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11 Attorneys for Mendoza Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF ARIZONA**

14 Roy and Josie Fisher, et al.,
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16 Plaintiffs,
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18 v.
19 United States of America,
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21 Plaintiff-Intervenors,
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23 v.
24 Anita Lohr, et al.,
25
26 Defendants,
27
28 Sidney L. Sutton, et al.,
29
30 Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS' OBJECTION
TO SUPPLEMENTAL REPORT AND
RECOMMENDATIONS AMENDING
THE FEBRUARY 21, 2017 REPORT
REGARDING TRANSITION PLANS**

Hon. David C. Bury

1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et
7 al.,
8 Defendants.

Case No. CV 74-204 TUC DCB

9
10 **INTRODUCTION**

11 Concerned that the District’s failure to have completed transition plans for schools
12 losing magnet status on the schedule set forth in the Court’s Order of November 19, 2015
13 (Doc. No. 1870) and the subsequent delays in their preparation (with the result that the
14 proposed plans were not shared with the parties until mid January 2017) created a situation
15 in which the delay attendant on even an expedited R&R process would do disservice to the
16 students and schools that need to know the specifics of the plans, Mendoza Plaintiffs stated
17 that they would not seek an R&R even if the District failed to address their objections to
18 those plans. (*See* email dated February 14, 2017 to the Special Master and all parties,
19 attached as Exhibit A, noting, too, the Court’s statement in its Order dated December 27,
20 2016, Doc. 1981 at 9:16-17: It is “important for the District to act on its own accord and be
21 accordingly held accountable.”)

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25 Mendoza Plaintiffs submit the within objection to the Special Master’s
26 Supplemental Report and Recommendation Amending the February 21, 2017 Report
27 Regarding Transition Plan (“SM Supp. Report”) because they believe they must clarify the
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1 record. They hasten to add that in asserting their objections they do not now seek further
2 delay in the finalization and implementation of the long overdue transition plans. Rather,
3 they seek to clearly set forth the outcomes for which the District must ultimately be held
4 accountable.

5 **INTEGRATION**

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7 The fact that the transition schools, when magnets, were unable to attain student
8 bodies that met the definition of integration set forth in the USP does not relieve them of
9 the obligation to seek to achieve greater levels of integration, particularly since each now
10 is a racially concentrated school. As the Court stated in its Order of December 27, 2016
11 (Doc. 1983) (at 4:19-5:1): “To be clear, the Court reiterates that the withdrawal of magnet
12 status from these schools shall not have a negative impact on their students. The Mendoza
13 Plaintiffs are 100 percent correct: ‘[T]he failure of the subject schools to achieve
14 integration criteria set forth in the USP should not relieve them (or the District) of on-
15 going efforts to increase integration at those schools particularly given that every one of
16 them is reported to be racially concentrated in the District’s most recent Annual
17 Report....The District should take steps to encourage open enrollment at these schools by
18 students whose presence would reduce the racial concentration at these schools and should
19 continue to advertise the possibility of qualifying for free transportation under the USP.’”

20 **NARROWING THE ACHIEVEMENT GAP**

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22 As stated above, Mendoza Plaintiffs are not seeking to have the “substance of [the
23 transition] plans...amended, the consequence [of which] would be to recycle the planning
24 process and undermine the already problematic implementation of the transition plans.”
25 (SM Supp. Report at 3:21-22.) Rather, they sought to counter the assertion by the District
26

1 in its response to their original comments on the transition plans that closing the
2 achievement gap did not factor into its development of those plans. They fully support and
3 agree with the Special Master's statement that "[t]he District agreed with the goal of
4 narrowing the achievement gap when it approved the Comprehensive Magnet Plan in
5 which narrowing the achievement gap is specifically identified as one of the obligations of
6 the District. The District should be held accountable for achieving that goal." (*Id.* at 3: 7-
7 10.)
8

9 The only outstanding issue--resolution of which would not require amendment or
10 revision of any transition plan since it relates to the assessment of how successfully the
11 plans are implemented but not to the provisions of the plans themselves-- is the District's
12 surprising assertion that the achievement gap is to be assessed on a school by school basis
13 and that to do so in the transition schools would be unworkable because there are not "big
14 enough numbers [of white students] to constitute a representative sample." (TUSD
15 Response to Dr. Hawley and the Plaintiffs' Comments on the Transition Plans, Doc. 1987-
16 6, at 8, n. 1.) The simple answer, already recognized in the individual magnet school plans
17 of each of these schools and recently articulated by the Special Master "is to look at
18 performance district-wide to assess academic progress of the students in the schools."
19 (Special Master Reply to TUSD Response to Dr. Hawley and the Plaintiffs' Comments on
20 the Transition Plans, Doc. 1987-5, at 4, item #20.)
21

22 **CONCLUSION**

23 As set forth above, in the Mendoza Plaintiffs' reply to the District's response to
24 their comments on the transition plans, the USP, and multiple Court orders, when it comes
25 time to assess the District's performance under the USP and specifically with respect to its
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1 implementation of the transition plans for the schools that have lost magnet status, the
2 District should be held accountable for the extent to which the schools have reduced their
3 levels of racial concentration and moved toward being more integrated and for the extent
4 to which they have reduced the achievement gap as measured against district-wide
5 performance.
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7
8 Dated: March 7, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on I electronically submitted the foregoing MENDOZA PLAINTIFFS' OBJECTION TO SUPPLEMENTAL REPORT AND RECOMMENDATIONS AMENDING THE FEBRUARY 21, 2017 REPORT REGARDING TRANSITION PLANS 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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Dated: March 7, 2017

/s/ Roxana Ontiveros
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