

# EXHIBIT E

Mendoza Plaintiffs' Comments and Objections to TUSD's ELL Supplement to the ALE  
Action Plan Report

April 7, 2015

On February 13, 2015, the Court ordered TUSD to “develop goals for increasing participation of ELL students in the specific ALE programs, where practicable, and provide explanation to the Plaintiffs and the Special Master as to how these goals were derived.” Doc. 1771 at 9. On March 5, 2015, TUSD provided the Plaintiffs and Special Master with a memo describing the ELL goals TUSD developed for four ALEs: the Dual Language Self-Contained GATE, Middle School for High School Credit Courses, the Dual Language program, and Advanced Placement courses.

As an initial matter, Mendoza Plaintiffs believe that administration of a non-verbal test of students' cognitive abilities is of great importance for increased participation of ELL students in ALEs. They were encouraged by the District's report that administration of the Raven nonverbal assessment resulted in a 71% increase in ELL participation in the GATE Dual Language program. On March 26 and 27, 2015, at the Parties' and Special Master's meeting in Tucson (“all-party meeting”), Mr. Michael Konrad described the District's piloting of another non-verbal assessment, the Discover test, with first graders this spring to assess their cognitive abilities using various measures. Mendoza Plaintiffs are interested in that test's potential to identify ELL students who could benefit from participation in GATE programs, and ask what the results of that piloting are. Mendoza Plaintiffs would support the use of a nonverbal assessment that helps increase ELLs' participation in ALEs, and would support the piloting of other nonverbal assessments. In that regard, they are aware of the Naglieri nonverbal abilities test, and the nonverbal subtest of the CogAT, which the District should consider piloting.

As was discussed during the all-party meeting, both the Mendoza Plaintiffs and the Fisher Plaintiffs also believe that all students should be tested for participation in GATE, rather than requiring parents to request testing. They believe this will benefit many Latino and African American students and that it also is likely to result in greater identification of ELL students who could benefit from GATE programs.

In light of the availability of nonverbal assessments and of the reported success of the Raven in identifying ELLs for GATE program participation, Mendoza Plaintiffs object to the few GATE programs for which the District has developed ELL participation goals. The District only developed a goal for the Dual-Language Self-Contained GATE. Given that a *non-verbal* assessment resulted in a great increase in ELL students' participation in that GATE program, Mendoza Plaintiffs see no reason why the District cannot develop ELL participation goals for Pull-Out and Resource GATE programs, as well as non-Dual Language Self-Contained GATE programs. While Mendoza Plaintiffs understand that the District decided to develop ELL participation goals only for ALEs

delivered in ELL students' primary language, they do not believe such an approach is appropriate or what was contemplated in the Court's February 13 Order; such considerations may be appropriate for the District to weigh in developing its ELL participation goals, but it should not determine which ALEs the District will develop goals for. That approach ignores that ELLs have varying degrees of English proficiency and that the District reports that it does in fact have ELL participants in ALEs not delivered in their primary language (AP classes beyond AP Spanish Language or Literature described at page 8). Further, the testing of all students using a nonverbal abilities assessment should result in greater ELL participation (as was true for the Dual Language Self-Contained GATE). Mendoza Plaintiffs therefore request that the District develop ELL goals for each of the GATE programs.

For the same reasons, Mendoza Plaintiffs similarly request that the District reassess the non-GATE ALEs for which it developed ELL participation goals. In addition, with respect to the Dual Language program, Mendoza Plaintiffs appreciate the District's explanation that the reconfiguration of the Two-Way Dual Language (TWDL) program to K-2 and K-3 at two elementary schools contributed to the decrease in ELLs' participation in that program for the 2014-15 school year. Mendoza Plaintiffs ask to what extent non-ELL students' participation decreased after this reconfiguration took place. They also request clarification about the TWDL program, as they previously understood that access to that program was limited to English-proficient students. The District indicates that it will add "Cycle II to the TWDL initiative in 3<sup>rd</sup>, 7<sup>th</sup> and 10<sup>th</sup> grades" in the 2015-16 school year." In light of the planned expansion of the program, ELL participation in the dual language program is likely to noticeably increase. However, that increase will be due to the nature of the program, and not to focused efforts to increase ELL participation in the program. Mendoza Plaintiffs thus request that the District revise its goal for ELL participation in dual language programs.

Mendoza Plaintiffs object to the goal for ELLs' participation in AP courses as insufficiently ambitious. The District states that "[b]ased on the most recent trend over the last three years, TUSD anticipates a positive annual growth of about four students." The projected growth of ELL participation in the AP program does not reflect the development of an ambitious goal for ELL participation that the District will strive to achieve, but is a mere reflection of what the District expects to observe without any additional effort. It is therefore not an appropriate goal for ELL participation. Mendoza Plaintiffs further find this goal for AP courses unacceptably low to the extent that it focuses on Spanish Language and Literature courses, which also appears to be the planned focus of the District's recruitment efforts. At the March 26 and 27 meetings, Mendoza Plaintiffs requested a breakdown of the data on participation in Spanish AP classes versus all other AP classes for all race and ethnicities because meaningful access and participation in ALEs does not result from a focus on language programs at the cost of participation in other ALEs. The District's ELL participation goal and recruitment efforts should also focus on increasing ELL students' participation in non-Spanish AP classes. Mendoza Plaintiffs therefore request that the District also revise this goal for ELL participation.