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12

13 UNITED STATES DISTRICT COURT  
14 FOR THE DISTRICT OF ARIZONA  
15

16 Roy and Josie Fisher, et al.,  
17 Plaintiffs,  
18 v.  
19 United States of America,  
20 Plaintiff-Intervenors,  
21 v.  
22 Anita Lohr, et al.,  
23 Defendants,  
24 Sidney L. Sutton, et al.,  
25 Defendant-Intervenors,  
26  
27  
28

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’  
OBJECTIONS TO TUSD’S NOTICE OF  
FILING OF ADVANCED LEARNING  
EXPERIENCES ACTION PLAN  
SUPPLEMENT AND ELL  
SUPPLEMENT TO THE ALE ACTION  
PLAN REPORT**

Hon. David C. Bury

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 al.,

7 Defendants.

8  
9  
10  
11 **Introduction**

12 In its February 13, 2015 Order, this Court directed Tucson Unified School District,  
13 No. One (“TUSD” or the “District”) to develop comprehensive goals for attaining unitary  
14 status with respect to the District’s Advanced Learning Experiences (“ALEs”) and to  
15 develop goals for English Language Learner (“ELL”) participation in specific ALEs.  
16 (Order dated 2/13/15 (Doc. 1771) (“ALE Order”) at 9.)

17 The standard TUSD now proposes for determining unitary status as to ALEs is even  
18 less ambitious than the initial “20% Rule” goals it proposed. Specifically, by proposing  
19 that it need only attain 80% of its goals, TUSD could attain unitary status while failing to  
20 make any progress on ALE goals for which the greatest Latino and African-American  
21 participation disparities exist. Moreover, the component of the proposed standard that  
22 looks at overall ALE participation would not prevent such an outcome as  
23 disproportionately large Latino enrollment in large ALE programs like the dual language  
24 program could easily mask major deficiencies in progress for relatively small ALEs that in  
25 fact were experiencing large participation disparities. The inadequacy of the standard is  
26 compounded by the fact that the District could attain unitary status under the standard it  
27 has proposed by disproportionately meeting ALE goals as to one plaintiff class over the  
28 other. Further, participation goals for University High School are effectively eliminated

1 because their attainment is made wholly irrelevant in determining whether unitary status  
2 has been achieved under the proposed standard.

3 Although this Court rejected TUSD's previous argument that ELL participation in  
4 English classes are "impossible" by requiring it to develop ELL participation goals "in  
5 specific ALE programs, where practicable," ALE Order at 9, TUSD developed such goals  
6 for only four ALEs delivered in participating ELLs' primary language. The District so  
7 limited its ELL goals notwithstanding the fact that its own data shows that ELLs have  
8 recently participated in many other ALEs, and that ELLs vary in English-language  
9 proficiency. Moreover, TUSD concedes that its ELL goal for Advanced Placement classes  
10 is not a true goal, but is instead a mere enrollment projection. TUSD's own documents  
11 reveal that the same is true with respect to its ELL Dual Language program "goal".

12 Accordingly, Mendoza Plaintiffs request that this Court reject the District's  
13 proposed standard for determining unitary status with respect to ALEs. They further  
14 request that TUSD be ordered to develop goals for ELLs' participation in other ALEs in  
15 which ELLs have participated in in the past, and that its existing ELL goals for Advanced  
16 Placement classes and the Dual Language program be revised.

### 17 **Objections to TUSD's Advanced Learning Experiences Supplement**

18 The District's Proposed Standard for Achieving Unitary Status Is Less Ambitious  
19 than the "20% Rule" Goals TUSD Previously Presented and Conflicts with the Express  
20 Order of this Court

21 In its ALE Order this Court directed that TUSD "in consultation with the Plaintiffs  
22 and the Special Master, develop the comprehensive goals for attaining unitary status by  
23 ensuring that African American and Latino students have equal access to the District's  
24 Advanced Learning Opportunities." (ALE Order at 9:21-24). The District now proposes a  
25 goal for obtaining unitary status with regard to ALEs "when it reaches meets [sic] the []  
26 goals for 2016-17 in 80% (37 out of 46) of the individual programs with a corresponding  
27 overall ALE increase for African American and Latino students so that their ALE  
28 participation rate is within 15% of their enrollment rate in the district", or, "[t]o the extent

1 the District falls short of this specific target... it must demonstrate its good-faith efforts to  
 2 meet those goals..." (Doc. 1788 at 6.)<sup>1</sup>

3 Mendoza Plaintiffs agree with the District's decision that "more ambitious goals  
 4 [than those based on the "20% rule"] should be implemented[.]" (ALE Supplement at 4.)  
 5 However, what the District now is proposing in fact is *not* more ambitious. Because the  
 6 District has already reached or exceeded its 15% goal for the majority of its data point  
 7 goals, TUSD's Proposed Standard would allow it to attain unitary status without  
 8 improving Latino and African American student participation in ALEs in which significant  
 9 progress still needs to be made, as discussed further below.

10 *The "80% (37 out of 46)" of "listed goals for 2016-17" Component of*  
 11 *TUSD's Proposed Standard<sup>2</sup> Would Permit TUSD to Attain Unitary Status While Making*  
 12 *No Progress as to ALEs in Which Significant Participation Disparities Exist.*

13 While the District's proposed 2016-17 goals of narrowing disparities in ALE  
 14 participation to within 15% of district enrollment appears more ambitious than the "20%  
 15 rule", the 80% achievement threshold would allow the District to achieve unitary status  
 16 while making **no** progress for 20% of its ALE goals. A standard allowing such a result is  
 17 inconsistent with this Court's rejection of the District's contention that it need not set goals  
 18 for individual ALEs.

19  
 20  
 21 <sup>1</sup> Notwithstanding the Court's directive that the goal to achieve unitary status with regard  
 22 to ALEs be developed "in consultation with the Plaintiffs and Special Master," (ALE  
 23 Order at 9:21-22), Mendoza Plaintiffs were not consulted about the District's new goal,  
 24 and first learned of it upon reviewing the District's ALE Action Plan Supplement filing  
 25 (Doc. 1788) ("ALE Supplement"). Significantly, District representatives failed to consult  
 on this proposed goal during in person meetings among all the parties and the Special  
 Master in Tucson on March 26 and 27, 2015. Mendoza Plaintiffs hereinafter refer to the  
 District's new proposed standard for achieving unitary status with respect to ALEs as  
 "TUSD's Proposed Standard."

26 <sup>2</sup> Mendoza Plaintiffs note that they understand the reference to 46 total goals (or "data  
 27 points") to refer to each goal in the "2016-17 goal (15%)" columns on the data/goal charts  
 on pages 10 through 15 of the ALE Supplement.

1 TUSD's Proposed Standard allows for strategic prioritization of recruitment efforts  
2 on the goals which the District is closest to meeting, at the expense of meeting ALE goals  
3 for which great progress still need be made, including ones for which, using the "20%  
4 rule", discrimination may be deemed to exist. (As discussed below, the portion of  
5 TUSD's Proposed Standard which measures overall participation in ALEs would do  
6 nothing to prevent such an outcome.)

7 For example, the nine ALE goals (20% of all ALE goals) for which little or no  
8 progress need be made under TUSD's Proposed Standard could include (1) Latino students  
9 in Elementary School Self-Contained GATE (5.6% increased participation needed to meet  
10 2016-17 goal), (2) Latino students in Middle School Resource GATE (12.6% increased  
11 participation needed), (3) Latino students enrolled in University High School ("UHS")<sup>3</sup>  
12 (over 12% increased participation needed)<sup>4</sup>. (*See Id.* at 10-11; Exhibit A at 21.) Notably,  
13 some of the ALEs for which the biggest disparities between Latino student participation  
14 and District enrollment exist, regard the more rigorous and beneficial ALEs to students.  
15 Thus TUSD's Proposed Standard therefore would negate this Court's statement "that  
16 TUSD can[not] avoid accountability ... as long as relevant data is gathered and Plaintiffs  
17 and the Special Master are free to point out any individual program where discrimination  
18 may exist." (ALE Order at 6:14, 18-20).

19 To further illustrate the point, Mendoza Plaintiffs note that the District would  
20 achieve six additional individual ALE goals by increasing Latino or African American  
21 students' participation by a total of 1% or less over the next two school years.<sup>5</sup> (*See* ALE

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22 <sup>3</sup> TUSD does not provide a UHS goal in its ALE Supplement. (*Id.* at 8.) Mendoza  
23 Plaintiffs disagree with and object to that decision as it fails to comply with the USP, as  
24 detailed further below.

25 <sup>4</sup> A 12% increase in Latino students' enrollment at UHS is needed to meet the "20% rule".  
26 (*See* page 21 of TUSD's 20% Rule Report provided to the plaintiffs and Special Master  
27 under the ALE Order, attached hereto as Exhibit A.) To achieve the 15% goal that TUSD  
28 sets for the end of the 2016-17 year, the District would therefore have to increase Latino  
students' enrollment at UHS by well over 12%.

<sup>5</sup> These data points and corresponding increases needed to meet their respective 2016-17  
goals are: African American students in Elementary School Self-Contained GATE (0.7%),  
Latino students in Middle School Self-Contained GATE (1%), African American students

1 Supplement at 10-15.) By Mendoza Plaintiffs’ calculations, the District then would need  
2 meet 2016-17 goals of increasing participation by over 1% for only four additional data  
3 points. The Court’s ALE Order indicates it presumed such increased participation to be  
4 innappropriate to determine unitary status, and Mendoza Plaintiffs agree, when it stated  
5 “[g]iven that the ALE [] goals result in total increases of participation by minorities in  
6 ALEs of zero to one percent, the Court assumes the 20% Rule will not be the sole basis for  
7 determining unitary status with respect to [ALEs.]” (ALE Order at 8.) TUSD’s Proposed  
8 Standard would require that it only increase participation in ALEs by more than 1% for  
9 four out of forty-six goals, and therefore, does not represent a meaningful improvement  
10 over the “20% rule” or an appropriate standard to determine unitary status as envisioned by  
11 this Court.

12           Significantly, the 80% goal-achievement threshold under TUSD’s Proposed  
13 Standard makes no distinction between goals for Latino student and African American  
14 student participation in ALEs. As a consequence, TUSD could potentially achieve unitary  
15 status regarding ALEs by disproportionately achieving goals for one plaintiff class over the  
16 other. Such an outcome is inconsistent with the USP’s requirement that TUSD improve  
17 both Latino and African American participation in all ALEs. Mendoza Plaintiffs therefore  
18 respectfully request that this Court reject TUSD’s Proposed Standard for achieving unitary  
19 status.

20                           *The Component of TUSD’s Proposed Standard Measuring Overall Latino*  
21 *and African American Student Participation in ALEs Also Allows TUSD to Attain Unitary*  
22 *Status While Failing to Address Goals For Which Significant Participation Disparities*  
23 *Exist*

24           In objecting to the Special Master’s ALE R&R, the District argued that it need only  
25 develop aggregate participation goals with respect to GATE programs and Advanced  
26

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27 in High School AP courses (0.5%), Latino students in High School AP courses (0.7%),  
28 African American students in Honors Pre-AP courses (0.4%), and Latino students in  
Middle School Honors Pre-AP courses (0.1%). (See ALE Supplement at 10-15.)

1 Academic Courses, in addition to its UHS goal, because of its contention that “separate  
2 goals will mean that ALE programs will be competing against each other.” (Doc. 1654 at  
3 4.) Notwithstanding this Court’s rejection of the District’s argument, (ALE Order at 9),  
4 TUSD now introduces a standard that would look even more broadly to overall ALE  
5 participation based on claims of competition between ALEs.<sup>6</sup>

6 Like the 80% goal-achievement threshold component of TUSD’s Proposed  
7 Standard, the component that looks to overall ALE participation ignores that there are  
8 material differences in the rigor and value to students of various ALEs and too would  
9 allow for little or no progress in Latino and African American students’ participation in  
10 certain ALEs. Because of the differing sizes of the various ALE programs, between 228  
11 and 4,953 for the 2014-15 school year, major deficiencies in meeting participation goals  
12 for multiple ALEs can be easily overcome and hidden by this component of the standard.  
13 (See TUSD’s Response to the 3/27/2015 SMP RFI #118 re ALE Data provided on April 8,  
14 2015 at 5-15, attached as Exhibit B.) Specifically, participation beyond that to satisfy the  
15 15% rule for some ALEs would disproportionately count in the District’s assessment of  
16 overall increased participation in ALEs.

17 Using District data reported on page 14 of the ALE Supplement, Mendoza Plaintiffs  
18 calculated the percent of actual 2014-15 Latino enrollment in the Dual Language program  
19 beyond the 2016-17 goals for each school level. They then converted these percentages  
20 into raw numbers using TUSD data on the total number of students enrolled in the Dual  
21 Language program in the 2014-15 school year (*id.* at 11). The data reveals that  
22 approximately 690 Latino students are currently enrolled in TUSD’s Dual Language  
23 program beyond that necessary to meet TUSD’s 2016-17 goal.

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24 <sup>6</sup> This Court should again reject the District’s contention that individual ALE programs  
25 cause competition between the programs such that it would be unable to achieve its ALE  
26 goals. (ALE Order at 5, n.5.) The District’s contention appears to stem from the fact  
27 some students may make decisions on which courses to take, which may involve an ALE,  
28 but that does not equate to “competition” between ALEs. Moreover, Mendoza Plaintiffs  
do not understand how the District believes pre-Advanced Placement courses compete  
with Advanced Placement (“AP”) courses, when it acknowledges that they are not taken  
during the same school year. (ALE Supplement at 5.)

1           If this Court were to apply the District's current data to the overall ALE  
2 participation component of TUSD's Proposed Standard, these "excess" 690 students would  
3 allow TUSD to easily overcome major deficiencies in progress for goals in which the  
4 largest disparities between Latino enrollment in the program and in the District exist:  
5 (Latino students in Elementary School Self-Contained Gate (156 enrolled in 2014-15),  
6 Middle School Resource GATE (159 enrolled in 2014-15), and enrollment at UHS (332  
7 enrolled in 2014-15)). (Exhibit B at 6-7, 14.) Notably, the *excess* number of Latino  
8 students enrolled in the Dual Language program for the 2014-15 year beyond the 2016-17  
9 goal is larger than the combined sum of current Latino students' participation in all three  
10 of these ALEs. Thus, this component of TUSD's Proposed Standard is likely to provide  
11 results that make it appear as though the District made meaningful advances in Latino  
12 participation in these three ALEs (and for that matter, all ALEs), even if no such advances  
13 actually occurred. That the District could achieve unitary status under this standard while  
14 failing to provide Latino and African American students' equal access to all ALEs under  
15 this component is an additional reason this Court should reject it.

16           In addition, although Mendoza Plaintiffs have assumed that the overall ALE  
17 participation component applies to Latino students and African American students  
18 separately for purposes of their examples, the vague proposed standard can just as easily  
19 merely require that the gap between the combined sum of Latino and African American  
20 students' participation in all ALEs and the combined plaintiff classes' District enrollment  
21 not be greater than 15%. To the extent that this component involves this kind of  
22 application, it is inappropriate as progress in meeting goals for Latino and African  
23 American students should be measured separately, just as was discussed for the other  
24 component.

25           Mendoza Plaintiffs agree with the District's statement that "more ambitious goals  
26 [than those based on the "20% rule"] should be implemented," (Doc. 1788 ("ALE  
27 Supplement") at 4), but, as discussed above, TUSD's Proposed Standard does not provide  
28



1 that. Mendoza Plaintiffs therefore respectfully request that this Court reject TUSD's  
2 Proposed Standard for attaining unitary status.

3 Additional Problems With The ALE Supplement

4 *TUSD's ALE Supplement and Proposed Standard Effectively Eliminate Its*  
5 *University High School Admissions Goals Even Though It Agrees That Such Goals*  
6 *Are Required by The USP.*

7 Although the parties have in the past disagreed on the extent to which the USP  
8 requires that goals be set for individual ALEs, TUSD has always agreed that the USP  
9 requires it to set goals to improve Latino and African American student admissions at  
10 UHS, as indeed it does. (*See, e.g.*, Doc. 1645-2 at 17 (TUSD's ALE plan setting goals  
11 specific to UHS admissions); Doc. 1645-6 at 6 (TUSD revisions to UHS goals); Doc.  
12 1645-8; Doc 1654 at 4 (TUSD objection to Special Master's ALE R&R acknowledging  
13 that the USP requires it to set UHS admission goals)). Notwithstanding this, and the fact  
14 that the District included UHS in its "20% rule" report under the ALE Order (Exhibit A),  
15 the District provides "no table with goal percentages [] for UHS" in its ALE Supplement.  
16 (ALE Supplement at 8.)

17 Mendoza Plaintiffs strenuously object to the District's omission of goals for  
18 increasing access to UHS. By omitting UHS goals from the ALE Supplement while  
19 proposing a unitary status standard that considers only the "46 different data points" within  
20 it, the District effectively eliminates any UHS goals it has proposed; whether and to what  
21 extent TUSD improves Latino or African American enrollment at UHS would have zero  
22 bearing on whether it should achieve unitary status with respect to ALEs. By omitting  
23 UHS goals, the District ignores this Court's mandate that it need "develop the  
24 comprehensive goals for attaining unitary status by ensuring that African American and  
25 Latino students have equal access to the District's [ALEs]." (ALE Order at 9:22-24).

26 The significance of this omission is highlighted by the fact that TUSD's own ALE  
27 Action Plan describes UHS as a "highly-ranked college-preparatory high school [in which]  
28 virtually all of its students successfully graduate and are accepted at a four-year college or

1 university,” (Doc. 1645-2 at 11), and that its own “20% rule” report indicates that it must  
 2 increase Latino enrollment at UHS by 12% to meet the “20% rule”, (which the District  
 3 purports to have abandoned for more ambitious goals, (*see* ALE Supplement at 4)).<sup>7</sup> The  
 4 omission of goals for this highly beneficial ALE provides an additional reason for rejecting  
 5 TUSD’s Proposed Standard. If this Court is inclined to adopt TUSD’s Proposed Standard  
 6 or any permutation of it notwithstanding their objections, Mendoza Plaintiffs respectfully  
 7 request that this Court require that the standard include an assessment of whether the  
 8 District achieves express UHS goals.

9 *Providing Meaningful Equal Access to Advanced Placement Courses*  
 10 *Requires That Goals Be Developed to Increase the Number of Latino and African*  
 11 *American Students Both Taking AP Exams, and Passing Them*

12 District data shows major disparities in Latino and African American AP students  
 13 that take, and that pass, AP exams as compared to white AP students. For the 2013-14  
 14 school year, 62% of white students in AP courses took the AP exams, and their AP exam  
 15 pass rate was 65%. (*See* Exhibit B at 27.) In contrast, only about 49.5% of Latino students  
 16 taking AP courses actually took the exams, and their pass rate was only 48%. (*See id.*)  
 17 While Mendoza Plaintiffs appreciate the value in taking AP courses regardless of whether  
 18 a student takes or passes the AP exam, the stark disparity the data presents reveals a deep  
 19 inequity in terms of the benefits of taking and passing AP exams not reflected in the AP  
 20 ALE goal. Mendoza Plaintiffs therefore respectfully request that this Court require the  
 21 District to revise its goals for AP courses to expressly articulate a goal to increase the  
 22 percentages of Latino and African American students who take and pass the AP exams.

23  
 24 <sup>7</sup> Mendoza Plaintiffs note that they understood this Court’s statement on page 3 of its ALE  
 25 Order that “UHS is not at issue, here” when discussing the “20% rule” to refer to the fact  
 26 that in the initial ALE Action Plan, the 20% rule was not used for UHS “because a large  
 27 number of UHS students are not drawn from District enrollment[.]” (Doc 1645-2 at 17).  
 28 However, as appears to be demonstrated the by “20% rule” report, to the extent one looks  
 at the UHS student cohort from within the District, the District can in fact develop UHS  
 goals similar to the 15% and 10% goals it now sets for other ALEs. (Exhibit A at 20-21.)  
 Mendoza Plaintiffs further note that there is no reason why UHS enrollment need stay at  
 50% non-TUSD residents.

1 Mendoza Plaintiffs suggest to this Court that it would be appropriate that such goals be  
2 considered in any standard ultimately adopted to determine whether the District has  
3 achieved unitary status with respect to ALEs.

4 *The District Has Failed to Consider Latino and African American Students’*  
5 *Neighborhood Access to ALEs or Whether Transportation Burdens*  
6 *Disproportionately Fall on Them*

7 In its ALE Order, the Court states that “TUSD must consider feasibility of  
8 neighborhood access for minority students to self-contained or more rigorous GATE  
9 programs[,]” (ALE Order at 8:1-2), and that “the question of equity must consider the  
10 location of these programs and whether transportation burdens fall disproportionately on  
11 African American and Latino students,(*id.* at 5, n.5.) Yet, there is no indication that such  
12 considerations took place. (ALE Supplement at 15-16.) This is particularly troubling  
13 because, as this Court observed, TUSD’s challenge to the fact that some ALEs are superior  
14 and more beneficial to students “appear[] to be based on student choices to remain in a  
15 neighborhood school with a pull-out program rather than travel away from home to attend  
16 a self-contained GATE program.” (ALE Order at 5, n.5.) Thus, Mendoza Plaintiffs object  
17 to the ALE Supplement to the extent TUSD has failed to consider neighborhood access to  
18 ALEs and any disproportion in transportation burdens.

19 *The “Study/Action Item[.]” Strategies, Including Ones Plaintiffs Supported at*  
20 *The March Meetings, Are Not Action Items; This Court Should Order that They*  
21 *Become Action Items*

22 As discussed above, the District indicates that “many” items listed as “Study/Action  
23 items” in the ALE Supplement are being studied. However, notwithstanding the label  
24 given to these items in the District’s filing, nothing suggests that any of those strategies are  
25 being acted upon beyond mere study, or that any are now “action items” before the TUSD  
26 Governing Board. Instead, the District temporizes, saying as “cost estimates and data  
27 results return[], [the District] will be able to determine which strategies may be  
28 implemented for 2015-16.” (ALE Supplement at 19.) At the meeting among the parties

1 and Special Master in late March, both the Mendoza and Fisher Plaintiffs expressed  
2 support for District-wide GATE testing to combat the barrier posed to Latino and African  
3 American student GATE participation by the current requirement that parents expressly  
4 request such testing. The Mendoza and Fisher Plaintiffs requested that the District assess  
5 what the cost of District-wide and Latino and African American student testing would be.  
6 The District's responsive memorandum is attached as Exhibit C. Now that the District has  
7 determined "cost estimates" and assessed "data results" in developing its recommendation  
8 that all first and sixth graders be tested, (Exhibit C at 2), a recommendation with which  
9 Mendoza Plaintiffs agree, Mendoza Plaintiffs respectfully request that this Court direct the  
10 District to begin taking any actions necessary to implement those recommendations for the  
11 2015-16 school year.

12 At the meetings in late March, the Mendoza and Fisher plaintiffs learned that Latino  
13 and African-American students are on wait-lists for participation in several of the District's  
14 ALEs. They each expressed support for the development of a priority wait list that would  
15 increase Latino and African-American student enrollment in those programs. So that this  
16 recruitment strategy, which appears among the most likely to effectively increase minority  
17 student access to ALEs, is given serious consideration, Mendoza Plaintiffs request that the  
18 Court direct the District to take this strategy to its Governing Board for approval, if  
19 required, and if not, that it begin implementing the strategy for the 2015-16 school year.

#### 20 **Objections to TUSD's ELL Supplement to the ALE Action Plan Report**

21 TUSD's Development of ELL Goals for Only Four ALEs Ignores That ELLs Have  
22 in Fact Participated in Many Other ALEs, That Arizona Has Reduced Curricular Burdens  
23 on ELLs, And That TUSD Has Effective Tools for ELL Recruitment

24 In its ALE Order, this Court rejected TUSD's argument that setting goals for ELL  
25 students' participation in ALEs is "simply impossible", noting that "ELLs were expressly  
26 identified in the USP for increased participation." (ALE Order at 8.) The Court then  
27 ordered that TUSD "develop goals for increasing participation of ELL students in specific  
28

1 ALE programs, where practicable, and [to] provide explanation to the plaintiffs and the  
2 Special Master as to how these goals were derived.” (*Id.* at 9.)

3 Notwithstanding the Court’s rejection of TUSD’s argument, the District only  
4 developed goals for ALEs “offered in the primary language(s) of the majority of the  
5 district’s ELL students.” (*See* TUSD’s ELL Supplement to the ALE Action Plan Report  
6 (“ELL Supplement”) at 1, attached as Exhibit D.) Those ALEs are: (1) Middle School for  
7 High School Credit Courses, (2) the Dual Language Program, (3) Advanced Placement  
8 Classes, and (4) the Dual Language Self-Contained GATE, which, as far as Mendoza  
9 Plaintiffs are aware, regards only the Self-Contained Gate at Hollinger K-8 school.

10 The District continues to argue that ELL students’ limited proficiency and the four-  
11 hour English Language Development (“ELD”) block prevent it from setting goals for  
12 ELLs’ participation in all ALEs delivered in English. (*See* Exhibit D at 1.) However, as  
13 Mendoza Plaintiffs noted in their comments on the ELL Supplement provided to the  
14 District, the refusal to develop goals for the vast majority of ALEs ignores the fact that  
15 ELLs have varying degrees of English-language proficiency. (*See* Mendoza Plaintiffs’  
16 Comments and Objections to TUSD’s ELL Supplement to the ALE Action Plan Report at  
17 2, attached as Exhibit E ).

18 Moreover, contrary to the District’s assertion, ELLs have participated in a large  
19 number of ALEs for which the District has not developed goals for. For example, in its  
20 Annual Report, the District reported that for the 2013-2014 school year, the following  
21 numbers of ELLs participated in ALEs: 19 in Pre-AP classes, 15 in Pull-out Gate, 4 in  
22 Advanced Placement classes, 3 in International Baccalaureate program, 2 in Resource  
23 GATE, and 1 in Self-contained GATE. (Doc. 1687-8 at 44-46). Notably, ELLs  
24 participated in the International Baccalaureate program and in a Self-Contained Gate,  
25 which are full-time programs in which the District has asserted ELLs would be unable to  
26 participate. (Doc. 1788 at 11).

27 Moreover, beginning in the upcoming 2015-16 school year, the four-hour ELD  
28 block the District cites as a barrier to ELL participation in ALEs will become less

1 burdensome, which should allow the District to recruit even more ELLs in ALEs than it  
2 did for the 2013-14 school year. (The Arizona Department of Education’s refined ELD  
3 requirements to be implemented beginning the 2015-16 school year can be accessed at  
4 [http://www.azed.gov/english-language-learners/files/2015/01/approved-refinements-to-](http://www.azed.gov/english-language-learners/files/2015/01/approved-refinements-to-the-sei-models.pdf)  
5 [the-sei-models.pdf](http://www.azed.gov/english-language-learners/files/2015/01/approved-refinements-to-the-sei-models.pdf).) Under the refined requirements, intermediate-proficiency ELL  
6 students at all school levels who are not in their first year of ELD instruction can have their  
7 participation in the ELD block reduced by between one and two hours.

8 The District has the tools necessary to help it identify and recruit ELL students into  
9 ALEs, further illustrating the inadequacy of TUSD’s ELL goals. For the Dual-Language  
10 Self-Contained GATE, “TUSD’s assessment protocol was revisited so that students could  
11 qualify on variables outside of academic and language proficiency. The Raven, a non-  
12 verbal assessment, was selected as the primary assessment tool in identifying ELLs for  
13 GATE program participation. As a result, more ELLs were identified and selected,  
14 resulting in the 71% increase” in ELLs’ participation. Exhibit D at 3. Notwithstanding the  
15 District’s statement, as far as Mendoza Plaintiffs could tell, the Raven assessment was only  
16 used to recruit ELLs into the Dual-Language Self-Contained GATE. The District could  
17 just as easily use non-verbal assessments to identify ELL students for participation in its  
18 other GATE programs. In addition, as discussed above, the District has indicated that it  
19 has waiting lists of students eligible for GATE programs, but for which capacity  
20 limitations prevents their current participation. The District should be able to give any  
21 ELLs on these waiting lists priority for participation in ALEs, which would further allow it  
22 to successfully recruit these students.

23 While Mendoza Plaintiffs believe that it is appropriate to consider ELL’s varying  
24 levels of English-language proficiency in developing goals for their participation in ALEs,  
25 they neither believe it appropriate that the this be the basis for developing goals only for  
26 the ALE programs delivered in ELLs’ primary language nor that this is what the Court  
27 contemplated in its ALE Order. They therefore request that this Court reject the District’s  
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1 development of few ELL ALE goals as non-compliant with its Order that TUSD develop  
2 ELL goals “in specific ALE programs, where practicable...” (ALE Order at 9.)

3 TUSD’s “Goal” of Four Additional ELL Students in AP Classes Per Year Is a Mere  
4 Projection of Expected Future Participation, Absent Any Further Actions by TUSD, and  
5 Inappropriately Focuses on Spanish Language and Literature Courses.

6 Notwithstanding that this Court stated that TUSD can use the “20% Rule each year  
7 as a rule-of-thumb to red-flag areas of concern, *including participation by ELL students in*  
8 *ALE programs, which may warrant further inquiry or improvement*” and that the “20%  
9 rule” “establish[es] *a floor*[,]” (Doc. 1771 at 7. (emphasis added)), the District sets a goal  
10 of adding a mere four additional ELL students to AP classes in each of the 2015-16 and  
11 2016-17 school years. (Exhibit D at 8.) Mendoza Plaintiffs object to this goal because it is  
12 insufficiently ambitious and merely reflects the projected growth of ELLs in AP classes in  
13 the coming school years. The District concedes so much in its indication that “[b]ased on  
14 the most recent trend over the last three years, TUSD *anticipates* a positive annual growth  
15 of about four students. *Based on this growth, the District forecasts* that by the end of FY  
16 2016-17 there will be similar growth of four students per year.” (*Id.* (emphasis added))  
17 The projected growth of ELL participation does not represent a goal that TUSD will strive  
18 to achieve to eliminate vestiges of past discrimination, but, instead, is a mere reflection of  
19 what TUSD expects to see without any additional effort on its part. Nor is “ensur[ing] that  
20 th[e] trend continues[.]” (*id.*), as TUSD says it will do, the kind of goal this Court  
21 contemplated (ALE Order at 9). This is particularly true here because the District states  
22 that it will endeavor to increase AP Spanish Language and AP Spanish Literature course  
23 offerings, which would increase ELLs’ access to those courses. (Exhibit D at 8.)

24 The District’s goal is further unacceptably low to the extent that it focuses on  
25 Spanish Language and Literature courses. (*See* Exhibit D at 8). As with the Dual  
26 Language program within the Self-Contained GATE ALE, goals for ELL participation that  
27 focus on only on Spanish Language components within those ALEs do not provide  
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1 meaningful access and participation to ELLs. Mendoza Plaintiffs therefore request that  
2 this Court require a more ambitious goal for ELLs participation in AP classes.

3 TUSD's Dual Language Goal Is Inadequate in Light of the Coming Expansions in  
4 TUSD's Two-Way-Dual-Language-Program and Upcoming State Changes That Would  
5 Increase ELL Student Identification

6 TUSD sets the goal of increasing ELLs' participation in its dual language program  
7 by 55 students for each of the 2015-16 and 2016-17 school years. However, as with its  
8 goal for ELL participation in AP classes, TUSD's dual language ELL participation goal is  
9 insufficiently ambitious in light of the District's planned expansion of its Two-Way Dual  
10 Language program ("TWDL program") in the next two school years, and State changes to  
11 the AZELLA Kindergarten Placement Test.

12 In the 2014-15 school year, TUSD implemented "Cycle 1" of its TWDL program  
13 initiative, implementing the program at kindergarten through second grades, sixth grade,  
14 and ninth grade at ten schools. (Exhibit D at 6; *see* TUSD's August 28, 2014 response re  
15 Dual Language program at 2, attached as Exhibit F (confirming ten schools participating in  
16 TWDL program).) In the 2015-16 school year, TUSD will implement the program for  
17 three additional grade levels, (Exhibit D at 7), and a similar expansion will occur in in the  
18 2016-17 school year. (*See* TUSD's Two-Way Dual Language Program Handbook at 12,  
19 attached as Exhibit G (referencing "Cycle 3" of TWDL program).) Given that TUSD  
20 reports that 280 ELL students participated in the Dual Language program for the 2014-15  
21 school year during which the TWDL program was implemented at five grade levels (K-2,  
22 6 and 9), the mere addition of 55 ELLs for 2015-16, during which new students will enroll  
23 in the program at three additional grade levels (3, 7, 10), (Exhibit D at 7), appears to be a  
24 mere conservative reflection of the growth the District anticipates it will observe. It is  
25 therefore not an appropriate goal for ELLs' participation in the District's dual language  
26 program.

27 Moreover, State changes to the AZELLA Kindergarten Placement Test, which  
28 resulted in under-identification of ELL students in the dual language program for the 2014-



1 15 year will be adjusted in the 2015-16 school year and will thereby help “identify  
2 kindergarten ELLs appropriately.” (Exhibit D at 7). Thus, beginning in the 2015-16  
3 school year, larger numbers of students enrolling in the District’s dual language program  
4 will be designated as ELLs. In light of this expected participation increase, which would  
5 not be a result of any TUSD effort, and expected increases as a result of the nature of the  
6 TWDL program, the District’s Dual Language ELL goal is not an appropriate goal.  
7 Mendoza Plaintiffs therefore request that the Court order the District to revise this goal as  
8 well.

9 **Conclusion**

10 For the reasons set forth above, this Court should sustain the objections of the  
11 Mendoza Plaintiffs to TUSD’s ALE Supplement and ELL ALE Supplement. Additionally,  
12 it should direct the Special Master to work with the parties to formulate a better standard to  
13 determine whether the District achieves unitary status with respect to ALEs.

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Dated: April 28, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2015, I electronically submitted the foregoing Mendoza Plaintiffs' Objections to TUSD's Notice of Filing of Advanced Learning Experiences Action Plan Supplement and ELL Supplement to the ALE Action Plan Report to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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