

District's Response to Special Master and Plaintiff Feedback to the Draft Revised GSRR Shared on May 28, 2015

On May 28, 2015, the District shared its Draft Revised GSRR with the Special Master and Plaintiffs, and requested feedback by June 12, 2015. The District received comments, suggestions, and feedback from the Special Master, the Department of Justice (DOJ), and the Mendoza Plaintiffs ("Parties"). District leadership reviewed the feedback and identified 33 recommendations, of which the District accepted 21 of the 33. Below, the District provides responsive explanations to inquiries and recommendations that were not accepted.

The Draft Revised GSRR, along with your feedback, will be presented to the Governing Board for study on June 23, 2015, so the Governing Board is aware of the feedback and recommendations provided by the Parties. After receiving additional feedback from the Governing Board on June 23, 2015, District leadership will present the Final Revised GSRR to the Governing Board for adoption in July 2015.

COMMENTS AND FEEDBACK FROM SPECIAL MASTER HAWLEY

1. I have always been puzzled by the district's treatment of PBS and restorative practices alternatives, something that happens throughout this document. All schools should be involved in PBIS and restorative practice is a much narrower strategy for dealing with particular issues. All schools successfully implemented PBIS, there would be less need for restorative practices. A simple fix in the short run would be to eliminate the phrase "whichever is appropriate".

Response: Accepted

2. P.12. I agree with the principles concerned about vague definition of leggings. Seems like "tights" takes care of this problem.

Response: Accepted

3. P.15. It seems appropriate to specify guidelines for providing information. These guidelines will accelerate in terms of days. One suggestion is that steps (bullets) 1-2-3 would be 24 hours for 4-5 might be 48 hours and longer for the others. These timelines could ensure accountability and focus on a quick resolution and minimizing the loss of instructional time.

Response: Not accepted, Regulation JK-R2 provides the appropriate timelines for providing information.

4. P.18. The removed language regarding setting the conference times seems to say that parents schedules do not now need to be taken into account. I hope that is not the intent.

Response: This is not the District's intent.

5. P.21. This might be phrased more flexibly with respect to would facilitate circles. For example,... facilitated by district staff including teachers.....

Response: Accepted

6. P.22 I would not list LSCs or student success specialists.

Response: Accepted

7. P. 25. The change here with respect to contacting law enforcement seems to give greater discretion school principals to do so for level III issues. This is not desirable.

Response: Accepted – the language related to School Safety/Law Enforcement does not only apply to Level III, so the District moved that language out of the Level 3 section and added it to bullet 11 in the guidance section. The first sentence of bullet 11 contains language directly from USP section IV(B)(2)(A)(iv).

8. P. 25 The effort to reduce redundancy with respect to the conditions for out of school suspension might be reconsidered. It seems important to emphasize that out of school suspension as a last resort strategy offenses below level four.

Response: The District emphasized this point by removing the prior reference to Page 17 and inserting the actual language from Page 17 directly into this section.

9. P.26. Condition five is fine with me. A close reading suggests that only three violations can be elevated. I'm not sure that that's the district intent I appreciate the effort to policy with the agreed-upon arrangements with respect to suspension.

Response: This is not the District's intent.

10. P. 27. Re minor aggressive acts "corridors" should be deleted and under endangerment there is a grammatical error with respect to tense.

Response: Accepted

11. pp. 27-28 It seems that the definition here could be clearer if it was presented in terms of bullets.

Response: Not accepted.

12. P. 29 I believe that the explanation for the change in levels is incorrect. The first change is from one to a 2 not from a 2 to a 1. Why is name-calling now to level offense?

Response: This was not changed from last year, this has been and remains a Level 2 offense. There was a suggestion to change it to a Level 1, but it was then changed back to a Level 2 after further discussion.

13. The policy on use of cell phones would make using a cell phone at recess or before school level 2 offense this seems a bit much.

Response: Not accepted, the language refers to “instructional time” as being the time when cell phones are not appropriate – this would not include recess or before school.

14. There is a great deal of text eliminated with respect to serious offenses but no explanation.

Response: The District communicated with the Arizona Department of Education about the listing of violations and learned that certain violations (i.e. Homicide, Kidnapping) are not often included in student handbooks and such was not required. The GSRR Committee discussed and proposed removal of these violations from the handbook.

COMMENTS AND FEEDBACK FROM THE DOJ

15. The current Guidelines for Student Rights and Responsibilities (“GSSR”) does not properly limit In-School Suspension (“ISS”) to cases where it would serve as an alternative to Out of School Suspension (see page 24-25 of the redline). Instead, the GSSR allows ISS to be used in cases where the alternative would be to keep the student in the classroom and apply another intervention or consequence. To remedy this misuse of ISS, the GSSR should eliminate ISS as a potential response to a level 2 infraction and only allow ISS in response to a level 3 (or higher) infraction.

Response: Not accepted. The language for ISS under Level 2 was revised to match the language for ISS under Level 3.

16. We suggest that the definition of restorative practices in the draft GSSR (page 21 of the redline) be replaced with the definition from the USP. That definition, from § (VII)(B)(1)(a), reads: “Restorative Practices[is] a framework to give those affected by conflict the tools and principles needed to resolve problems and build relationships. Restorative Practices focus upon the emotional and social disturbance created by conflict and provide a process for holding students accountable for their actions while building a supportive school environment.”

Response: Accepted

17. The District’s use of abeyance contracts is a powerful and productive alternative to exclusionary discipline. However, the language discussing the use of abeyance contracts (page 19 of the redline) is vague (*e.g.*, abeyance contracts may be used if “the administrator believes it is in the best interest of the student and the school community”) and could be strengthened to better encourage the use of such contracts. For example, the GSRR could require that students be offered abeyance contracts unless there are particular circumstances that would make it inappropriate (for example, the suspension is too short for an abeyance contract to make sense or a student has repeatedly failed to

honor past abeyance contracts). However, the fact that an administrator believes a student may violate the abeyance contract should not prevent offering the student the opportunity to try to live up to its terms.

Response: Accepted

18. Several times, the Purpose Section of the document (page 6 in the redline) states that the District strives to keep students in the classroom whenever “practicable.” We suggest changing “practicable” to “possible.” Practicable could be read as suggesting that logistical challenges or other minor difficulties justify excluding students from the classroom. Using the word “possible” makes it clear that students should be kept in the classroom whenever that result can be accomplished without sacrificing student safety or a similarly important objective, even if that requires some effort on the part of District staff.

Response: Accepted

19. The paragraph on harassment (page 11 of the redline) begins: “It is the policy of the TUSD to prohibit discriminatory harassment based on real or perceived race, color, religion/religious beliefs . . .” The term of art used in federal law and guidance on harassment is “actual or perceived,” so we suggest that “real” be changed to “actual.”

Response: Accepted

20. The paragraph on gang behavior (page 11 of the redline) states: “The behaviors that have become associated with gang activity or membership, especially violence, intimidation, and disrespect will not be tolerated . . .” Disrespect should be deleted from this paragraph because it suggests that disrespect is a serious and essentially criminal offense, a characterization at odds with the GSRR’s appropriate treatment of disrespect as a low-level misbehavior.

Response: Accepted

21. We suggest removing bandanas from the list of prohibited clothing (page 12 of the redline). We assume this prohibition exists to address the use of bandanas as gang related apparel. However, gang-related apparel is already separately prohibited in the dress code. Therefore listing bandanas by itself is either redundant or overly broad, and if overbroad, is more likely to be selectively enforced in a discriminatory manner.

Response: Accepted

22. Vandalism is included as conduct that may be reported to law enforcement (page 16 of the redline). However, in the introductory paragraph to this section, the only justification given for reporting conduct to law enforcement is the need to “maintain safety.” Since it is difficult to see how reporting vandalism to law enforcement is necessary to maintain safety, we suggest that vandalism either be removed from the list of offenses that may

lead to a law enforcement referral or that the District explain its inclusion on some other basis.

Response: Accepted, added “or seek restitution” after “maintain safety.”

23. We suggest that the added definition of “In-School Intervention” (page 18 of the redline) have its own header so it is not part of the section about due process for students with disabilities. Also, we want to confirm that “In-School Intervention” in that section is the same thing as In-School Suspension in the action levels chart (page 24 of the redline). If so, we suggest choosing one term.

Response: Not accepted. Throughout the document the District revised all references to ISS from “In-School Suspension” to “In-School Suspension/Intervention.” ISS is used primarily at the Elementary and K8 School levels; ISI is being expanded at secondary schools (Middle and High Schools). In ISI, students will continue receiving classroom instruction, while this may be the case in some ISS settings it is not the norm.

24. In the section on PBIS (page 21 of the redline 21), the District should add or cross-reference the Level 1 interventions (page 24 of the redline) to the list of Tiered interventions, and should remove interest-based clubs from the list, as that is not an intervention.

Response: Accepted

COMMENTS AND FEEDBACK FROM THE MENDOZA PLAINTIFFS

25. As an initial matter, Mendoza Plaintiffs note that the first page of the revised GSRR is titled “2015-16 Draft Only” and makes reference to principals’ ability to provide “comments and/or changes” to the draft. Additionally, there are some comments and questions in the margin of the document. (For example, on page 22 where there is a question about whether LSCs and Student Support Specialists should be included.) Mendoza Plaintiffs therefore ask whether they should expect additional substantive changes to the GSRR beyond those in the May 28 GSRR, or that may result from the plaintiffs’ and/or Special Master’s comments on that GSRR?

Response: No.

26. On page 18 of the revised GSRR, the “In-School Intervention” (“ISI”) and “Alternative Education Placement” (“AEP”) programs are defined. However, the GSRR does not detail whether the ISI program will be available to all students subject to a short-term suspension, or, similarly, whether the AEP program will be available to all students subject to a long-term suspension. Nor are there any guidelines to suggest circumstances in which these alternatives to suspension would be available. Mendoza Plaintiffs understand from the District’s June 1, 2015 email regarding the 2015-16 USP budget,

that there will be a limited roll-out of the ISI program for the 2015-16 year. Yet, as written, the GSRR may lead parents to believe the alternative is available to all students facing a short-term suspension. In addition, given that the District is seeking to remedy existing disproportionality in the administration of disciplinary consequences, it is important that clear guidelines for when these alternatives are available be outlined to avoid the potential result of the alternatives to suspension becoming disproportionately available to students of a particular race/ethnicity, which could exacerbate rather than remedy existing disproportionality issues. Mendoza Plaintiffs therefore request that the GSRR be revised to provide clarity in this regard.

Response: Not accepted, but the District added “where available” to the definition of ISI, rather than the proposed list of schools where it is available.

27. On pages 6, 24 and 25 of the GSRR, the District indicates that exclusionary consequences can be applied “only after the District has first attempted and documented the types of intervention(s) used in PBIS and/or Restorative Practices (whichever is appropriate).” The District’s Revision Guide indicates that the reason for these additions is to “[a]lign[] inconsistencies with the rest of the document and with the USP.” To more closely align the GSRR with the USP, Mendoza Plaintiffs request that the language of “(whichever is appropriate)” be revised to read “as appropriate,” as is included in USP Section VI, B, 2, a., (i) language. Such a revision would reflect that application of both PBIS and Restorative Practices may be appropriate and should therefore be applied, as was contemplated in the USP.

Response: Not accepted, this was removed per the Special Master’s comment (see Comment and Response #1 above).

28. Mendoza Plaintiffs are confused by the District’s indication that it removed language on page ten, relating to Arizona’s “Parents’ Bill of Rights,” to “[r]educe unnecessary or redundant language.” (Revision Guide at 1.) Mendoza Plaintiffs think that the District would want to continue to inform parents of these rights, particularly as the very purpose of the GSRR is to outline student and parent/guardian rights and responsibilities. In addition, many parents would presumably not be aware of these rights if they are not included in the GSRR, and there is no other reference to these rights in the GSRR. Thus, Mendoza Plaintiffs do not believe that removal of language reduces “unnecessary” or “redundant” language. Mendoza Plaintiffs note that they additionally do not understand the language removal in light of the fact that a number of rights still included on page ten (including, but not limited to, rights “j,” “k,” and “l” as revised) are also found in Arizona’s “Parents’ Bill of Rights.”

Response: Not accepted. The District removed the language that was not relevant to the educational setting.

29. USP Section VI, B, 2, a, (1) requires that “exclusionary consequences [be limited] to instances in which student misbehavior is ongoing and escalating, and the District has first attempted and documented the types of intervention(s) used in PBIS and/or

Restorative Practices...” Mendoza Plaintiffs appreciate that the District has added this language to descriptions of short-term suspensions that correspond to action levels two and three on pages 24 and 25, respectively, to “[a]lign[] inconsistencies with the rest of the document and with the USP.” (Revision Guide at 2.) However, this language was not added to descriptions of long-term suspensions under action levels four and five on page 25. Mendoza Plaintiffs thus request that this USP-required language also be added to the long-term suspensions on page 25 to make the GSRR internally consistent and consistent with the USP.

Response: Not accepted. This is the same language that existed in the 2014-15 GSRR. Some Level 4 and 5 violations mandate exclusionary discipline.

30. In its Revision Guide, the District indicates that with regard to student infractions and corresponding action levels, it “[c]hanged ‘Inappropriate Language (verbal or nonverbal)’ from a ‘2’ to a ‘1’ (a parallel change was adding ‘swearing at a staff member’ to ‘Defiance’ – a level ‘2’).” While these are revisions with which Mendoza Plaintiffs agree, it does not appear that these revisions were successfully made to the GSRR as they appear to have been deleted from page 29. Mendoza Plaintiffs thus request that the District revisit those revisions to ensure that they are included in the GSRR.

Response: Not accepted. This violation will remain a Level 2 as it was in the 2014-15 GSRR.

31. On page 18 of the GSRR, with regard to long-term suspensions, the District removed language that required that conferences among parents, students, and appropriate TUSD staff take place as part of “the continuum of supports and interventions implemented to support student success,” which is part of the District’s Restorative Practices and PBIS strategy under the USP to “develop[] a continuum of graduated and appropriate consequence” USP Section VI, B, a., ii. Notably, identical language was not removed from the short-term suspension section on the same page. Notwithstanding the discrepancy, Mendoza Plaintiffs understand from the description of consequences applicable to the various action levels (on pages 24 and 25), that these conferences are required for both long-term and short-term suspensions. Thus, to keep the GSRR consistent, Mendoza Plaintiffs request that the language be added back to the long-term section on page 18.

Response: Accepted. The District moved the sentence describing conferences above both sections so it is clear that it applies to both short-term and long-term suspensions.

32. Mendoza Plaintiffs write to supplement their comments on the revised GSRR submitted earlier today. Mendoza Plaintiffs are aware that hearings on student appeals of suspensions typically do not take place until about the 9th day after students have been suspended. USP Sections VI, A and B both emphasize the importance of limiting exclusionary consequences imposed on students. Mendoza Plaintiffs could not find a Governing Board-approved regulation describing any time-limitation within which appeals hearings must take place after suspension or after a hearing is requested. They

are very concerned that students who must wait almost two weeks for an appeals hearing are subject to the very type of exclusionary consequences the USP was trying to limit. Mendoza Plaintiffs therefore request that the District directly address this issue by doing whatever is necessary, which we believe should include the appropriate revisions to District regulations (an approach contemplated in USP Section VI, B, 2, b), to ensure that any disciplinary appeals hearings take place within three days after students or parents request them.

Response: Not accepted, the District works diligently to schedule hearings with families according to *their* schedule and availability – which is not always within three days of the request for a hearing. Further, parents and advocates often need more than three days to prepare for a hearing.

33. In addition, USP Section VI, B, 2, b contemplates revisions, including to TUSD regulations, to provide “language-accessible proceeding[s].” Mendoza Plaintiffs understand that for hearings in which a Spanish-language interpreter is needed, typically any available individual with any amount of Spanish-language proficiency takes on the role of interpreter, regardless of whether the individual is in fact qualified to provide interpreter services. Mendoza Plaintiffs believe that this approach materially affects students’ rights to a fair hearing, and therefore request that the District also make any revisions necessary to require that only qualified interpreters be used at the hearings for which those services are needed.

Response: It is the District’s practice to use qualified interpreters at long-term suspension hearings and expulsion hearings.

Fisher Plaintiffs Revised GSRR Comments

On May 28, 2015, the District submitted a draft GSRR to the Special Master and all plaintiffs and asked for responses by June 12, 2015. During the week of June 15, the District held several meetings to analyze the comments and make revisions to the GSRR. The District received the following comments from the Fisher plaintiffs on Thursday, June 18 at 3:38 p.m., after the District had completed its revisions. The Revised GSRR was sent the Special Master and all plaintiffs later on the afternoon of June 18. Therefore, eight of fifteen of the Fisher comments were not included in the final revision. However, seven issues were addressed because they were raised by another party or were in the Revised GSRR. We have indicated those below.

Fisher Representatives Comments on the Revised Guidelines for Student Rights and Responsibilities

June 16, 2015

On May 28, 2015, the District submitted a revised GSRR for the 2015-2016 school year. The following items are of concern to the Fisher Representatives.

1. On page 7 under the section about when the guidelines apply, there is a sentence that says the principal is authorized to begin disciplinary action outside of school is intrusive and general with no specific guidelines about when the principal is just in applying discipline outside of the school. This can lead to abuse of authority.
2. On page 10, under Parent Rights, the District has eliminated items l, m, p. These should be left in.
See response above #28
3. On page 12 the description of bullying needs to be clarified so that the word “repeatedly” is delineated.
The term “repeated” is defined on p. 23.
4. On page 14, it says that the district is not responsible for confiscated items. This encourages adults to be careless when handling students’ property and should be deleted.
5. On page 16 the definition of aggravated assault needs clarification. The examples of when this situation exists is not specific particularly the statement about someone being incapable of defending himself. Without specific guidelines this will lead to abuse.
6. On page 17 the GSRR should read that a manifestation hearing must be held prior to a long term suspension hearing.

7. On page 18 it removes the statement that a “parent conference must take parent schedules into consideration. This should be left in.
See response above #4
8. Also on page 18 the GSRR talks about In School Suspension (ISS). When this is to be used needs to be spelled out. For example, is ISS utilized after PBIS and Restorative Practices have not be successful or can it be used immediately for certain offenses, I e Level 3 offenses.
Revised GSRR: See p. 24, Level 3, third bullet
9. On page 19, the District should clearly explain when abeyance contracts may be utilized and who is entitled to them and for what offenses.
See response above #17
10. On page 20 the appeal process for long term suspensions needs to be better explained.
11. On page 25 the GSRR talks about police contact for Level 3 offenses, but Level 3 offenses do not warrant contacting the police.
See response above #7
12. On page 28 under aggravated assault the District needs to define “serious physical injury”. Also the sentence about administration going into students’ homes needs to be removed. The administrators cannot be given carte blanche to roam their students’ neighborhoods looking for infractions.
Revised GSRR: See p. 23
13. On page 29, remove defiance of authority.
14. On page 30, the section concerning “substance represented as an illicit drug” should be deleted or changed to level 3.
15. The Fisher Representatives also recommend that the GSRR call for a Parent Ombudsman who parents can contact to assist them in dealing with discipline. We recommend that five of these positions be funded – two for high schools, two for middle schools and one for elementary. The positions should report to the external auditor that the District is required to employ. A description of this position, along with a referral form is attached.