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

Roy and Josie Fisher, et al.,
 Plaintiffs

and

United States of America,
 Plaintiff-Intervenor,

v.

Tucson Unified School District, et al.,
 Defendants,

and

Sidney L. Sutton, et al.,
 Defendants-Intervenors,

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

Maria Mendoza, et al.,
 Plaintiffs,

and

United States of America,
 Plaintiff-Intervenor,

v.

Tucson Unified School District, et al.
 Defendants.

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

ORDER

1 On September 6, 2018, the Court adopted a completion plan, recommended by the
2 Special Master, to gather and evaluate data on a school-by-school basis, with the end goal
3 being an assessment as to whether there is district-wide parity in extracurricular programs.
4 (Order (Doc. 2123) at 137-138); (USP (Doc. 1713) § VIII.A.1). This is especially important
5 for non-athletic activities because research suggests a correlation between participation and
6 student achievement. (R&R (Doc. 2351) at 3.) The Court also mandated that the District
7 implement a process by which Principals are responsible for ensuring that extracurricular
8 activities at their schools provide opportunities for interracial contact and positive settings
9 of shared interest. (Order (Doc. 2123) at 137); (USP (Doc. 1713) § VIII.A.2).

10 On August 30, 2019, the District filed a Notice of Compliance. The District included
11 the district-wide reporting chart for SY 2018-19, for the two-year comparison with the SY
12 2017-18 chart, as requested by the Special Master because in prior years the District
13 tabulated different participation data.¹ There is no assertion of district-wide racial
14 disproportionality based on these numbers. The District’s review of the data, disaggregated
15 at the school level, concluded “no pattern of racial/ethnic disparities in extracurricular
16 participation . . . nor that students overall were not being afforded opportunities for
17 interracial contact and positive settings of shared interests.” (Notice of Compliance (NC),
18 Ex. 4: “Analysis of Extra-Curricular Participation in District Schools” (Doc. 2260-1) at
19 17.) The District reported findings: “consistent with a larger pattern that is well-
20 documented across the United States wherein schools with lower socioeconomic status
21 tend to participate in extracurricular activities at lower levels.” *Id.* at 20. Therefore, the
22 District, being “cognizant of the need to ensure that extracurricular activities, particularly
23 at the elementary level are available to all students[,] . . . has implemented strategies aimed
24 at reducing disparities across schools, including (a) reducing and/or eliminating all fees
25 associated with participation in extracurricular activities, (b) increasing transportation

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27 ¹ See (Reply (Doc. 2317) at 5-6 (asserting it has been reporting data in current format
28 for three years, SY 2016-17 through SY 2018-19, and retroactively applied both the old
and current data reporting methods to the data for SY 2015-16; data charts for SY 2013-14
through SY 2018-19).

1 options to support participation in extracurricular activities, and (c) designing certain
2 extracurricular activities to target increased participation at lower socio-economic
3 schools.” *Id.*

4 The only thing missing are the specifics necessary to ensure that the District is
5 monitoring the efficacy of these efforts. Consequently, the District shall file a supplement
6 to its “Analysis of Extra-Curricular Participation in District Schools” identifying the target
7 schools with lower socioeconomic status which are Racially Concentrated schools,
8 identifying the extracurricular activities and strategies being implemented at these schools
9 to increase participation, and provide corresponding status reports for these Racially
10 Concentrated schools, including the base-line data for the schools and report on these
11 schools and efforts in future District Annual Reports (DARs).²

12 The Special Master and the Mendoza Plaintiffs focus on the District’s admitted
13 failure to provide school-by-school comparison data and extracurricular activity
14 comparisons, necessary to: “analyze the array of extracurricular activities occurring in the
15 schools and identify those that provide opportunities for interracial contact and positive
16 settings of shared interest and, if necessary, develop remedial strategies to ensure such
17 opportunities are occurring in each school.” (Mendoza Objection (Doc. 2284) at 3 (citing
18 Order (Doc. 2123) at 137-38.) The District attempts to rectify the omission by replying that
19 it “analyzed the extracurricular activities occurring in all schools and has identified that,
20 due to the broad levels of participation across races/ethnicities, virtually all such activities
21 provide ‘opportunities for interracial contact and positive settings of shared interest.’”
22 (Reply (Doc. 2317) at 3.) The District attaches a chart, Exhibit A, which reflects that “over
23 the past three years only a handful of activities have had single-race/ethnicity
24 participation.” This data would not, however, help a Principal identify extracurricular
25 activities which promote opportunities for interracial contact. Knowing which activities to
26 NOT promote is not the same thing as knowing which types of extracurricular activities to

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28 ² Racially Concentrated is used here as defined in the USP. (USP (Doc. 1713) § II.B.1.)

1 promote. Looking at the data provided by the District and placing itself in the position of a
2 Principal, the Court would be hard pressed to perform his or her responsibility to create
3 and lead an extracurricular monitoring team, analyzing data at a regularly scheduled time
4 to ensure interracial contact in positive settings of shared interest. (NC, Ex. 5: Principal
5 Review Process (Doc. 2260-1) at 22.) The Special Master’s recommended format for
6 gathering and reporting individual school data for all extracurricular activities at all schools
7 would allow a Principal to make a relevant comparison within a school and between similar
8 schools to identify extracurricular activities and strategies to use at his or her school to
9 provide opportunities for interracial contact and to create positive settings of shared
10 interest.

11 **Accordingly,**

12 **IT IS ORDERED** that the Special Master’s Report and Recommendation (Doc.
13 2351) is ADOPTED.

14 **IT IS FURTHER ORDERED** that within 14 days of the filing date of this Order
15 the District shall file a Supplement to its “Analysis of Extra-Curricular Participation in
16 District Schools” identifying the target schools with lower socioeconomic status which are
17 Racially Concentrated schools, identifying the extracurricular activities and strategies
18 being implemented at these schools to increase participation, and provide corresponding
19 status reports for these Racially Concentrated schools, including the base-line data for the
20 schools. The District shall include reporting on these schools and efforts in future District
21 Annual Reports (DARs).

22 **IT IS FURTHER ORDERED** that the District shall use the format for gathering
23 and reporting individual school data for all extracurricular activities at all schools as
24 recommended by the Special Master. The District shall provide this data to the Principals
25 in a timely fashion to enable them to make relevant comparisons within their schools and

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1 between similar schools to identify extracurricular activities and strategies to use at their
2 school to provide opportunities for interracial contact and to create positive settings of
3 shared interest.

4 Dated this 15th day of November, 2019.

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Honorable David C. Bury
United States District Judge