The Coalition for Accountability, Respect, and Excellence (C.A.R.E.)

July 24, 2018

Dear Dr. Trujillo and Members of the TUSD Governing Board:

On April 11, 2018 TUSD filed a legal brief with the Federal Court that included an argument (albeit an ostensibly legally and ethically unsound argument) to "immediately and totally terminate the Mendoza case" which would, if accepted by the Court, strip the Mendoza Plaintiffs of their legal standing and consequently cause abandonment of legal representation for 29,000 Mexican American/Latino students through the remainder of the desegregation case and its post unitary status plan implementation. This legal action was taken via TUSD's contracted Phoenix-based legal counsel. When community members asked individual Board members and the Superintendent about the origin and rational in taking this legal action, dissimilar and drastically conflicting responses were provided. Some publicly stated that they had no knowledge of the inclusion of the referenced legal argument and totally disagreed with the position once they learned about it, while others said it was buried or not noticeable within the TUSD legal brief but vacillated on their position on this portion of the filing. Some stated their desire to hold legal counsel accountable for this situation. Still others attempted to dismiss it as having no relative legal consequence without the filing of a "motion to dismiss the Mendoza case" thus, claiming that no legal action had been taken to terminate the Mexican American Plaintiffs'/Mendoza Plaintiffs' case. This specific "walk-back-" gibberish just added insult to injury. TUSD's varied and conflicting responses are alarming and reveal an overall lack of leadership in managing the desegregation case, in addition to exhibiting a continued absence of respect in dealing with the Mendoza Plaintiffs and the students and community which they have represented for more than 40 years. However, to be clear, the referenced language within the brief has been taken as an affront by many within the community at large.

The continual repetition of the statement that TUSD has never asked for a separation of the Mendoza Plaintiffs from the desegregation case is uninformed, disappointing and absurd. It is an untruth. Surely, the Board, the Superintendent, and legal counsel are aware that a legal argument which is included in a legal brief filed with the Court, such as the one in which the offending notion was presented, is actionable by the Court. The TUSD argument was posed as part of TUSD's opposition to the Special Master's Annual Report. Please do not insult the intelligence of those who follow this case carefully by implying that only a "motion to dismiss" the Mendoza Plaintiffs' case could result in this change when TUSD has included language in a legal brief which theoretically could be accepted by the Court. And please do not repeat the idea that this statement was "buried" in a 50- page document. 1.) It was not--- it was quite near the very beginning of the summary and the introduction on page 5, which anyone who has been a student knows are the first items read when skimming a document; and 2.) It is your collective responsibility NOT to simply and casually skim legal documents for which you are accountable, whether you seek such accountability or not.

There are two scenarios possible here: The Board and Superintendent were hoodwinked by the lawyers who are taking a typically unethical but legal approach to getting "out from

under court order/the USP" (TUSD often uses this language as if to imply that the District is the victim of some type of oppression in the desegregation case, which is a preposterous notion.). OR- you yourselves came up with this strategy and hoped that no one would notice. Obviously, you do not appear trustworthy under either of these scenarios, and neither of these scenarios result in any benefit for the 29,000 Mexican American/Latino students who are part of the class of students represented by the Mendoza Plaintiffs. In fact, this "legal" strategy, wherever derived, is divisive and the cause of harm within the District, as well as within the community.

For those who follow the desegregation case, the Board and the new Superintendent, in whom some of us had much hope, the drumbeat of 'it didn't happen, and 'it wasn't us' is very, very disheartening. Please take immediate action to extract/rescind all of the language in the April 11, 2018 filing that references the "immediate and complete termination of the Mendoza case" and resubmit a corrected version to the Federal Court. The following language is found to be most objectionable:

From page 5 of the TUSD April 11, 2018 legal brief:

> "the District also generally objects to the R&R to the extent that it does not recommend immediate and complete termination of court supervision in CV 74-204 (the Mendoza case), on the grounds that, since Judge Frey expressly found that the District had never operated a dual school system with respect to Hispanic students, the *Green* factors and the requirement of good faith compliance with a comprehensive decree do not apply in that case. Since it is undisputed that the specific conduct that Judge Frey found to be discriminatory with respect to Hispanic students is no longer occurring, and has not occurred for decades, that is all that is required, and the decree, and supervision, in that case should be terminated. This objection is set forth in more detail in Section I(C) below."

From pages 42,43, and 44 of the TUSD April 11, 2018 legal brief:

> **"The District Generally Objects to Continued Supervision in Case No. 74-cv-204 (the Mendoza case).**
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> Judge Frey expressly found that the District had not operated a dual school system with respect to Hispanic students:
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> In light of the principles discussed above and the evidence presented, the segregative acts by the District and the existence of racial imbalance in the schools are insufficient for a finding that a Mexican-American/Anglo dual school system has ever been operated by the defendants. [*Id.*, p. 221.]
>
> There were only two types of conduct that Judge Frey found improper with respect to Hispanic students: certain school siting decisions, and assignment of students from overcrowded schools, in a manner that intentionally increased racial concentration. The conduct described by Judge Frey ended in the 1960s. There is no evidence that it has resumed, and any lingering effects of that conduct have either been attenuated by time as noted by Judge Frey, or, in the 9 schools still affected in 1977 (5 of which are now closed) eliminated by District policy by 1986. Where a district has engaged in specific prohibited discriminatory acts, but has not operated a dual school system, that is all that is required.
>
> The additional requirements for termination of court supervision in a desegregation case, first laid down by the Supreme Court in *Green v. County School Bd*., 391 U.S. 430 (1968), were premised on the prior operation of a dual school system. The language of *Green* itself, and its rationale, were clearly limited to circumstances in which the school

> district had operated a dual system as to the plaintiff class. Accordingly, the District is entitled to entry of judgment terminating supervision in the Mendoza case (No. 74-cv-204). The mere fact that the Mendoza case was consolidated with the *Fisher* case (No. 74-cv-90) does not change this. Judge Frey noted that, although the cases were consolidated for pretrial and trial, "the cases retain their separate identities." [ECF 345, p. 7. This is consistent with law under Rule 42(a), which holds that consolidation does not merge the cases into one, and that consolidated cases retain their separate identities, such that a judgment in one is immediately appealable regardless of the procedural status of any other consolidated action. This was most recently reaffirmed by the Supreme Court in *Hall v. Hall*, 584 U.S. _, 138 S.Ct. 1118, (Slip. Op. March 27, 2018). The Supreme Court noted that, under the former consolidation statute (former 28 U.S.C. § 734, later replaced by Rule 42(a)), it was well settled that "consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another," quoting *Johnson v. Manhattan R. Co*., 289 U. S. 479, 496–497 (1933). *Id*., Slip Op. at 10. The Supreme Court confirmed that this definition of consolidation carried over unchanged into Rule 42(a) when it replaced the consolidation statute in 1937. *Id*., Slip Op. at 17. Accordingly, since there was no finding of a dual school system with respect to the Mendoza plaintiffs, and the improper conduct found by Judge Frey relating to the Mendoza plaintiffs abated over 50 years ago, the District is entitled to immediate termination of the Mendoza case. The District thus objects to the Special Master's Report and Recommendation to the extent it does not recommend immediate termination of the Mendoza case."

On June 21, 2018, C.A.R.E. held a community forum to address this matter. The overwhelming consensus of those in attendance was that the TUSD Governing Board should take immediate action to extract/rescind all of the language in the April 11, 2018 filing that references the "immediate and complete termination of the Mendoza case" and resubmit a corrected version to the Court. To repeat, this is formal request to the Governing Board and Superintendent to immediately act upon this request. In addition, C.A.R.E. requests that TUSD immediately: 1.) Issue a media release correcting the record on the District's position, as noted above; and 2.) Immediately terminate its contract with Steptoe & Johnson LLP and secure a local legal firm to represent TUSD in the desegregation case.

The argument that the District has not discriminated against Mexican American students for decades is part of the argument made by TUSD in its April 11th filing. Of course, this should also be eliminated. It is ironic that the very actions taken by the District within the April 11th filing, and which we continue to protest, actually reflects TUSD's continued attempts to marginalize Mexican American students.

Were it not for the persistent legal advocacy of the Mendoza Plaintiffs and their legal counsel on behalf of Mexican American/Latino students, several areas which the Governing Board and the Superintendent now brag about and utilize for purposes of student recruitment and state/national recognition would either <u>not exist or would show little to no notable progress</u>. These include but are not limited to:

- Improved ethnic/racial student integration at magnet schools and other schools;
- Mexican American Culturally Relevant Curriculum course and curriculum offerings at the elementary through high school levels;
- Increased attention and resources to the needed improvement of academic achievement within populations who have traditionally shown low academic achievement indicators; high drop out rates; high failure rates, etc.;

- Increased resources to the area of professional development;
- Focused attention to student integration and student achievement in the improvement of magnet schools and/or magnet programs;
- Attention, improvement and expansion of dual language offerings;
- Increased participation of Mexican American/Latino students in all Advanced Education Program offerings (GATE, Advanced Placement, Honors, International Baccalaureate, AVID, dual credit offering, University High School, etc.),
- Policies/practices that ensure opportunities of all TUSD offerings for English Language Learners;
- Increased resources and attention to multicultural curriculum and materials at all levels;
- The development of policies to decrease over-representation by historically over-represented ethnic/racial groups in the application of discipline;
- The development of policies and practices to increase family engagement by historically under-represented ethnic/racial groups;
- The development of policies and practices to increase ethnic and racial minority representation of teachers and administrators;
- The development of policies and practices to ensure technology offerings are equitable throughout the District; and
- The development of data and informational reports for the purposes of supporting the Special Master's monitoring of TUSD's compliance with the court order;
- Improved processes and monitoring of the desegregation budget; and
- Increased public attention in TUSD's accountability in complying with the desegregation court order (Unitary Status Plan).

In addition, due to the District's legal obligations in complying with its court order it receives nearly $64,000,000 annually in desegregation funding. How does the District resolve having taken this amount over the last many decades (over a billion dollars to date) if the District has not discriminated against Mexican American/Latino students "for decades", as the April 11th filing states, and how did the District plan to adjust this amount in the event that the Court accepted its outrageous legal position regarding the Mendoza case? Of course, C.A.R.E. does not anticipate that the Court would support the District in its position pertaining to the Mendoza case. **The irony and insult are obvious and the District's actions require immediate remedy.**

Please note that a great deal of what is contained in the April 11, 2018 filing is disputable since repeated claims are made that the District is in full compliance with the Unitary Status Plan, however, this will be left up to the Plaintiffs to dispute and for the Court to review by the required legal standards.

Sincerely,

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