

**SPECIAL MASTER, IMPLEMENTATION COMMITTEE, AND  
PLAINTIFF COMMENTS ON THE FOURTH DRAFT OF THE  
CODE OF CONDUCT SUBMITTED ON MAY 23, 2018  
(INCLUDING DISTRICT RESPONSES AND REVISIONS)**

June 4, 2018

DEPARTMENT OF JUSTICE [TUESDAY, MAY 29]

1. As we discussed over the phone last week, the DOJ appreciates the District's receptivity to adding a sentence to the draft "Mutual Combat (Fighting)" offense about any conduct not meeting the definition of that offense being treated as the level three offense of "Other Aggression."
2. [Page 10] The DOJ supports the District's effort to make this draft discipline code clearer and more consistent than the current GSRR. This includes the District's decision to clarify the specific and narrow factual scenarios in which the discipline offenses of "Other Aggression," "Mutual Combat (Fighting)," and "Assault" are to be applied.

**Response to 2: Draft 5 includes a revised sub-section titled "Physical Conflict" under "Aggression" the section, designed to "clarify the specific and narrow factual scenarios" in which these three offenses are to be applied. The District forwarded this change to the DOJ on Thursday, May 31 and received positive feedback. See DOJ comment #5, below.**

3. The DOJ also supports the District's proposed waiver of long-term disciplinary consequences for first-time Drug/Alcohol Use or Possession offenses.
4. The DOJ therefore would not object to the District's adoption of this draft discipline code.

DEPARTMENT OF JUSTICE [MONDAY, JUNE 4]

5. [Page 10] Thank you for sharing the revised violation chart. We think the graphical representation of the progression in seriousness of aggression offenses is helpful and appreciate the clarification that routine fights should be treated as the level 3 offense of "Other Aggression." We are concerned, however, that calling the level 4\* offense "fighting" rather than "serious fight," or something else that makes clear that only fights that threaten safety qualify as a level 4\*, will lead to confusion and the use of exclusionary discipline in inappropriate cases. Specifically, we are concerned that administrators will treat any conduct that looks like a fight as a 4\* offense, even if it does not meet the definition. Therefore, we suggest replacing "fighting" with "serious fight" or some other term that makes clear that not all conduct that is commonly called a fight may be treated as a level 4\*.

**Response: the District will present this comment to the Governing Board and, if supported, will change the title as suggested by the DOJ.**

[Page 10] Also, the sentence under 4\* in the chart is confusing. We suggest changing “administrators will be granted” to “administrators will grant an automatic waiver” because it is the students, not the administrators, who are being granted the waiver.

**Response: the District has made this revision in Draft 5.**

MENDOZA PLAINTIFFS [TUESDAY, MAY 29]

6. Mendoza Plaintiffs greatly appreciate the District’s efforts to address their (and others’) concerns as reflected in the revisions to Draft Code 4. As detailed below, while Mendoza Plaintiffs believe that the use of elevations of disciplinary consequences will require careful monitoring, they view Draft Code 4 as USP-compliant and an improvement to the current GSRR. They therefore support Draft Code 4 and recommend that the TUSD’s Governing Board approve Draft Code 4 and begin implementation for the 2018-19 school year.
7. In an excess of caution, [Mendoza Plaintiffs] reiterate a previously expressed concern that as part of such implementation the District also ensure meaningful training on the provisions of the GSRR for all teachers and other personnel who have disciplinary responsibilities.
8. As an initial matter with respect to the provisions of Draft Code 4, the District’s adoption of the DOJ’s proposed language to clarify that instances of “mutual combat” (supporting the imposition of exclusionary discipline) exist only “where the circumstances present a threat to safety...” addresses Mendoza Plaintiffs’ previously stated concerns that incidents for which the USP does not allow for exclusionary discipline could be classified as “mutual combat”. Further, the District’s related revisions concerning waivers of “the mandatory minimum, eleven-day long term suspension normally used” for level 4 infractions also provided them with clarification to better understand how the District will approach “mutual combat.”
9. Mendoza Plaintiffs continue to have some concern that potential elevation of disciplinary consequences for misbehavior occurring three times within a semester (as opposed to three occurrences within a nine-week period, as contemplated in the first draft of the code) “moves [the District] away from what it describes as a ‘rare’ option that would be employed where interventions have failed to address significant repeat infractions, to elevation of consequences of a seemingly more punitive nature.” They do however appreciate that the District has eliminated “double elevations” from Draft Code 4 and recognize that the District has in the past used elevation of disciplinary consequences sparingly. With their understanding that the District intends to continue so using elevation of consequences and that it will monitor the circumstances and frequency when elevations occur, Mendoza Plaintiffs state that they have no objection to Draft Code 4’s elevation of consequences provisions but again emphasize that they believe this is an area in which careful monitoring by the Discipline Review Team will be required.
10. For the reasons and with the understandings stated above, the Mendoza Plaintiffs recommend that the TUSD Governing Board approve Draft Code 4 as the District’s new code of conduct for the 2018-19 school year

FISHER PLAINTIFFS [THURSDAY, MAY 31]

**NOTE: FISHER PLAINTIFFS SUBMITTED REQUESTS FOR INFORMATION (4) AND COMMENTS. THE COMMENTS ARE INCLUDED BELOW. THE REQUESTS FOR INFORMATION, AND THE DISTRICT'S RESPONSES TO THOSE REQUESTS, ARE ATTACHED AS A SEPARATE RFI DOCUMENT, BELOW.**

11. For the reasons stated [below] and the lack of information requested in the Fishers' response, Fisher Plaintiff cannot recommend that TUSD Governing Board approve Draft Code 4 as the District's new Code of Conduct of the 2018-19 school year.
12. [Pages 2 and 19] On page 2 of the Handbook, it states that, "TUSD must follow specific procedures for students considered disabled under federal law, including whether misbehavior is a [manifestation] of the students disability." However on page 19, it states that "a [manifestation] determination conference must be held prior to the 11th day of suspensions." There are several things wrong with this policy.

First, it violates the Individuals with Disabilities Education Act (IDEA).

Second, if a student is out for 11 days, that is a long term suspension and a hearing should have been held. However, a long term suspension hearing of a student with disabilities cannot be held prior to the [manifestation] hearing to determine if the act is related to the student's disability.

Third, once the manifestation hearing is held if it is determined that the violation is caused by his disability, the student's due process rights have been violated.

[Fourth], by creating this policy, the District is willfully ignoring due process.

**Response: In response to the Fisher comment, the District has modified the language on page 19 in Draft 5 as follows:**

*"A manifestation determination conference must be held ~~prior to the 11<sup>th</sup>~~ day by the 10th day of suspension"*

**The District did not mean to convey that students would receive 11-day suspensions without a manifestation hearing. The language quoted from page 19 has been in every version of the GSRR since the adoption of the USP in 2013 (and prior) and has never been objected to or caused any confusion as to our obligations under IDEA.**

13. [Pages 13 and 16] The Fishers repeat their objection to the expanded authority under violations of arson, burglary and breaking and entering. The District's response is that "They have authority over acts committed by students on the way to school, from school and those that impact have a harmful effect on students or the educational process". This is a policy destined to lead to inconsistent and unfair application of discipline. Principals are being given

the authority to go into neighborhoods to investigate alleged crimes that would better be handled by law enforcement.

**Response: The District has not expanded principal authority for any of these violations. The violation definitions, and principal’s authority over them, is the same as it has been since the 2013-14 adoption of the GSRR:**

*Additionally, the principal is authorized to begin disciplinary action when a student's misconduct away from school has a detrimental effect on the other students, or on the orderly educational process, because the violation is directly connected to prior violations at school, or threatens to produce further violations at school.*

**Since 2013, this language has never been objected to and has not led to the “inconsistent and unfair application of discipline.”**

14. [Page 5] The Positive Intervention Centers and In School Intervention Centers give the District two avenues for removing a student from class who has not been suspended.

**Response: In-School Intervention (ISI) and Positive Intervention Centers (PICs) are interventions, not discipline, so they do occur absent a suspension. ISI is a *positive alternative to suspension*, meaning students are placed in ISI in lieu of being suspended.**

**PICs provide structure to the existing policy of a “30 minute timeout.” The District has trained, and will continue to train, staff members operating PICs to de-escalate situations and help students reflect on behavior. We believe this approach is more restorative and student-centered than merely sending a student to a timeout for up to 30 minutes. And, PIC data is collected and closely monitored to ensure it is not over-abused by particular teachers (this feature does not exist with the current, unstructured “30 minute timeout” policy).**

SPECIAL MASTER / IMPLEMENTATION COMMITTEE MEMBER KELLY LANGFORD

[TBD]

We are still waiting on Dr. Hawley and Kelly Langford to submit their comments on Draft #4.