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12

13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 Roy and Josie Fisher, et al.,) **Case No. 4:74-CV-00090-DCB**
16)
Plaintiffs,)
17)
v.)
18)
United States of America,)
19)
Plaintiff-Intervenors,)
20)
v.) **MENDOZA PLAINTIFFS’**
21) **RESPONSE TO NOTICE TO**
Anita Lohr, et al.,) **COURT CONCERNING**
22) **SUSPENSION OF MEXICAN**
Defendants,) **AMERICAN STUDIES COURSES**
23) **AND REQUEST FOR SPECIAL**
Sidney L. Sutton, et al.,) **MASTER TO TAKE ACTION**
24)
Defendant-Intervenors,)
25)
26)
27)
28)

1	Maria Mendoza, et al.,)	Case No. CV 74-204 TUC DCB
)	
2	Plaintiffs,)	
)	
3	United States of America,)	
)	
4	Plaintiff-Intervenor,)	
)	
5	v.)	
)	
6	Tucson United School District No. One, et)	
7	al.,)	
)	
8	Defendants.)	
)	
9)	

INTRODUCTION

The Tucson Unified School District’s (“TUSD” or “District”) “suspension” of Mexican American Studies courses and teaching activities violates the Post Unitary Status Plan (“PUSP”) approved by this Court and currently in effect. Mexican American Studies is an integral component of the PUSP intended to improve educational outcomes and promote equity for Latino students. The District’s own data demonstrates that Mexican American Studies courses have indeed improved the educational outcomes of Latino students.

Notwithstanding that data, which the District has championed in other documents it has filed with the Court, the District elected to “suspend” those courses rather than challenge the finding of the State Superintendent of Public Instruction that the courses violated state law. By taking such action, the District flaunted the

1 authority of the District Court and the Special Master because those courses are
2 specifically required by the court ordered and court approved PUSP.

3 TUSD's "suspension" of these courses follows years of neglect of its
4 obligations to the District's Latino students under the PUSP including its obligations
5 to address academic performance gaps as they impact Hispanic students. Mendoza
6 Plaintiffs request that the Special Master and District Court enforce the PUSP and
7
8 reinstate Mexican American Studies courses and teaching activities in accordance
9 with the mandates of the Plan and direct the District to implement and regularly
10 monitor in good faith all provisions of the Action Plan for Mexican American
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12 Studies as set forth in the PUSP.

14 **TUSD'S "SUSPENSION" OF MEXICAN AMERICAN STUDIES**
15 **COURSES AND TEACHING ACTIVITIES VIOLATES THE PUSP**
16 **GOVERNING THIS CASE**

17 In its Opinion dated July 19, 2011, the Ninth Circuit Court of Appeals ordered
18 the District Court to maintain jurisdiction over TUSD until the District attains
19 unitary status. Thereafter, the District Court expressly held that "[u]ntil a unitary
20 status Plan is developed to replace the PUSP, it remains in place." (Order filed
21 September 14, 2011, Docket No. 1320, at 3: 18-19.) Further, by Order filed January
22 6, 2012, appointing the Special Master, the District Court expressly provided that
23 the Special Master "shall ...oversee the [PUSP] currently in force until such time as
24 the USP is formulated." (Order filed January 6, 2012, Docket No. 1350, at 2:23-24.)
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1 In its December 18, 2009 Order approving the PUSP that is currently in
2 effect, the District Court determined that the Plan meets “the needs of African
3 American and Hispanic students for academic improvement, both personal and
4 programmatic.” (Order filed December 18, 2009, Docket No. 1299, at 8:2-3.) The
5 Court also determined that the Plan is “based on sound educational principles for
6 addressing the types of problems faced by TUSD, aimed at providing equal
7 educational opportunities to minority and other disadvantaged students in the
8 district.” (Order filed December 18, 2009, Docket No. 1299, at 12:26; 13:1-2.)
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11 The Mexican American Studies Department is one of the components for
12 achieving the goals set forth under the PUSP (PUSP at 31, V.) and was expressly
13 referenced in the Court’s December 18, 2009 Order approving the Plan. (Order filed
14 December 18, 2009, Docket No. 1299, at 7:5-6.) The Mexican American Studies
15 Department is a subsection of the Restorative School Culture and Climate section of
16 the PUSP. This section is intended to promote equal access to educational
17 opportunities, foster the success of traditionally underserved student populations
18 (and contribute to closing the achievement gap) and promote a District-wide culture
19 that “convey[s] respect, support and a sense of belonging to all students, regardless
20 of their ethnically/racially diverse backgrounds.” (PUSP at 24.) The purpose of the
21 Mexican American Studies Department under the PUSP is “to position the Mexican
22 American Studies Department as an organizational contributor to TUSD’s
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1 commitment to greater academic and social equity for Hispanic students.” (PUSP at
2 31, V.A.)

3 The PUSP establishes an Action Plan for the Mexican American Studies
4 Department and explicitly states that the Mexican American Studies Department
5 “will be expanded at the middle and high school levels to more adequately meet the
6 needs of the student population” and the “Mexican American Studies course
7 capacity . . . will be maintained and expanded as requested by students each year.”
8 (PUSP at 31, V.B.1., V.B.2.) The PUSP sets forth the Mexican American Studies
9 Department course offerings at the high school, middle school and elementary
10 school levels that are integral to achieving the goals of the PUSP. Under the PUSP,
11 the “Expected Outcomes” for the Mexican American Studies Department “will
12 make discernible contributions to TUSD equity efforts, especially with regard to
13 Hispanic students.” (PUSP at 33, V.C.)

14 The stated goals and expected outcomes of the PUSP with regard to the
15 Mexican American Studies Department cannot be accomplished when Mexican
16 American Studies courses and teaching activities are indefinitely “suspended.” The
17 Mexican American Studies Department is a critical component of the PUSP
18 intended to improve the educational outcomes and promote equity for Hispanic
19 students who comprise 61% of the District. TUSD’s “suspension” of Mexican
20 American Studies courses and teaching activities violates the PUSP governing this
21 case.

1 **MEXICAN AMERICAN STUDIES COURSES HAVE IMPROVED**
2 **THE EDUCATIONAL OUTCOMES OF LATINO STUDENTS WHO**
3 **ARE AMONG THE INTENDED BENEFICIARIES OF THE PUSP**
4 **AND PLAINTIFFS IN THE UNDERLYING DESEGREGATION**
5 **LAWSUIT**

6 One of the goals of the PUSP is to address the disproportionate achievement
7 rate of Latino students in TUSD. Mexican American Studies Department courses
8 are an essential component of the PUSP effort to achieve that goal – and, they are
9 effective. The data reported by the District in its most recent filing with this Court
10 demonstrates the improved educational outcomes for students enrolled in Mexican
11 American Studies courses.

12 In its January 23, 2012 filing with the Court-- Report on the Status of
13 Implementation of the PUSP (“TUSD PUSP Report”) (Docket No. 1353)-- TUSD
14 reported that graduation rates of “low income” and “very low income” students were
15 “substantially higher” for those taking Mexican American Studies courses than
16 those who did not take the courses.¹ (TUSD PUSP Report at 35.) Low income
17 students taking Mexican American Studies courses had a 7.8 percentage point
18 higher graduation rate than those who did not take the courses. (TUSD PUSP
19 Report at 35.) Very low income students had a 14.7 percentage point higher
20 graduation rate than those who did not take the courses. (TUSD PUSP Report at 35.)
21 TUSD also reported that had low and very low income students who did not take a

22 ¹ The students were enrolled in Mexican American Studies courses at Cholla,
23 Catalina, Pueblo, Rincon and Tucson High Schools. (TUSD PUSP Report at
24 35.)
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1 Mexican American Studies course been able to graduate at the same rates as their
2 Mexican American Studies peers, approximately 104 more students would have
3 graduated from TUSD in May 2010. (TUSD PUSP Report at 36.)
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5 TUSD further reported that during the 2009-10 school year seniors who took
6 Mexican American Studies courses graduated at a 10.9% higher rate than their
7 senior peers who did not take the courses. (TUSD PUSP Report at 36.) From 2005
8 to 2010, seniors enrolled in Mexican American Studies courses graduated on
9 average at a rate of 92.8% compared to those not enrolled in the courses who
10 graduated at an 85.8% rate. (TUSD PUSP Report at 36.)
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13 Graduates of TUSD who completed courses in the Mexican American Studies
14 Department attest to the educational benefits they gained by taking these courses.
15 Gilberto Contreras Morales, a 2010 graduate of Rincon High School, attributes his
16 attendance at the University of Arizona to his taking a Mexican American
17 Government class. (Declaration of Gilberto Contreras Morales, ¶¶ 3,8, attached as
18 Exhibit 1.) While he was enrolled in the class he heard from a guest speaker who
19 discussed financial aid for college. (Contreras Morales Decl., ¶ 7.) Mr. Contreras
20 Morales had sought guidance from his high school counselors and did not receive
21 enough attention to learn about financial aid and was advised to attend community
22 college. (Contreras Morales Decl., ¶ 9.) It wasn't until he heard from the guest
23 speaker in his Mexican American Studies class that he learned that he could qualify
24 for a full scholarship to attend the University of Arizona. (Contreras Morales Decl.,
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1 ¶ 8.) He sought and obtained that scholarship and is currently enrolled at the
2 University of Arizona. (Contreras Morales Decl., ¶ 2.)

3
4 Kim Dominguez, a 2003 graduate of Cholla High School, did not do very
5 well in high school due to family problems. (Declaration of Kim Dominguez, ¶¶ 3,
6 4, attached as Exhibit 2.) She did not feel connected to her courses with the
7 exception of Mexican American Studies courses and dance and choir. (Dominguez
8 Decl., ¶¶ 5, 8.) Her experience in the Mexican American Studies classes was
9 completely different than any other experience she had had as a student.
10 (Dominguez Decl., ¶ 7.) She received good grades in her Mexican American
11 Studies courses unlike in her other courses. (Dominguez Decl., ¶ 9.) After
12 graduation she enrolled off and on at Pima Community College. (Dominguez Decl.,
13 ¶ 10.) She is currently a student at the University of Arizona and is majoring in
14 Mexican American Studies. (Dominguez Decl., ¶ 11.) She says it is the primary
15 reason that she is studying at the university. (Dominguez Decl., ¶ 12.)

16
17 Data provided by the District demonstrates that students who completed
18 Mexican American Studies courses had improved educational outcomes. The
19 District should not dismantle a court-ordered plan that is providing the intended
20 outcomes under the PUSP. Rather than dismantling courses and teaching activities
21 in the Mexican American Studies Department, TUSD should be evaluating how
22 these courses are closing the achievement gap and decreasing disparities for Latino
23 students so the curriculum and teaching methodologies can be expanded and
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1 replicated. TUSD’s action to “suspend” these programs is reminiscent of the pattern
2 of neglect toward Latino students it has demonstrated in the over three decades long
3 period it has been subject to court oversight in this desegregation case.
4

5 **TUSD FLAUNTED THE AUTHORITY OF THE DISTRICT COURT**
6 **AND THE SPECIAL MASTER WHEN IT “SUSPENDED” THE**
7 **MEXICAN AMERICAN STUDIES COURSES THAT ARE**
8 **EXPRESSLY MANDATED BY THE PUSP**

9 Notwithstanding the express provisions of several District Court orders
10 mandating that the PUSP is currently in effect, the TUSD Governing Board
11 unilaterally acted on January 10, 2012, to “suspend[] immediately...all MAS
12 [Mexican American Studies] courses and teaching activities...” and to transfer all
13 students “currently enrolled in MAS courses ...to new or existing sections of other
14 courses....” (TUSD Governing Board Resolution dated January 10, 2012, attached
15 to TUSD “Notice to Court” filed January 13, 2012, Docket No. 1352.) Yet, as
16 described above, those Mexican American Studies courses are expressly called for
17 in the PUSP.
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20 Simply put, so long as TUSD remains under Court supervision, it is obligated
21 to seek “ ‘court authorization for the promulgation of polices and rules regulating
22 matters such as assignment of students and the like.’” (Ninth Circuit Opinion filed
23 July 19, 2011 at 9790, quoting *Bd. of Ed. of Okla. City Public Schs. v. Dowell*, 498
24 U. S. 237, 249-50 (1991)), including any proposal to amend or modify any provision
25 of the court-approved PUSP.
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1 The District attempts to justify its unilateral action by insisting that it had to
2 act quickly to avoid the loss of state funds. Tellingly, however, it neither seeks to
3 explain why it did not immediately reach out to the Court and/or Special Master nor
4 does it suggest that it made any effort to explain to the Superintendent of Public
5 Instruction that it was required to get Court authorization before it could abrogate
6 provisions of the PUSP.
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8
9 In fact, the District appears to have determined to amend the PUSP by stealth.
10 Significantly, the notice for the January 10, 2012 Meeting at which the resolution
11 “suspending” the Mexican American Studies classes was adopted says nothing
12 about a proposed change to the PUSP. Instead, listed as the sole
13 “**STUDY/ACTION ITEM**” on the agenda is the following:
14

15
16 Superintendent of Public Instruction John Huppenthal’s
17 Final Ruling Regarding Tucson Unified School District’s
18 Mexican American Studies Program – **Consider Alternatives** and Direct
19 Attorneys Representing Tucson Unified School District and the
20 Superintendent.

21 (Tucson Unified School District Governing Board Draft Agenda for Regular Board
22 Meeting, January 10, 2012, printed from TUSD website, attached as Exhibit 3;
23 emphasis added.)

24
25 The District’s January 10, 2012 meeting suspending Mexican American
26 Studies courses and teaching activities is insufficient for modifying the court-
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1 ordered PUSP. Any modification to the PUSP requires the District Court's
2 authorization. TUSD failed to obtain it.

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4 **TUSD'S "SUSPENSION" OF MEXICAN AMERICAN STUDIES**
5 **COURSES FOLLOWS YEARS OF NEGLECT OF ITS OBLIGATIONS**
6 **TO THE DISTRICT'S LATINO STUDENTS UNDER THE PUSP AND**
7 **REQUIRES IMMEDIATE INTERVENTION TO ACTIVELY**
8 **ADDRESS ACADEMIC PERFORMANCE GAPS AS THEY IMPACT**
9 **LATINO STUDENTS**

10 The resolution "suspending" the District's Mexican American Studies courses
11 begins with the following language: "The Mexican-American Studies (MAS)
12 Department is and shall remain an organizational contributor to TUSD's
13 commitment to greater academic and social equity for Hispanic Students."
14 However, its actions, as documented both in the TUSD PUSP Report² and the report
15 on expenditure of desegregation funds for the school year 2010-2011 that it recently
16 made available to the parties tell a very different story - - and cry out for immediate
17 action by the Special Master and the Court.

18
19 In addition to providing for the maintenance and the expansion of Mexican
20 American Studies course capacity, the PUSP included the following very important
21 provision in the Mexican American Studies Department Action Plan:
22

23 The Mexican American Studies Department will
24 be expanded at the middle and high school levels to more

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26 ² The Mendoza Plaintiffs take issue with much that is in the TUSD PUSP Report but
27 address only those provisions that relate to the Mexican American Studies
28 Department here. They will address other problems with that Report in a
separate filing as provided for in the Order Appointing Special Master.

1 adequately meet the needs of the student population, as the
2 budget permits. Within the Elementary level, the department
3 will expand its services by developing systems of support to
4 schools towards the elimination of disparities for Hispanic students
5 in the following areas: achievement, discipline, special education
6 placement, grade retention, GATE placement and IB enrollment, as
7 the budget permits.

8 (PUSP at 31, V. B.)

9 In the TUSD PUSP Report, the District now asserts that the Mexican
10 American Studies Department was not provided with a budget to permit it to
11 provide *any* expansion of services in elementary schools. Yet, the detailed services
12 are essential to achieve the “commitment to greater academic and social equity for
13 Hispanic Students” that the District proclaims in its resolution of January 10, 2012.
14 The TUSD PUSP Report also says that “within budget constraints” the Mexican
15 American Studies Department expanded at the middle and high school levels;
16 however it provides no detail concerning the nature or scope of the expansion or the
17 impact of those so-called budget constraints.

18 That the District has made a conscious decision to slight its Latino students is
19 evidenced by the report it recently provided on desegregation fund expenditures in
20 the District. According to that report, relevant pages of which are attached as
21 Exhibit 4, in the school year 2010-2011, of the approximately \$60,000,000 in
22 desegregation funds that it received, the District budgeted \$697,563 to the Mexican
23 American Studies Department. By contrast, it budgeted \$883,904 for the African-
24 American Studies Department. As of the 100th day of the 2010-2011 school year,
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1 according to the TUSD website, Hispanic enrollment was 32,232 and African-
2 American enrollment was 3,025. The Mendoza Plaintiffs do not quarrel with the
3 amount budgeted for the African American Studies Department but they do
4 emphatically contend that the extraordinary discrepancy given the relative size of
5 the student populations is probative of the District's lack of commitment to its more
6 than 32,000 Latino students and suggests that it has not made anything like the
7 effort it should to fund the development of systems of support in the TUSD
8 elementary schools to eliminate disparities for Latino students or to meet the needs
9 of its Latino middle and high school students.

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13 That failure is compounded by the fact that as of January 2012, when it filed
14 the PUSP Report, the District had yet even to have finalized, much less adopted, the
15 Student Equity Plan that was to have been in place by June 1, 2010. (See TUSD
16 PUSP Report at 32 and PUSP at 29-31.) Further, it flies in the face of the District
17 Court's statement, embracing a sentiment that had been expressed to it by the
18 Mendoza Plaintiffs that " 'the District has a moral as well as a legal obligation to
19 actively address academic performance gaps as they impact African American and
20 Hispanic students so long as it receives any desegregation/integration funds.'"
21 (Order filed December 18, 2009, Docket No. 1299, at 10: 7-12.)

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25 The TUSD PUSP Report acknowledges that other provisions of the PUSP
26 relating to the Mexican American Studies Department in addition to that discussed
27 above have not been implemented or have been implemented only in part.
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1 The Department was to increase student, parent, and community engagement
2 and empowerment by facilitating quarterly “Parent Encuentros” events at each
3 school where Mexican American Studies classes were being taught. Among other
4 things, these events were to inform parents concerning what was occurring in
5 children’s classrooms and to inform them about their children’s academic progress.
6 In its Report, after reaching back to 2003-04, that is five years before the PUSP was
7 adopted, to have *something* to recite, TUSD acknowledges that it held the
8 encuentros in only one elementary school the year the PUSP was adopted and then
9 says it held them in the 2010-11 school year (without saying if they were quarterly
10 or only per semester) at “sites that hosted MAS courses, and only for parents of
11 students in those courses.” It does not say what it intends to do with this program
12 now that the courses have been “suspended.” More importantly, it effectively
13 concedes that it has failed to reach the great majority of Latino parents in the
14 schools where Mexican American Studies courses had been taught and does not
15 begin to address what it will be doing to inform, engage or empower students,
16 parents, and community at this time when the District’s Latino population feels
17 abandoned by the District.

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23 The TUSD PUSP Report claims that the District has “implemented” the
24 provision of the PUSP concerning “Equitable Representation of Hispanic Students”
25 by referencing graduation data for students at four high schools. (TUSD PUSP
26 Report at 36.) While that data is noteworthy for demonstrating that students who
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1 enroll in Mexican American Studies classes graduate at higher rates than those who
2 do not it falls short of the PUSP requirement that activities are to “focus[] on
3 retention and matriculation rates of Mexican American/Hispanic students” in the
4 entire District. (PUSP at 32-33, B(4)(a).) The Report acknowledges that activities
5 focused on more equitable representation of Mexican American/Hispanic students in
6 AP classes has been limited and that this provision of the PUSP for all practical
7 purposes is “Not Implemented.” (TUSD PUSP Report at 36, 35 (b).)

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10 Finally, with its silence on the point, the TUSD PUSP Report implicitly
11 acknowledges that the District’s administrators took no action to monitor or
12 otherwise ensure that the provisions of the Mexican American Studies Department
13 Action Plan were implemented. (See PUSP at 31, IV (E).)

14
15 All of these failures are of particular concern given the decision to “suspend”
16 the Mexican American Studies courses because they further confirm the perception
17 of the District’s Latino population that the District is not committed to academic and
18 social equity for its Latino students.
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21 In the Notice the District filed to inform the Court and the Special Master of
22 its “suspension” of the Mexican American Studies courses, it attempts to mitigate
23 the damage it has inflicted by asserting that the Mexican American Studies
24 Department “will continue to work towards implementing the programs and
25 activities required by the PUSP....” (Notice to the Court filed January 13, 2012,
26 Docket No. 1352, at 5:6-7.) Given the abysmal record of non-performance set forth
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1 above, no comfort can be taken from that statement. Similarly, its statement that it
2 will now “study” and bring to the Board “new measures designed to narrow the
3 achievement gaps for traditionally underserved and economically disadvantaged
4 students” (Resolution attached to Notice to the Court as Exhibit A) is not reassuring.
5 In fact, it is alarming because it demonstrates the extent to which the District, when
6 freed from Court scrutiny, failed to implement the PUSP. The Student Equity Plan
7 that the PUSP required to have been in place by June 1, 2010 (and which is yet to be
8 developed) was *intended to address precisely this issue*³. (See PUSP at 29, IV,
9 acknowledging the existence of gaps in student performance that follow lines of
10 race/ethnicity and income level and setting forth the components of an Action Plan
11 to promote equity in student performance.)
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16 Even as work on the unitary status plan proceeds, it is essential that the
17 District be directed to act aggressively to implement in good faith all provisions of
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19 ³ It also is important to note that the portion of the resolution that addresses new
20 curriculum to be developed fails even to address the District’s literature
21 curriculum notwithstanding both that the “suspended” Mexican American
22 Studies classes included literature courses and that the study of literature
23 provides rich opportunities to be “exposed to diverse viewpoints.”
24 (Resolution attached to the District’s Notice to the Court as Exhibit A.)
25 Further, that resolution provides only that a “plan” for implementation of the
26 resolution be presented to the Board by August 2012. Yet, the USP is to be in
27 place by June. Therefore, it appears that the District does not intend to have
28 “studied” measures to narrow the achievement gap or developed new
curriculum until after the Special Master’s work has been concluded—
suggesting at the very least that the District fails to appreciate how central
“measures...to narrow the achievement gap” are to a remedial plan and to the
District’s obligations to address the vestiges of discrimination.

1 the Action Plan that are in effect and that its implementation of those provisions be
2 regularly and rigorously monitored.

3 **CONCLUSION**
4

5 Mendoza Plaintiffs request the Special Master and District Court enforce the
6 PUSP and reinstate Mexican American Studies courses and teaching activities in
7 accordance with the mandates of the Plan and direct the District to implement and
8 regularly monitor in good faith all provisions of the Action Plan for Mexican
9 American Studies as set forth in the PUSP.
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17 Respectfully submitted,

18 DATED: February 2, 2012

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

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26 By: /s/ Nancy Ramirez

Nancy Ramirez
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AND EDUCATIONAL FUND

CERTIFICATE OF SERVICE

1
2 I hereby certify that on February 2, 2012, I electronically transmitted the attached
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a
4 Notice of Electronic Filing to the following CM/ECF registrants:

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