the District could post an updated list on the website with notation that includes projects that are planned and budgeted for the current school year.

Technology
In the 2015-16 school year, the District invested in the acquisition of hardware and software to be used for the first time in 2016-17 thus making exponential progress in addressing the provisions of the USP dealing with technology.

Increasing the access students have to learning technology and software is important and this effort focused on schools serving the largest numbers of African American and Latino students. These initiatives have largely eliminated differences among schools with respect to access students have to technology.

Access is essential but how the technology facilitated learning resources are used is also important. Studies of ways that technology can facilitate learning show that access is often more equitable than utilization. For example, how many hours in a day or week a student has access to computers in the classroom or school does not,

in itself, indicate what the learning experiences of students are. Often, students who are achieving at relatively low levels are more likely to be using computers to develop so-called basic skills rather than to engage in more complex problem-solving and the development of what are called "higher order" knowledge and skills. Whether this is the case in TUSD we do not know, but the level of investment in teacher training on the use of computers and other learning technologies is, at best, modest.

How students use technology, especially with respect to the development of higher order skills, depends significantly on their teachers' proficiency to make the most of the learning opportunities that technology-facilitated learning provides. For most teachers, their proficiency in using technology to facilitate student learning depends on the professional development and hands-on support that they receive as they teach.

The District acknowledges that it has much more to do with respect to training teachers to use technology in the most productive ways. The District provides such training in three ways. First, training occurs during sessions in which teachers are brought together in classroom-type settings. Second, the District has provided online courses that are voluntary but these appear to not be used extensively. Third, the District has identified teachers who are considerably more proficient than their peers to serve as Teacher Technology Liaisons (TTL). TTL serve teachers in their own schools but teach a regular course load. TTL are paid a modest stipend for taking on this responsibility.

The TTL support for teachers in the utilization of technology has the virtue of being school-based and responsive to particular needs of individual teachers or small groups of teachers. However, the amount of time that TTL have to work with their colleagues is quite limited because it must take place during the school day when the TTL have their own classes to teach or after school when teachers who need support may not be able or willing to stay at the school.

*16 As evidence of the success of this initiative, the District indicates that a total of 2800 hours of support during the first months of the 2016-17 school year by TTL were provided—an average of a little more than one hour for each of the District's teachers. Of course, some teachers may feel reasonably confident about their proficiency but it is hard to imagine that an average of one hour per teacher will serve the needs of teachers to

develop proficiency in the use of technology, especially with respect to more complex courseware.

Learning new skills often requires hands-on support. When the learner becomes aware that the skills they believed they had learned are more limited than they believed, they need someone to show them how to do the task involved. This means that teachers would benefit substantially if the TTL(s) in their school were able to work with them in the classroom while they were teaching. But, because TTLs are also teaching, such support may be limited.

As suggested above, the real payoff for student learning from the utilization of technology comes from students engaging in simulations, and complex problem-solving and other types of higher order learning. But most of the teacher training thus far appears to be focused on simple tasks in the management of data rather than how to facilitate learning of more advanced knowledge and skills.

The District uses teacher surveys (self-assessment) to determine whether teachers' professional learning needs are being met. These surveys indicate that teachers, in general, are increasing their proficiency in the use of technology to support student learning. However, the assessment strategy is problematic. Numerous studies indicate that people—not just teachers—overestimate their capabilities and are not very good at assessing how much they have just learned when asked in the kind of surveys of the teaching that the District uses. The reasons for this are understandable. First, teachers—especially new teachers—are often unwilling to draw attention to the fact that they have limited understanding of what they are supposed to have learned. Second, teachers (this finding is not limited to teachers) may actually think they've learned what they were taught but when they apply what they've just learned they find that the knowledge they thought they had is more limited than they believed. Paradoxically, this over-estimate of proficiency is more likely for novices than for experts or people with greater levels of proficiency.

The District says it is working towards "skill-based assessment." If this means that teachers will be observed on how they use technology to facilitate student learning, this would be an important step. It should be noted that few Districts undertake such intensive evaluations of teacher capabilities.

Information Systems and Budgetary Processes

Information Systems
While it has been a long time coming, it appears that the Evidenced Based Accountability System (EBAS) is well along in the implementation phase. The test will now be to use the extraordinary capabilities of this system in decision-making from the classroom to the Governing Board throughout the year.

The hardware and software the District now has available gives it capabilities about student learning and influences on student learning that most school districts lack. The EBAS provides the District with detailed information that integrates an array of data sources. Embedded in the software are programs to facilitate data analysis as well as suggestions about effective practices for addressing challenges identified in the analysis. For example, algorithms can identify individual students who are high risk as well of those who are of a high probability of becoming high risk both with respect to behavior and academic performance. Having identified such students, the program can provide information on research-based interventions.

*17 For the first time, the District is able to integrate teacher data and all other types of information about student experiences and outcomes. This makes it relatively easy to create analytical models that might explain why, for example, for example student achievement is trending down in an individual school or if the reasons that specific student is not achieving might be linked to that student being taught in two consecutive years by beginning teachers.

Any information system is only as useful as the capabilities of those using the system permit. The District has increased its in-house professional staff giving it significant capacity for research and evaluation.

Steps have been taken to train teachers and administrators. There is more to be done here and the District seems to be moving forward in an appropriate way. A key to the effective data-based decision-making at the school level is the enhancement of the MTSS system with the addition of MTSS facilitators. Clarity is needed about the adequacy of the number and placement of MTSS facilitators, how EBAS and the MTSS system are integrated, and how the MTSS system will work in the absence of facilitators whose primary role is to facilitate

the effective use of information on student behavior and academic performance beyond the designation of MTSS "Leads."

The 910G Budget Process for 2017-18 is in place. The process itself will be monitored throughout the year to ensure requests for information are responded to in a timely manner.

The continuing concern on the part of the plaintiffs is the criteria that can be used to determine whether a proposed use of 910G funds represents supplanting (*i.e.*, whether it would be more appropriate to use O and M funds for a particular purpose).

Expenditure reviews have been completed in a timely

way. However, since all dollars are listed as encumbered, one might question how one would know of unexpended funds. Yearly reallocation requests continue to be substantial, *i.e.* greater than several million dollars.

The yearly expenditure "audit" has been completed in a timely way and now reflects spending per the accounting system that delineates expenditures by activity.

All Citations

Not Reported in Fed. Supp., 2017 WL 3503671

Footnotes

[1]   Beginning in the fall of 2016, the District developed material that spoke to the advantages of an integrated education.

[2]   However, while the data are ambiguous, educators receiving stipends appear to be leaving the District at a higher rate than those employees who do not receive a stipend. This may be because most stipends go to first-year teachers, who typically have high turnover rates.

[3]   Ninety percent of beginning teachers say that the mentoring they received enhance their teaching. While one would not expect beginning teachers to say that they did not improve their teaching during the year, the positive response to mentoring is evidence of its usefulness.

[4]   This information about the placement of first year teachers in racially concentrated and underperforming schools is not provided by the District's Annual Report. Rather, the District provides information about the number of schools in which more than 10% of the teachers were beginning teachers. While the District should surely reduce, if not eliminate, the number of schools with 10% or more beginning teachers (the number dropped from 23 to 15) in the last two years, that the District did so is unrelated to provision in the USP.

[5]   The concept of PLC is that one or more teams of teachers, counselors, MTSS Facilitators and administrators at the school level will use data and other evidence related to student learning to identify needs for improvement and to develop plans for implementing the improvement strategies.

[6]   For example, a presentation by an external consultant whose training was entitled, "leadership for culturally

responsive teaching (sic)" provided no examples of CRP or culturally responsive teaching.

7   The goals pursued by the District were more ambitious than those recommended by a nationally prominent consultant.

8   Family mentors are parents who volunteered to meet with other parents who may find it difficult or awkward to go to the school or seek opportunities to share their concerns and suggestions with teachers and principals.