

2019 WL 6114864

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United States District Court, D. 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,
Maria Mendoza, et al., Plaintiffs,
and
United States of America, Plaintiff-Intervenor,
v.
Tucson Unified School District, et al., Defendants.

No. CV-74-00090-TUC-DCB (Lead Case), No.
CV-74-0204-TUC-DCB (Consolidated Case)

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Signed 11/15/2019

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ORDER

Honorable David C. Bury, United States District Judge

Extracurricular Activities: USP § VIII

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

On August 30, 2019, the District filed a Notice of Compliance. The District included the district-wide reporting chart for SY 2018-19, for the two-year comparison with the SY 2017-18 chart, as requested by the Special Master because in prior years the District tabulated different participation data.¹ There is no assertion of district-wide racial disproportionality based on these numbers. The District's review of the data, disaggregated at the school level, concluded "no pattern of racial/ethnic disparities in extracurricular participation ... nor that students overall were not being afforded opportunities for interracial contact and positive settings of shared interests." (Notice of Compliance (NC), Ex. 4: "Analysis of Extra-Curricular Participation in District Schools" (Doc. 2260-1) at 17.) The District reported findings: "consistent with a larger pattern that is well-documented across the United States wherein schools with lower socioeconomic status tend to

participate in extracurricular activities at lower levels.” *Id.* at 20. Therefore, the District, being “cognizant of the need to ensure that extracurricular activities, particularly at the elementary level are available to all students[,] .. has implemented strategies aimed at reducing disparities across schools, including (a) reducing and/or eliminating all fees associated with participation in extracurricular activities, (b) increasing transportation options to support participation in extracurricular activities, and (c) designing certain extracurricular activities to target increased participation at lower socio-economic schools.” *Id.*

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

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

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

Accordingly,

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

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

IT IS FURTHER ORDERED that the District shall use the format for gathering and reporting individual school data for all extracurricular activities at all schools as recommended by the Special Master. The District shall provide this data to the Principals in a timely fashion to enable them to make relevant comparisons within their schools and between similar schools to identify extracurricular activities and strategies to use at their school to provide opportunities for interracial contact and to create positive settings of shared interest.

All Citations

Not Reported in Fed. Supp., 2019 WL 6114864

Footnotes

¹ See (Reply (Doc. 2317) at 5-6 (asserting it has been reporting data in current format 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).

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