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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
United States of America,
Plaintiff-Intervenor,
v.
Anita Lohr, et al.,
Defendants,
and
Sidney L. Sutton, et al.,
Defendants-Intervenors,

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
(lead case)

ORDER

CV 74-204 TUC DCB
(consolidated case)

1 On June 3, 2014, the Special Master filed a Report and Recommendation (R&R)
2 (Doc. 1612) relating to TUSD's Action Plan for Recruitment and Retention, which is
3 TUSD's implementation plan for the Unitary Status Plan (USP), § IV, Administrators and
4 Certificated Staff, subsection C, Outreach and Recruitment, and subsection F, Retention..

5 Section IV.C.3 requires the following:

6 By April 1, 2013, the District shall develop and implement a plan to recruit
7 qualified African American and Latino candidates for open administrator
8 and certificated staff positions. The plan shall be developed by the District
9 recruiter with the input of a racially and ethnically diverse recruitment team
10 comprised of school-level and district-level administrators, certificated staff
11 and human resources personnel. The plan shall address any and all
12 disparities identified in the Labor Market Analysis.

13 a. The District recruiter, with input from the recruitment team, shall take the
14 following steps to implement the recruitment plan, and shall modify it
15 annually based on a review of the previous year's recruiting data and the
16 effectiveness of past recruiting practices in attracting qualified African
17 American and Latino candidates and candidates with Spanish language
18 bilingual certifications. The recruitment plan shall:

19 i. Establish a nationwide recruiting strategy, based at
20 minimum on the outcome of the Labor Market Analysis, which
21 shall include specific techniques to recruit African American and
22 Latino candidates and candidates with Spanish language bilingual
23 certifications from across the country, including through: (i)
24 advertising job vacancies on national websites and publications,
25 including career websites, national newspapers, education
26 publications, and periodicals targeting African American and
27 Latino communities; (ii) recruiting at Historically Black Colleges
28 and Universities ("HBCUs"), through the Hispanic Association of
Colleges and Universities ("HACU"), and at other colleges and
universities with teacher preparation programs serving significant
numbers of African American and/or Latino students, including
providing vacancy announcements to campus career services
offices; and (iii) attending local and state-wide job, diversity, and
education fairs and/or expos;

ii. Create a process to invite retired African American and
Latino administrators and certificated staff to be considered for
open positions for which they are qualified;

iii. Incorporate strategies for building and utilizing
partnerships with local employers that recruit nationally to promote
TUSD employment opportunities to their prospective employees
and their families;

1 iv. Develop local programs to identify and support local
2 high school, college and university students to interest them in
3 teaching careers, including, for college and university students,
4 exploring and promoting opportunities for teaching in the District;
5 and

6 v. Encourage and provide support for African American and
7 Latino non-certificated staff (e.g., paraprofessionals) who are
8 interested in pursuing certification.

9 Section F, Retention, requires the following:

10 1. The District shall adopt measures intended to increase the retention of
11 African American and Latino administrators and certificated staff,
12 including, but not limited to, doing and/or taking into account the
13 following:

14 a. Commencing with the effective date of this Order, on an ongoing basis,
15 evaluating whether there are disparities in the attrition rates of African
16 American and Latino administrators or certificated staff compared to other
17 racial and ethnic groups. If disparities are identified, the District shall, on
18 an ongoing basis, assess the reason(s) for these disparities and develop a
19 plan to take appropriate corrective action. If a remedial plan to address
20 disparate attrition is needed, it shall be developed and implemented in the
21 semester subsequent to the semester in which the attrition concern was
22 identified;

23 b. Surveying teachers each year using instruments to be developed by the
24 District and disaggregating survey results by race, ethnicity, and school site
25 to assess teachers' overall job satisfaction and their interest in continuing
26 to work for the District. These surveys shall be anonymous; and

27 c. Conducting biannual focus groups of representative samples of District
28 certificated staff to gather perspectives on the particular concerns of these
staff in hard-to-fill positions (e.g., ELL and special education teachers)
and/or who have been hired to fulfill a need specifically identified in this
Order.

TUSD initially proposed a summary draft of the Outreach, Recruitment and
Retention (ORR) Plan in July 2013, and after revisions to flesh out the details of the ORR
Plan in February, March, and April, 2014, the Plaintiffs Mendoza, with Plaintiffs Fisher
joining, (R&R (Doc. 1612), Ex. B), asked the Special Master for a R&R to the District's
April 24, 2014, version of the Plan, *id.*, Ex. A-4. Apparently, there was another version, May
5, 2014, without substantive changes, and subsequent to the R&R, on May 22, 2014, TUSD
agreed to further changes, *id.*, Ex. F:ORR, which the Special Master concluded resolves
some of the issues he had raised in the R&R on behalf of the class-Plaintiffs. The class-

1 Plaintiffs would not agree to withdrawal of the R&R, therefore, the Special Master noted
2 areas needing resolution and those he considered moot. In addition to the Special Master’s
3 recommendations, the Plaintiffs Mendoza filed objections to the R&R for omissions of two
4 issues: 1) retention provisions aimed at attrition disparity, and 2) advertising outreach
5 provisions. Because TUSD’s Objection was limited to the R&R, the Court calls for a Reply
6 to the Plaintiffs’ objections related to omissions in the R&R.

7 The Plaintiff Intervenor, the United States Department of Justice (DOJ), did not seek
8 a R&R on the ORR Plan, but did make comments to the initial summary draft of the ORR
9 Plan: IV.C.3; IV.C.3.a.i-v. Three of the DOJ comments are echoed in the issues raised by
10 the class-Plaintiffs in the R&R as unresolved. The Court finds the DOJ comments helpful.

11 The R&R addressed seven issues, three of which are now moot because of the May
12 22, 2014, changes made by TUSD. The three moot issues are: 1) the District will not assert
13 in the ORR Plan that it is not required to develop a retention plan; 2) the District clarified its
14 commitment to nondiscriminatory hiring, and 3) “diversity” in the ORR Plan is defined as
15 racial and ethnic diversity. The remaining four issues from the R&R, which the Court
16 resolves now are as follows: 1) the quality and usefulness of the LMA; 2) the composition
17 of the Recruitment and Retention Advisory Committee; 3) incentives for recruiting and
18 retaining teachers with Spanish bilingual certification, and 4) support for African American
19 and Latino Non-certified staff to attain certification.

20 The Court considers *de novo* the express provisions of the USP and whether the
21 ORR Plan satisfies the USP program mandates to the extent practicable. *Fisher v. TUSD*,
22 652 F.3d 1131, 1135-1136 (9th Cir. 2011) (citing *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995);
23 *Freeman v. Pitts*, 503 U.S. 467, 492 (1992); *Bd. of Ed. of Okla. City Public Schs. v. Dowell*,
24 498 U.S. 237, 249–50 (1991), *see also Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S.
25 1, 12 (1971) (quoting *Brown v. Board of Ed., Brown II*, 349 U.S. 249, 299 (1955) (“School
26 authorities have the primary responsibility for elucidating, assessing, and solving these

1 problems; courts [] have to consider whether the action of school authorities constitutes good
2 faith implementation of the governing constitutional principles.”) The ultimate inquiry is
3 whether the constitutional violator, here TUSD, has complied in good faith with the
4 desegregation decree, here the USP, to eliminate the vestiges of past discrimination to the
5 extent practicable. *Id.*, see also *Green v. County School Bd. of New Kent, Va.*, 391 U.S. 430,
6 435 (1968).

7 In its review, the Court considers the R&R, including the attached briefs presented
8 in the first instance to the Special Master regarding the questions addressed in the R&R, and
9 the parties’ Objections. The Court may call for further briefing in the event it determines
10 additional information is required to decide the issues and may, *sua sponte*, set a matter for
11 hearing. Here, the Court finds no additional briefing or oral argument is necessary regarding
12 the parties’ objections to the R&R, adopts the R&R, and approves the ORR Plan, with the
13 revisions described below to clarify that the focus of the ORR Plan is to recruit qualified
14 African American and Latino candidates for open administrator and certificated staff
15 positions, and candidates with Spanish language bilingual certification. The Court calls for
16 a Reply from TUSD to the Mendoza Plaintiffs’ objection that the R&R omitted a
17 recommendation regarding omissions by TUSD from the ORR of the specific requirements,
18 mandated in the USP, for an annual retention review and revision provision aimed at attrition
19 disparity and the advertising outreach provision.

20 1) The Labor Market Analysis (LMA)

21 The USP requires the District “to develop and implement a plan to recruit qualified
22 African American and Latino candidates for open administrator and certificated staff
23 positions. . . . The plan shall address any and all disparities identified in the Labor Market
24 Analysis.” USP § IV.C.3. The ORR Plan shall “establish a nationwide recruiting strategy,
25 based at minimum on the outcome of the Labor Market Analysis,” and the ORR Plan shall
26 include all the specifics set out in subsections (i) through (v) of the USP. *Id.*

1 The Special Master concluded: that regardless of any results from the LMA, the
2 District is not released from its responsibility to undertake aggressive efforts to increase the
3 numbers of African American and Latino educators, as expressly required pursuant to
4 specific strategies set out in the USP. (R&R at 4.) According to the Special Master, the
5 purpose of the LMA is to identify the potential pool of candidates from which the District
6 might recruit so as to determine whether its efforts at recruitment are adequate to address
7 disparities between the composition of the professional staff of the district and the pools of
8 potential candidates. *Id.* (emphasis added). In other words, TUSD must develop a plan to
9 implement the agreed to strategies for recruiting administrators and certificated staff, and if
10 any disparities are identified in the LMA, TUSD must also address them.

11 The USP included: “The District hired an outside expert to undertake a Labor
12 Market Analysis to determine the expected number of African American and Latino
13 administrators and certificated staff in the District, based on the number of African American
14 and Latino administrators and certificated staff in the State of Arizona, in a four-state region,
15 a six-state region and the United States.” USP (Doc. 1450), § IV.C.2. In the context of the
16 USP § IV, the expected number refers to the number of candidates which might be recruited
17 in Arizona, in a four-state region, a six-state region and the United States.

18 In accordance with the USP, the ORR Plan requires TUSD to analyze the findings
19 of the LMA, (R&R (Doc. 1612, Ex. F: ORR § III.A.2), develop a nationwide recruiting
20 strategy based, at minimum, on the outcome of the LMA, and includes specific techniques
21 to recruit African American and Latino candidates, and candidates with Spanish language
22 bilingual certifications from across the country, *id.* A.4. According to TUSD, it “hired [the]
23 outside consultant to undertake a labor market analysis (“LMA”) that compares the actual
24 number of African-American and Latino administrators and certificated staff [in TUSD] to
25 the statistical expectation [for such staff] using various demographic group availability rates
26 derived from labor market data.” (R&R (Doc. 1612), Ex. F: ORR § VI.A.2.) According to
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1 TUSD’s analysis of the findings of the LMA, it “revealed no negative disparities in hiring
2 between TUSD’s workforce and the local and state labor markets. (See Appendix A for a
3 Summary of Preliminary Findings).” *Id.*

4 As noted by the Special Master, a LMA can include a multitude of factors relevant
5 to determining successful recruiting strategies aimed at a specific pool of employees. (R&R
6 (Doc. 1612) at 5.)¹ Here, the LMA looked at whether the racial/ethnic statistical composition
7 of employees in TUSD is reflective of this particular demographic group’s representation in
8 the relevant external labor market. According to the LMA, the conclusion is that where the
9 compositions are close it can be found that the employer’s employment of that racial/ethnic
10 group is consistent with their availability in the geographic area. The LMA concluded that
11 the numbers of racial/ethnic employees in TUSD are close to the percent of like racial/ethnic
12 employees in Arizona. (R&R (Doc. 1612), Ex. A-4: LMA at 1.) But, the LMA did not stop
13 with concluding TUSD’s employment of racial/ethnic employees is consistent with their
14 availability in the geographic study areas. It went further to conclude: “The data fail to
15 produce any evidence whatsoever that these demographic groups are underrepresented in the
16 District’s workforce.” *Id.* at 18.

17 “In light of the findings of the LMA, TUSD has developed a nationwide outreach
18 and recruiting strategy to enhance the racial and ethnic diversity of TUSD’s workforce by
19 focusing on “Hard-to-Fill Content Areas, Critical Needs Subject Areas, and staffing Hard-to-
20 Fill sites.” (R&R (Doc. 1612), Ex. F: ORR § VI.A.2) (emphasis added). Critical Needs
21 Subject Areas are areas required for graduation (core subjects) and/or required by state or
22 federal law, for which there have been an inadequate pool of qualified candidates. Such

24 ¹Generally, a LMA identifies the area within which employers compete for labor,
25 survey that labor market to determine typical salaries and ancillary pay considerations to
26 recommend salary structures and ancillary pay considerations that will enable an employer
27 to effectively compete for employees in the geographic labor market within specific job
28 classifications.

1 subject areas are assessed annually. For school year 2013-14, critical needs subject areas
2 included exceptional education, math, and science. *Id.* at § IV: Definitions. Hard-to-Fill
3 Content Areas are specialized content areas within the TUSD curriculum for which there are,
4 or have been, an inadequate pool of qualified candidates. For school year 2013-14, hard-to-
5 fill content areas included: dual language and Culturally Relevant Courses (CRCs). *Id.* A
6 “Hard to Fill Site” is a school where traditionally there have been insufficient applicants for
7 instructional vacancies to meet staffing needs. *Id.*

8 There are two problems with TUSD’s use of the LMA. First, using the LMA to
9 determine disparities in hiring between TUSD’s workforce and the local and state labor
10 markets goes beyond the scope of the use described for the LMA in the USP § IV.C.2 and
11 the ORR, § VI.A.2. Both described the LMA in the context of identifying potential pools of
12 candidates in Arizona, in a four-state region, a six-state region, and the United States, from
13 which the District might recruit to determine whether its recruitment efforts were adequate.
14 In this context, the USP requires that the nationwide recruiting strategy should be based at
15 a minimum on the LMA. The Court finds no requirement nor allowance in the USP for the
16 District to make a “disparity” determination, except pursuant to Subsection E, Assignment
17 of Administrators and Certificated Staff, which requires:

18 The District [to] identify significant disparities (*i.e.*, more than a 15
19 percentage point variance) between the percentage of African American or
20 Latino certificated staff or administrators at an individual school and
21 district-wide percentages for schools at the comparable grade level
22 (Elementary School, Middle School, K-8, High School). The assessment of
23 significant disparities shall also take into account the percentage of African
24 American and Latino students on each school campus. The District shall
25 assess the reason(s) for the disparities and shall review and address, to the
26 extent relevant and practicable, its hiring and assignment practices,
27 including enforcing hiring policies and providing additional targeted
28 training to staff members involved in hiring and assignment.

24 (USP (Doc. 1450) § IV.E.) The Annual Report filed by TUSD, July 31, 2014, reflects that
25 the District completed compiling data for this disparity assessment in July and is currently
26 identifying and analyzing significant disparities. (Annual Report (Doc. 1641) at 25-26.)
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1 Here, § IV.C.3.a, Outreach and Recruitment, of the USP expressly requires TUSD’s
2 annual review of recruiting data to assess the “effectiveness” of past recruiting practices in
3 “attracting” qualified African American and Latino candidates, and candidates with Spanish
4 language bilingual certifications. *See also*, USP § IV.I.3, Professional Support, charged: “By
5 July 1, 2013, “the District shall develop and implement a plan for the identification and
6 development of prospective administrative leaders, specifically designed to increase the
7 number of African American and Latino principals, assistant principals, and District Office
8 administrators.” *Id.* (emphasis added).² The Court finds these provisions provide the relevant
9 sufficiency markers for the ORR Plan, not whether there is a racial/ethnic disparity in the
10 TUSD work force.

11 Second, the LMA is not a legitimate basis for TUSD to shift outreach and
12 recruitment from a plan developed “to recruit qualified African American and Latino
13 candidates for open administrator and certificated staff positions” to a plan “aligned with
14 TUSD’s general recruiting practices, with a particular focus on recruiting and retaining
15 qualified individuals from historically underrepresented groups and qualified individuals to
16 fill hard-to-fill positions.” (R&R (Doc. 1612), Ex. F: ORR § II, Overview.) The ORR Plan
17 “Overview” does not mention the USP goal.

18 The Executive Summary reflects the ORR Plan will focus on “two separate but
19 interrelated objectives, . . . : (1) fulfilling general human resources needs, and (2) fulfilling
20 specific USP-related human resources needs.” *Id.* § III. The latter objective is mandated by
21 the USP. The former, while it is interrelated to the extent it is benefitted indirectly from the
22 latter, cannot stand on equal footing as an objective for allocation of resources authorized
23 under the USP “to recruit qualified African American and Latino candidates for open
24 administrator and certificated staff positions.” The Court finds that the ORR Plan must be

26 ²The Court discusses the second part of this Professional Support provision below in
27 the context of TUSD’ proposed financial incentives.

1 revised to make it clear the plan is aimed at this express objective, not at improving ethnic
2 and racial diversity, generally, nor recruiting, generally, for hard-to-fill³ positions.

3 Given the limited use of the LMA, the Court adopts the recommendation of the
4 Special Master. The Court does not order a new LMA and finds that the LMA does not
5 release the District from implementing the ORR Plan to recruit qualified African American
6 and Latino candidates for open administrator and certificated staff positions and instead
7 implement an ORR Plan to enhance racial and ethnic diversity by recruiting for “Hard-to-Fill
8 Content Areas, Critical Needs Subject Areas, and staffing Hard-to-Fill sites.” Additionally,
9 the Court finds that the LMA may not be applied to change the focus of the ORR Plan to
10 address two objectives, one of which is not part of the USP, instead of focusing on the one
11 objective mandated by the USP: “to recruit qualified African American and Latino
12 candidates for open administrator and certificated staff positions.”

13 The Court turns to the class-Plaintiffs concerns that the LMA is flawed. Plaintiffs’
14 complain that a number of questions remain which must be answered to determine the
15 integrity of the study’s data and, correspondingly, the integrity of any analysis. To the extent
16 the ORR Plan, includes: “Analyzing the findings of the [LMA],” (R&R (Doc. 1612), Ex. F:
17 ORR § III.A.2, TUSD shall respond to Plaintiffs’ questions and produce any data relevant
18 to the those findings. The Court notes that TUSD appears to have answered the questions,
19 which Plaintiffs Mendoza assert remain unanswered. (Mendoza Objection (Doc. 1620) at
20 3-4; R&R (Doc. 1612), Ex. A-3.) Plaintiffs may always seek to compel answers and/or
21 discovery by way of a Motion to Compel, which may be a better method for briefing the
22 specific deficiencies related to TUSD’s answers.⁴ As noted by the Special Master, a better

24 ³The Court uses the term hard-to-fill, here, to refer to: critical needs subject areas, hard
25 to fill content areas and hard-to-fill sites. ORR § IV: Definitions.

26 ⁴The Plaintiff Intervenor, the United States, did not object to the Special Master’s
27 recommendation to not require a new LMA, but noted that TUSD still, as of 6/10/2014, had
28 not provided requested data concerning adding comparative Metropolitan Statistical Areas

1 LMA would require gathering of more and/or different data and require continual updating.
2 He offers some suggestions: analysis of differences in salary and other benefits that influence
3 recruitment; quality of life, including economic considerations in the social context, and time
4 specific analysis because resources change as geographic locals experience economic
5 difficulties and reduce staff or vice a versa. In the event TUSD chooses to update the LMA,
6 it should afford the Special Master and the Plaintiffs an opportunity to submit suggestions
7 regarding the scope and use for any future LMA.

8 2) Recruitment and Retention Advisory Committee

9 The Special Master asks that TUSD align the membership of the Recruitment and
10 Retention Committee with the USP and clarify whether the newly identified Committee
11 members will influence the selections of 2014 recruitment and retention efforts. In respect
12 to the ORR Plan the USP requires: “input of a racially and ethnically diverse recruitment
13 team comprised of school-level and district-level administrators, certificated staff and human
14 resources personnel.”

15 TUSD responds that it has so aligned the membership by adding six Latino members,
16 where there was previously only one, for a total of seven Latino members on the 15 member
17 committee. (TUSD Objection (Doc. 1625) at 9 (citing R&R (Doc. 1612), Ex. E: 2014-15
18 Advisory Committee.) It appears that the composition of the Recruitment and Retention
19 Advisory Committee has been amended to include community members and a member from
20 Pima Community College (PCC). The ORR Plan should note that the changed composition,
21 while not provided for in the USP, corresponds to strategies reflected in the USP §IV.C.3.ii
22 and .iii and the ORR Plan, § VI, Outreach and Recruitment, subsections 6, Partnership with
23 Local Employers and 7, Local Programs, Colleges and Universities. TUSD clarifies: “The
24 newly selected Committee members will influence recruitment and retention efforts for
25 _____
26 to the LMA, which it first requested 2/27/2013, and again requested when it reviewed the
27 summary LMA, 8/26/2013. (DOJ Objection (Doc. 1621)).

1 school year 2014-15.” *Id.* at 9-10. There is no objection to this change in the composition
2 of the Committee from that which was specified in the USP.

3 The Court finds that TUSD has addressed the imbalance in the Committee objected
4 to by Plaintiffs Mendoza and made the clarification sought by the Special Master. The Court
5 finds the Special Master’s recommendation related to Recruitment and Retention Advisory
6 Committee is moot.

7 3) Incentives: Recruiting/Retaining Teachers with Spanish Bilingual Certification

8 The Special Master notes that the USP is replete with requirements to recruit and
9 retain teachers with Spanish bilingual certification. *See* USP § IV.B.1 (Personnel: TUSD to
10 hire or designate human resource person to be responsible for regular review of applicant
11 pool to ensure TUSD is considering African American and Latino candidates, candidates
12 with demonstrated success in engaging African American and Latino students, and
13 candidates with Spanish language bilingual certifications at the school sites and at the
14 District level); § IV.C.3.a (Outreach and Recruitment: requiring annual review of recruiting
15 data and effectiveness of past recruiting practices in attracting qualified African American
16 and Latino candidates, and candidates with Spanish language bilingual certifications); *id.* at
17 (i) (nationwide recruiting strategy shall include specific techniques to recruit African
18 American and Latino candidates, and candidates with Spanish language bilingual
19 certifications); § IV.D.1 (Hiring: TUSD to maintain database of all applicants for
20 administrative and certificated staff positions, including all certifications (e.g. bilingual
21 certification . . .)); § IV.E.3 (Assignment of Administrators and Certificated Staff: TUSD to
22 address disparities or address resource needs at a particular campus, TUSD to offer voluntary
23 reassignment of bilingual personnel to campuses with increased numbers of ELL students
24 or to dual language programs).

25 The ORR Plan mirrors the USP emphasis on recruiting and retaining teachers with
26 Spanish bilingual certification. *See* ORR § III.A.3: (Outreach and Recruitment: TUSD to

1 review and modify as needed to continually strengthen the Plan’s effectiveness in attracting,
2 and retaining, qualified African American and Latino candidates, candidates with
3 demonstrated success in engaging African American and Latino students, and candidates
4 with Spanish language bilingual certifications); *id.* at A.4 (nationwide recruiting strategy
5 shall include specific techniques to recruit African American and Latino candidates, and
6 candidates with Spanish language bilingual certifications); § VI.3 (Annual Review and
7 Process for Modification: data to be collected and disaggregated by race/ethnicity where
8 applicable, including Critical Needs (Math, Science, Exceptional Education, ELL/Dual
9 language (including candidates with Spanish language bilingual certifications), etc., *but see*
10 (§ IV Definitions: Critical Needs Subject Areas for school year 2013-14 of exceptional
11 education, math, and science, not including ELL/Dual language or candidates with Spanish
12 language bilingual certifications).

13 At the urging of the Mendoza Plaintiffs, TUSD added two advertising sites,
14 exclusively aimed at recruiting bilingual candidates: the National Association for Bilingual
15 Education (NABSE) and the Arizona Association for Bilingual Education (NABE). TUSD
16 commits to annually evaluating and modifying on an ongoing bases the in-person recruiting
17 strategies as to effectiveness in attracting diverse candidates, including African American and
18 Latino candidates, and candidates with Spanish language bilingual certifications.

19 Not required, expressly, by any provision of the USP, TUSD intends to offer
20 recruiting incentives of financial reimbursements and stipends, “targeting” African American
21 and Latino candidates. ORR § VI.A.4.c. The incentives are to be utilized as recruitment
22 tools and are, therefore, not available to all incoming or existing administrators or teachers.
23 *Id.* TUSD established the incentives for candidates beginning Spring, 2014, with a relocation
24 reimbursement to out-of-state, new-to-TUSD, incoming administrators and teachers filling
25 a position qualifying for a recruitment and retention incentive. The recruitment and retention
26 incentives are financial stipends for the following: 1) Dual language/Bilingual (new or
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1 existing teachers with a bilingual certification teaching in a dual-language classroom); 2)
2 Culturally Relevant Courses (CRCs) (incoming or existing CRC teachers meeting certain
3 specified qualifications); 3) Hard-to-Fill Sites (new or existing teachers who voluntarily
4 move to Hard-to-Fill Sites, and 4) Critical Needs (new or existing teachers teaching in critical
5 needs subject areas, which for school year 2013-14 are exceptional education, math, and
6 science.

7 Again, the Court is concerned that each incentive be clearly linked to the USP
8 objectives of recruiting qualified African American and Latino candidates for open
9 administrator and certificated staff positions, and candidates with Spanish language bilingual
10 certifications. While recruiting qualified teachers is notably an important goal, alone, it is
11 insufficient for allocation of resources limited for the purpose of implementing the USP. The
12 Court notes that the USP § IV, Professional Support, I.3. requires the ORR Plan “to propose
13 methods for ‘growing your own,’ including the possibility of financial support to enable
14 current African American and Latino employees to receive required certifications and
15 educational degrees needed for such promotions.” *Id.* Accordingly, TUSD should link any
16 financial incentives to the USP § IV.I.3 or show why financial incentives are better used as
17 alternatively proposed in ORR Plan § VI.A.4.c. As an aside, the Court questions whether
18 ORR Plan § VI.B.b, Other Measures, Encourage Prospective Leaders to Become Leaders,
19 satisfies USP § IV, Professional Support, I.3, requiring growing-your-own methods. This
20 section of the ORR Plan references § V: Methods for Growing Our Own, but the Court has
21 reviewed the ORR Plan attached at exhibit F to the R&R and finds no mention of any
22 Growing-Our-Own methods.

23 The Court finds that the ORR Plan must be revised to clarify the links between the
24 incentives and a USP goal, and TUSD should explain why it chose to use financial
25 incentives, alternatively, for recruitment rather than as proposed in the USP as a possible
26 method of enabling current noncertificated African American and Latino employees to

1 receive required certifications and educational degrees needed for promotions to
2 administrators or certificated staff. *Id.* TUSD should also include the Methods for Growing
3 Our Own in § V, if there was an oversight or provide the Court with a copy of the ORR Plan
4 that includes it, if the copy provided by the Special Master is inaccurate.

5 4) Certification of Non-certified African American and Latino Staff

6 The Special Master does not take issue with the ORR Plan for supporting
7 noncertificated staff in obtaining certification. Neither Plaintiff objected to the Special
8 Master’s position on this subject. The USP, however, required TUSD to consider financial
9 incentives here. Therefore, TUSD must explain why it chose to not use financial incentives,
10 here, and instead added financial incentives, *sua sponte*, as a recruitment method.

11 5) Plaintiffs’ Objections to Omissions in the Special Master’s R&R

12 Plaintiffs complain that the R&R omitted any recommendation to the ORR Plan for
13 failing to include the requirement pursuant to the USP § IV.F.1.a: “If disparities [in attrition
14 rates for African American or Latino administrators or certificated staff] are identified, the
15 District shall . . . develop a plan to take appropriate corrective action. If a remedial plan to
16 address disparate attrition is needed, it shall be developed and implemented in the semester
17 subsequent to the semester in which the attrition concern was identified.” Plaintiffs complain
18 that the ORR Plan does not reflect that remedial measures are mandatory and required the
19 very semester following the semester in which a disparity is found to exist.

20 Additionally, Plaintiffs complain that the ORR advertising plan is limited to certain
21 express publications, ORR § VI.A.4.a,⁵ when it should instead reflect the USP’s requirement
22 that TUSD advertise job vacancies “on national websites and publications, including career
23

24
25 ⁵Appendix B, with additional entities being considered for future recruitment
26 advertising, is not attached to the ORR Plan filed with the R&R for the Court’s review. *See*
27 (R&R (Doc. 1612) at Ex. F: ORR.) The Court assumes the addition sought by Plaintiffs
Mendoza is not contained in Appendix B.

1 websites, national newspapers, education publications, and periodicals targeting African
2 American and Latino communities.” USP § IV.C.3.a.i.

3 TUSD did not respond to Plaintiffs’ Objection to the R&R. Because TUSD has not
4 had an opportunity to respond to Plaintiffs’ Objection in respect to omissions in the Special
5 Master’s R&R, the Court calls for a Reply.


6 **Accordingly,**

7 **IT IS ORDERED** that the Court adopts the Report and Recommendation (Doc.
8 1612) in Part as to the limited use for the LMA. The remainder of the Special Master’s
9 recommendations require no action by the Court.

10 **IT IS FURTHER ORDERED** that within 21 days of the filing date of this Order
11 TUSD shall file a Reply to the Mendoza Plaintiffs Objection to omissions in the R&R.

12 **IT IS FURTHER ORDERED** that TUSD shall have 21 days from the filing date
13 of this Order to revise the ORR Plan to conform to the findings and directives of the Court
14 made herein, including providing an explanation for the use of financial incentives, if used
15 alternatively to the USP proposal to consider financial incentives in the context of a “Grow
16 Your Own” program. Any objection may be filed within 14 days of the filing of the revised
17 ORR. The Court shall rule, thereafter, to adopt the ORR Plan for implementation in TUSD.

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19 DATED this 20th day of August, 2014.

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24 **David C. Bury**
25 **United States District Judge**
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