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School District No. 1*

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
Tucson Unified School District No. 1,
et al.,
Defendants.

4:74-cv-00090-DCB
(Lead Case)

Maria Mendoza, et al.,
Plaintiffs,
v.
Tucson Unified School District No. 1,
et al.,
Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

MOTION FOR PARTIAL UNITARY STATUS

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Introduction and Summary

Tucson Unified School District No. 1 moves for an order that it is in unitary status regarding its operations in the areas of transportation, extra-curricular activities, family and community engagement, facilities, technology and its evidence-based accountability system, as defined in the Unitary Status Plan (“USP”). There are no remaining vestiges of discrimination causally linked to the *de jure* violations which occurred more than 40 years ago. The District has complied in good faith with the provisions of the current desegregation decree – the USP entered four years ago in February 2013. Accordingly, the District respectfully requests that the Court withdraw its supervision over District operations in these areas.

This motion is based on the following memorandum, the Annual Reports filed by the District along with the appendices to those reports, and the prior record and proceedings herein.

For the convenience of the Court and the parties, the District is preparing a compendium of the materials cited in this memorandum which, with the permission of the Court and the parties, the District will provide to all in electronic format, but will not separately file, as it only contains copies of materials already in the record.

I. PARTIAL UNITARY STATUS IS AN IMPORTANT STEP TOWARDS RETURNING CONTROL TO THE DISTRICT GOVERNING BOARD.

The decision of the Supreme Court twenty-five years ago in *Freeman v. Pitts*, 503 U.S. 467 (1992), established both the authority of a federal court to find a school district partially in unitary status, and the importance of doing so in light of the ultimate goal to return supervision to local authorities. In *Freeman*, the Supreme Court reviewed the order of the district court finding that the DeKalb County School System had achieved unitary status in certain areas of its operations, and relinquished remedial control in those areas, while retaining supervision as to the remaining areas. The Eleventh Circuit reversed, holding that the district court must retain jurisdiction over all of the school district’s operations until such time as it found complete unitary status, and

1 terminated supervision entirely. The Supreme Court reversed the decision of the 11th
2 Circuit, holding that a “federal court in a school desegregation case has the discretion to
3 order an incremental or partial withdrawal of its supervision and control.” 503 U.S. at
4 489. The Supreme Court also emphasized the importance of the exercise of that
5 discretion. “Partial relinquishment of judicial control, where justified by the facts of the
6 case, can be an important and significant step in fulfilling the district court’s duty to
7 return the operations and control of schools to local authorities.” *Id.*

8 The *Freeman* opinion still provides guidance today for district courts in
9 considering a request for partial unitary status. In deciding whether to order partial
10 withdrawal, a court should consider: (1) whether the district has complied with the
11 decree in those aspects of the system where supervision is to be withdrawn; (2) whether
12 retention of judicial control over each specific area is needed to achieve compliance
13 with the decree in other facets of the school system; and (3) whether the district has
14 demonstrated its good-faith commitment to the whole of the court’s decree so the court,
15 public and parents understand the school district will not return to or operate a dual
16 system in the particular area where supervision will be withdrawn. *Freeman*, 503 U.S.
17 at 491.

18 Substantial, but not complete, compliance is all that is required as long as it was
19 made as part of a good faith effort at compliance. *Howard Johnson Co. v. Khimani*, 892
20 F.2d 1512, 1516 (11th Cir. 1990). “[I]n determining whether a school board has acted
21 in good faith, a court should not dwell on isolated discrepancies, but rather should
22 ‘consider whether the school board’s policies form a consistent pattern of lawful
23 conduct directed to eliminating earlier violations.’” *Manning ex rel. Manning v. School*
24 *Bd. of Hillsborough Cty.*, 244 F.3d 927, 946 (11th Cir. 2001) (quoting *Lockett v. Board*
25 *of Educ. of Muscogee County Sch. Dist.*, 111 F.3d 839, 843 (11th Cir.1997)). “The
26 focus is on the school board's pattern of conduct, and not isolated events, because the
27 purpose of the good-faith finding is to ensure that a school board has accepted racial
28

1 equality and will abstain from intentional discrimination in the future. [Citation omitted]
2 Focusing on isolated aberrations blurs a court's long-term vision.” *Id.* at n. 33.

3 **II. NO VESTIGES OF PAST *DE JURE* VIOLATIONS REMAIN TODAY IN**
4 **THE SIX AREAS OF DISTRICT OPERATIONS AT ISSUE IN THIS**
5 **MOTION.**

6 “The vestiges of segregation that are the concern of the law in a school case may
7 be subtle and intangible but nonetheless they must be so real that they have a causal link
8 to the *de jure* violation being remedied.” *Freeman*, 503 U.S. at 496.

9 The only findings of *de jure* violations in this case are set forth in Judge Frey’s
10 Findings of Fact and Conclusions of Law, after a full evidentiary trial on the merits forty
11 years ago, in January 1977. [ECF 345.] The analysis of whether any vestiges of past
12 discrimination remain, then, must be founded on a clear understanding of (a) exactly
13 what conduct Judge Frey found to violate constitutional standards, and (b) what vestiges
14 of that conduct Judge Frey found remaining at the time of the trial in 1977.

15 After carefully considering the evidence presented, Judge Frey’s findings of *de*
16 *jure* violations may be summarized as follows:

17 a. The District failed to properly assign African American students to other
18 schools when dismantling the prior segregated system in 1951, because it assigned too
19 many African American students to schools that were heavily Hispanic.

20 b. During the 1950s and 1960s, some elementary school construction and
21 siting decisions were made with segregative intent, resulting in higher concentrations of
22 Hispanic students in some schools.

23 c. During the 1960s, some decisions to relieve individual school
24 overcrowding were made with segregative intent, resulting in Hispanic students being
25 assigned and transported to schools with high Hispanic concentrations, and Anglo
26 students being assigned and transported to schools with lower Hispanic concentrations,
27 despite the availability of closer, more integrative alternatives. [ECF 345, Ex. 1,
28 *passim*.]

1 Judge Frey was careful to limit his findings of violations. First, he found that the
2 District had never operated a dual school system with respect to Hispanic and white
3 students:

4 In light of the principles discussed above and the evidence
5 presented, the segregative acts by the District and the
6 existence of racial imbalance in the schools are insufficient
7 for a finding that a Mexican-American/Anglo dual school
8 system has ever been operated by the defendants. [*Id.*, p.
9 221.]

10 He noted that the District had made substantial but not complete progress in eliminating
11 the vestiges of the state-mandated segregation which ended in 1951:

12 It appears that at the time Brown v. Board of Education,
13 (Brown I) 347 U.S. 483, was decided in 1954, the District
14 was in compliance with its mandate insofar as Blacks were
15 concerned. . . . However, in light of the subsequent cases
16 interpreting what the United States Supreme court meant in
17 1968 in Green v. Country School Board, 391 U.S. 430, when
18 it stated, at page 438, that a dual system must be eradicated
19 "root and branch", it now appears that all effects of the dual
20 system which existed in 1950-51, were not effectively
21 eradicated, notwithstanding considerable progress and
22 attenuation. What effect remains is discussed elsewhere in
23 these Findings. [*Id.*, pp. 119-120.]

24 Although most parts of the dual Black/non-Black school
25 system were dismantled in 1951-52, and although most later
26 decisions were made using neutral policy considerations, the
27 District was under an affirmative duty to go beyond just
28 neutral policy considerations in order to erase all effects of
the past statutory segregation. It failed to do so. [*Id.*, p.
222.]

Moreover, Judge Frey's findings were primarily limited to elementary schools:

Except for Spring, no reasonable inference could be drawn
that the imbalances present in the junior high schools at the
time of trial resulted from segregative intent or acts on the
part of the District. [*Id.*, p. 184.]

Except as to Spring Junior High, a conclusion or inference
that the District has operated or is operating a dual or
segregated junior high school system with respect to either
Black students, Mexican-American students, or both, is not
warranted by the evidence. [*Id.*, p. 186.]

1 There is no dual junior high school system within the
2 District, even though Spring retains effects from former
segregation as to Black students. [*Id.*, p. 189.]

3 The District has never operated a de jure segregated or dual
4 system with respect to high schools. [*Id.*, p. 193.]

5 There has been no evidence presented from which it can
6 rationally or reasonably be inferred that the District has
7 operated a de jure segregated dual high school system or that
there is a current condition of segregation in any high school
in the District resulting from intentionally segregative State
or District action. [*Id.*, p. 194.]

8 Finally, Judge Frey made it clear that most of the effects of the *de jure* violations had
9 attenuated by the time of the trial forty years ago, and that the current racial balance in
10 most schools in the District was not the result of those *de jure* violations:

11 In summary of this section on segregation and desegregation
12 within and/or by the District, a reasonable conclusion to be
13 drawn is that the District is not operating a de jure
14 segregated system, notwithstanding some segregative intent
15 and actions. The District made a commendable and valiant
16 effort to desegregate the dual or de jure system as to Blacks,
17 at the time and under the circumstances, including the state
18 of the law then existing. Viewed 25 years later under
19 different circumstances, including a whole new array of
legal decisions, it was inadequate. However, most of the
effect from the earlier segregation of Black students, has
attenuated during the past 25 years. As stated elsewhere in
these findings, it appears that some effect may remain, as
evidenced by the relatively large number of Black students
remaining in the area of Spring, Roosevelt and University
Heights. [*Id.*, p. 70.]

20 In the final analysis, the only vestige of the prior discrimination which Judge
21 Frey found continued to exist as of the time of trial was in the racial and ethnic makeup
22 of students at nine schools in the District, five of which no longer exist as active
23 schools:

24 Some effects of past intentional segregative acts by the
25 District remain at these schools: Spring Junior High, Safford
26 Junior High, University Heights, Roosevelt, Manzo,
Jefferson Park, Cragin, Tully and Brichta. [*Id.*, p. 223.]

27 Judge Frey made no findings that any vestiges of the prior discrimination remained in
28 the areas of transportation, extra-curricular activities, family and community

engagement, facilities, or in the then-current analogs of technology or data systems.¹ Indeed, Judge Frey found precisely the opposite with respect to transportation and extracurricular activities:

The single high school, Tucson High, had segregated homerooms prior to 1946. In that year, Superintendent Morrow eliminated this practice, along with other similar practices in athletics, choir, band, orchestra and all other school activities. [*Id.*, p. 42.]

Since 1969, all Black and Mexican-American students in the District could attend any school of their choice anywhere in the District, provided their attendance at such school improved the racial balance in that school; transportation to any such school would be furnished by the District. [*Id.*, p. 200.]

Nearly ten years ago, this Court addressed whether the very limited vestiges of discrimination found by Judge Frey to exist in 1977 continued to exist. First, the Court noted:

As noted in the Court's February 7, 2006, Order, Judge Frey made very limited, specific findings regarding student assignments and the existence of any vestiges of *de jure* segregation remaining in the district. [ECF 1239, p. 2.]

The Court then turned to the only vestiges found by Judge Frey – student assignment at the nine schools – and held that any vestiges existing in 1977 had been eliminated by 1986:

The Court finds that as to student assignments at Brichta, Manzo, and Tully, any vestiges of *de jure* segregation were eliminated to the extent practicable as of 1983.

...

The Court finds that as to student assignments at Safford Middle School, any vestiges of *de jure* segregation were

¹ In the “Comment” section of his findings, Judge Frey did note that “[i]t may well be appropriate at any future hearings in this case to determine whether there are any existing effects from such past discriminatory acts of the District, as found by the Court, which may not have been apparent to the Court.” [ECF 345, Ex. 1, p. 205] However, given the full and hotly contested trial, the extensive post-hearing briefing, the year that Judge Frey took to carefully assess the evidence, and his detailed findings and conclusions spanning 223 pages, it is extraordinarily unlikely that anything escaped Judge Frey’s careful eye. Certainly no one since has suggested that Judge Frey missed any vestiges in his 1978 decision.

1 eliminated to the extent practicable as of 1986. [ECF 1239,
2 pp. 16, 18.]

3 Spring Junior High, University Heights and Roosevelt had been closed many years
4 earlier, and in a subsequent order the Court adopted findings that student body
5 enrollment at Cragin and Jefferson Park by 1983 had met targets established in 1978.
6 [ECF 1270, p. 6.]²

7 Accordingly, since the only causally-linked vestiges found by Judge Frey to exist
8 forty years ago in 1977 (student assignment at the nine listed schools) had been
9 eliminated by 1986, there can be no vestiges of discrimination existing today which are
10 causally linked to the *de jure* discrimination which is the foundation of this case. In
11 short, this is one of the “rare cases . . . where the racial imbalance had been temporarily
12 corrected after the abandonment of *de jure* segregation” where it can be asserted with
13 “confidence that the past discrimination is no longer playing a proximate role.”
14 *Freeman, supra*, 503 U.S. at 503 (Justice Scalia, concurring).

15 Even in the absence of these findings, it is beyond genuine dispute that no aspect
16 of the school district operations which are the subject of this motion retains any vestiges
17 which are causally linked to any *de jure* discrimination found to have occurred from 45
18 to 70 years ago. The very nature of those operations is so fundamentally different now
19 than it was then, the makeup of the district and the community so different, and the time
20 period of the violations so very long ago, as to make it far “more unlikely than not” –
21 indeed all but impossible – that there could be any causal link to the limited instances of
22 discrimination found by Judge Frey to have occurred many years prior to the trial in
23 1977. As Justice Scalia noted twenty five years ago, “[a]t some time, we must
24 acknowledge that it has become absurd to assume, without any further proof, that
25 violations of the Constitution dating from the days when Lyndon Johnson was President,
26

27 ² The factual findings of the Court’s 2007 and 2008 orders cited above were not
28 set aside by the 9th Circuit in its subsequent decision remanding the matter for further
supervision by the Court.

1 or earlier, continue to have an appreciable effect upon current operation of schools. We
 2 are close to that time.”). *Id.* at 506.

3 **III. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE** 4 **PROVISIONS OF THE USP REGARDING TRANSPORTATION.**

5 Section III of the USP sets out eight general obligations for the District in
 6 transporting its students to and from school and school activities. The District must (a)
 7 utilize transportation services as a critical component of integrating schools; (b) make
 8 transportation decisions that promote student attendance at integrated and magnet
 9 schools and programs; (c) include District transportation administrators in planning and
 10 monitoring activities related to student assignment and integration; (d) provide free
 11 transportation to District students enrolled in magnet schools and programs and to
 12 students enrolled in racially-concentrated schools where such transfers increase the
 13 integration of the receiving school and when those students live outside the “walking
 14 zone” of the school in which they are enrolled; (e) provide prospective and enrolled
 15 families with information regarding the availability of free transportation at school sites,
 16 Family Centers, the District office, and on the website; (f) not permit race- or ethnicity-
 17 based discrimination by a private party with which it contracts to provide transportation;
 18 (g) include the transportation each student receives in the student’s data dashboard entry
 19 by July 1, 2013³; and (h) include data in the Annual Reports regarding student use of
 20 transportation, disaggregated by school attended and grade level.

21 **A. The District Has Complied With Each Of The Eight Transportation** 22 **Requirements.**

23 The story of the District’s compliance with its Transportation obligations is
 24 largely told through the District’s Annual Reports, as well as its policies expressly
 25 committing to continued use of transportation to support integration and educational
 26 improvements for all students.

27 ³ The “student’s data dashboard” is an undefined term in the USP, but which
 28 refers to the information about a student which automatically appears on an authorized
 user’s screen when the student’s record is accessed in the District’s electronic student
 information system (known as Mojave at the time, and now known as Synergy).

1 **1. The District utilizes transportation services as a critical**
2 **component of integrating schools.**

3 The District utilized transportation services as a critical integration component
4 from the very inception of the USP, with more than a third of all transportation going
5 toward fulfilling desegregation obligations, including approximately 25% for magnet
6 transportation, 6% for ALE transportation, 3% for incentive transportation, and the
7 balance for other integration-related transportation (extracurricular support and
8 grandfathered ABC zone students). [AR 12-13, ECF 1549-1, p. 27; AR 14-15, ECF
9 1918-1, p. 71.] In SY 12-13, the District also constructed and opened a new bus facility
10 on the west side of town, improving bus service for west-side schools, which
11 predominantly serve the District's Hispanic students and families. [AR 12-13, ECF
12 1549-1, p. 26.] Since the USP was entered, the District has provided transportation to
13 every student eligible for and desirous to use transportation, including to approximately
14 75% of all students who are eligible for desegregation-related transportation. [AR 13-
15 14, ECF 1686, p. 66.] Over the past three years, the district has consistently provided
16 magnet student transportation to approximately 5,600 students per year, with rates of
17 ridership among African American and Hispanic students that exceed those students'
18 rates of enrollment in the District. [AR 15-16, ECF 1958-1, p. 88.]

19 **2. Transportation decisions are made to promote integration.**

20 From the inception of the USP and throughout its implementation, transportation
21 decisions have been made to promote student attendance at integrated and magnet
22 schools and to improve racial integration. The District created a plan to provide free
23 transportation for every eligible student who wanted transportation to magnet schools
24 and programs or to improve integration, and the District has successfully implemented
25 this plan throughout the life of the USP. As detailed in subsections 1 and 3-9 of this
26 section, the District's transportation decisions promoted these goals by offering and
27 transporting every qualified and willing student to magnet schools, magnet programs
28 and schools where such transportation would improve integration.

1 **3. District transportation administrators participated in planning**
 2 **and monitoring activities related to student assignment and**
 3 **integration.**

4 Beginning in SY 13-14, the District's Transportation Director, Routing Manager
 5 and Project Manager collaborated with the Director of Interscholastics, the Director of
 6 School Community Services (Student Assignment), and directors from elementary and
 7 secondary leadership to develop and submit for approval five action plans focused on
 8 integration that also contained clearly articulated Transportation goals. These plans
 9 included the Extracurricular Equitable Access Plan, the Family Engagement Plan, the
 10 Advanced Learning Experiences ("ALE") Access and Recruitment Plan, the
 11 Comprehensive Magnet Plan, and the Comprehensive Boundary Plan. [AR 13-14, ECF
 12 1686, pp. 66-67.] Details regarding the role of transportation in these plans are included
 13 in the Transportation section (section III), as well as the Student Assignment, Discipline
 14 and Extracurricular activities sections (Sections II, VII and VIII) of AR 13-14. [*Id.*]

15 These administrators also work closely with the Coordinated Student Assignment
 16 ("CSA") Committee, which allows multiple District administrators to collaborate to
 17 improve integration and diversity across a wide variety of District programs. [AR 15-
 18 16, ECF 1958-1, p. 85.] For example, the CSA Committee was pivotal in designing,
 19 developing, marketing, and implementing express shuttles for SY 16-17 (designed to
 20 reduce travel times and increase the impact of transportation on promoting integration
 21 and reducing racial concentration through the voluntary movement of students), and in
 22 monitoring and planning activities related to student assignment and integration. [*Id.*]

23 **4. The District offered free transportation to all District students**
 24 **enrolled in magnet schools and programs, and to students**
 25 **enrolled in racially-concentrated schools where such transfers**
 26 **increase the integration of the receiving school.**

27 The District has provided free transportation to all students enrolled in magnet
 28 schools and programs, and to students who transfer and enroll in racially concentrated
 schools where the transfer increases the integration of the receiving school. [AR 13-14,
 ECF 1686, pp. 68-69; AR 13-14, Apps. III-1, III-3, ECF 1689-9, pp. 1, 4-10; AR 14-15,
 ECF 1918-1, pp. 70-71; AR 15-16, ECF 1958-1, pp. 87-90.] These reports detail

ridership totals and percentages of those who took advantage of magnet- and integration-related free transportation, broken down by program and race. [Id.] For example, in SY 13-14, out of the total magnet school population, 5580 students were eligible for, and were offered, free transportation, and ridership among African Americans, Hispanic, Native Americans, Asian/Pacific Islanders and Multiracial students all slightly increased. [AR 13-14, ECF 1686, pp. 68-69.] In SY 14-15, 5796 magnet students, 1,471 GATE and University High School students, 793 Incentive Transportation students, and 1006 ABC zone students were eligible for magnet- and integration-related free transportation. [AR 14-15, ECF 1918-1, pp. 70-71.]

5. The District provided prospective and enrolled families with information regarding the availability of free transportation at school sites, Family Centers, the District office, and on the District website.

Beginning in SY 13-14, all open enrollment and magnet applications and school registration forms referenced the availability of transportation. These forms were available in English and Spanish at all school sites, the Family Centers, and the District's School Community Relations office. Copies were also available online in seven languages, including English and Spanish. [AR 13-14, ECF 1686, pp. 69-70.] Samples of these forms and notices can be found at AR 13-14, Appendix III-3 [ECF 1686-9, pp. 4-10.] In July 2015, the District sent letters with routing information to parents that were customized for incoming kindergarten students, homeless students, incentive transportation students, and others, resulting in 22 versions of the letter. [AR 15-16, App. III-2, ECF 1961-1, p. 5.]

6. The District did not permit race- or ethnicity-based discrimination by a private party with which it contracts to provide transportation.

The District's contracts with private transportation services providers include language prohibiting race- and ethnicity-based discrimination, and TUSD's internal EEO compliance officer was available to review and investigate alleged violations of this policy. The District has not received any reports of such discrimination. [AR 13-14,

App. III-4, Standard Terms and Conditions, ECF 1686-9, pp. 20, 47; AR 14-15, ECF 1918-1, p. 70; AR 15-16, ECF 1958-1, p. 87.]

7. The District included the transportation each student was eligible to receive in the student's data dashboard record entry by July 1, 2013.

By April 2013, transportation eligibility and routing were included on each student's dashboard, updated nightly. If students ride a yellow bus, their bus schedule is included. If they have SunTrans bus passes, this eligibility is noted. If they decline or fail to appear for transportation services, this is noted. By July 2013, each student's dashboard also included information identifying transportation programs for which the student was eligible, including, for example, GATE, incentive transportation and magnet transportation. [AR 13-14, ECF 1686, p. 72; AR 14-15, ECF 1918-1, p. 73-74.]

8. The District included data in the Annual Reports regarding student use of transportation, disaggregated by school attended and grade level.

Beginning with AR 13-14, the District included in its Annual Reports District-wide transportation information disaggregated by school and grade level. [AR 13-14, ECF 1686, p. 72; AR 13-14, App. III-1, ECF 1686-9, p. 1; AR 14-15, App. III-4, ECF 1848-8, p. 8; AR 15-16, App. III-3, ECF 1961-1, p. 7.] The District also included extensive information on transportation disaggregated by race and ethnicity, and by school program, among other areas. [AR 13-14, ECF 1686, pp. 66-67; AR 14-15, App. III-3, ECF 1848-8, p. 7; AR 15-16, Apps. III-6 and III-7, ECF 1961-1, pp. 50-53.] This data demonstrates the District's provision of transportation on an equitable basis to students of all backgrounds and as a key component of integration.

B. The District's Transportation Policies And Practices Are Consistent With Other Districts That Have Achieved Unitary Status.

The District's transportation policies and practices are consistent with other districts that have achieved unitary status. For example, in *United States v. Morehouse Parish School Board*, 2013 WL 791578 (W.D. La. Mar. 4, 2013), the court found and declared:

1 The School Board has continuously and purposefully
2 implemented unitary transportation policies for more than
3 the past three years. Under those policies, there are no dual
4 routes (and have not been for many years). All students who
5 are eligible are provided free school bus transportation to
6 and from school, regardless of how far or close they live to
7 the school which they attend. Those students who request
8 majority-to-minority transfers are, likewise, transported to
9 their requested schools.

10 Students are assigned and transported according to a
11 geographically feasible route schedule that affords the most
12 integration possible given the geographical and time
13 limitations. Of the eighty-six bus routes, there are six bus
14 routes which transport students of only one race. However,
15 those routes are based only on the demographic living
16 patterns of the students and the feasibility of transportation,
17 not based on discriminatory purposes.

18 The Court finds that the School Board has operated and
19 continues to operate its system-wide transportation program
20 in a unitary manner, with no vestige of past discrimination
21 remaining in that area of operation. It has adhered to its non-
22 discriminatory policies and practices for many more than the
23 requisite three years necessary to demonstrate it has attained
24 unitary status in that area of operation. Therefore, the School
25 Board is unitary in the area of transportation.

26 *Morehouse*, 2013 WL 791578 at *3; *see also Andrews v. Monroe Cty. Sch. Bd.*, 2015
27 WL 5675862 at *5-8 (W.D. La. Sept. 25, 2015) (declaring unitary status for the areas of
28 transportation and student assignment, but continuing supervision over the assignment
of teachers and principals); *United States v. Bd. of Pub. Instruction of St. Lucie Cty.*, 977
F. Supp. 1202, 1221 (S.D. Fla. 1997) (“[T]he District’s well documented commitment to
equitably distribute transportation burdens, and the current lack of any racially
identifiable burdens compels this Court to grant the District’s motion as to
transportation. As well, the institutional safeguards as implemented by the District,
convinces the Court that any future burdens will be adequately handled by local
authorities and processes.”)

Here, the District has continuously and purposefully implemented unitary
transportation policies for years, there are no dual routes, all students who are eligible
are provided free school bus transportation to and from school, and all those who
request incentive transfers are transported to their requested schools. Additionally, the

1 District has for years provided transportation for magnet schools and programs,
2 extracurricular activities, and other integration-related efforts, all without
3 discrimination. Of course, the law does not require, and no system can create,
4 transportation that provides perfect equality to all students. *See Swann v. Charlotte-*
5 *Mecklenburg Bd. of Ed.*, 402 U.S. 1, 29 (U.S. 1971)(no rigid guidelines exist to gauge
6 unitary status with regard to transportation). Still, the District has been and remains
7 unitary in its transportation policies and efforts, and is committed to adequately and
8 properly addressing any potential future burdens related to the District's transportation
9 policies and procedures.

10 Based on this demonstrated good-faith compliance and commitment, this Court
11 can be satisfied that the district "has accepted the principle of racial equality and will not
12 suffer intentional discrimination in the future," *Freeman*, 515 U.S. at 498, and that there
13 is virtually no possibility that the school district's compliance with court orders was
14 only a "temporary constitutional ritual," or that the District will return to operating in an
15 unconstitutional manner, *Morgan v. Nucci*, 831 F.2d 313, 321 (1st Cir. 1987).

16 **IV. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE**
17 **PROVISIONS OF THE USP REGARDING EXTRACURRICULAR**
18 **ACTIVITIES.**

19 Section VIII of the USP requires the District to do the following "in order to
20 provide students equitable access to extracurricular activities": (1) offer opportunities
21 for interracial contact in positive settings of shared interest; (2) provide a range of
22 extracurricular activities at each school; (3) provide transportation to support
23 extracurricular activities in a manner that promotes the attendance of District students at
24 integrated and magnet schools; (4) where voluntary tutoring is provided, ensure that it is
25 provided equitably; and (5) identify and implement changes to the student information
26 system to facilitate better reporting on participation in extracurricular activities. [ECF
27 1713, pp. 53-54.]
28

1 **A. The District Has Complied In Good Faith With USP Provisions For**
2 **Extracurricular Activities.**

3 Upon the entry of the USP, the District immediately began taking steps to
4 evaluate and develop the District's abilities to provide equal access and opportunities to
5 and within extracurricular activities in the District. The Director of Interscholastics
6 worked with a committee of representatives from the Fine Arts, Student Equity,
7 Transportation, and Guidance and Counseling departments, and with principals from
8 elementary and high schools to evaluate the District's extracurricular activities programs
9 and develop a plan to pursue the steps needed to improve the equitable provision of
10 extracurricular activities to all students and to ensure good faith compliance with the
11 USP. [AR 13-14, ECF 1686, p. 194; AR 13-14, App. VIII-1, ECF 1690-8, pp. 1-5.]
12 The District prepared the Extracurricular Equitable Access Plan, which was submitted to
13 the Plaintiffs and the Special Master for review, and was subsequently finalized and
14 approved. [*Id.*] The District utilized that plan to pursue and accomplish the goals of
15 providing all students opportunities to participate in extracurricular activities regardless
16 of race, ethnicity or ELL status, and to promote diversity in extracurricular activities,
17 bringing students of all races and cultures together in positive settings of shared interest.
18 [AR 15-16, ECF 1958-1, p. 364.]

19 **1. Offering opportunities for interracial contact in positive**
20 **settings of shared interest.**

21 Each year since the inception of the USP, the District provided all students with
22 equitable access to extracurricular activities regardless of their race, ethnic background
23 or ELL status, allowing them to have interracial contact in positive settings of shared
24 interest. [AR 15-16, Table 8.1, ECF 1958-1, p. 366.]

25 In October 2013, the District developed a plan to implement a leadership
26 academy for students in grades 6-12 to identify extracurricular activities of shared
27 interest and to discuss strategies for rolling out the activities at various sites. [AR 13-14,
28 ECF 1686, p. 195.] As discussed in more detail below, by the start of SY 14-15, the
District had developed several strategies for increasing the available opportunities for

1 interracial contact in positive settings of shared interest. In the fall of 2014, the District
2 conducted parent and student surveys to gain perspectives on student participation – and
3 interest – in various extracurricular activities, including a survey developed specifically
4 for obtaining feedback from parents of African American and Latino students. [AR 14-
5 15, ECF 1918-1, pp. 298-99; AR 14-15, Apps. VIII-3 – VIII-5, ECF 1852-3, pp. 9-16.]⁴

6 From the surveys, the District developed sharper insights into the primary
7 obstacles to participation, including event times, lack of transportation, and a lack of
8 activities on Wednesdays when schools conduct staff professional development. The
9 District also gained insights as to the participation disparities between activity types.
10 For example, high school student participation in sports was approximately three times
11 that of participation in fine arts and clubs. [*Id.* p. 299.] The District then took the
12 insights obtained from the assessments and developed three programs (Dimensional
13 Coaches Training⁵, the Captain's Academy⁶, and Pursuing Victory with Honor

14
15 ⁴ The surveys included questions such as “What extracurricular activities would
16 you like to see at your school”, “What keeps you from participating in extracurricular
activities at your school”, and “What kind of tutoring services would you like to see at
your school?” [AR 14-15, pp. VIII – 278-79, ECF 1918-1, pp. 298-99.]

17 ⁵ During the summer of 2015, each TUSD fall season coach and sponsor
18 participated in a four-hour 3Dimensional Coaches Training that focused on building
relationships with students. Extensive research regarding different coaching
19 philosophies and the cultural influence of coaches in the lives of the people they impact
supported the 3Dimensional Coaching curriculum. In this curriculum the 1st Dimension
20 is Fundamentals (Physical); the 2nd Dimension is Psychology (Mind); the 3rd
Dimension is Heart (Relationship). Research shows only fifteen percent of coaches
21 intentionally coach beyond the 1st Dimension, and so the District provided this training
to educate its coaches about the importance of the other two dimensions. The purpose
22 of the training was to bring coaches and sponsors together to discuss relationship
building as it pertains to the students under their charge and to focus attention on
23 creating a culture and climate of inclusion. This was a critical part of providing
opportunities for interracial contacts in a positive setting. When choosing this training
24 for the coaches, the District used the following core beliefs, which are integral to the
District's mission: coaches can have a greater impact on the lives of the students they
25 work with than any other adult; athletics is a natural environment for learning to work
together in a positive setting; working toward a common goal is inherent in sports and it
26 takes a coach who understands that premise; and winning comes from developing a
culture of respect and integrity. This training was mandatory for all paid coaches
starting in SY 15-16. [AR 14-15, ECF 1918-1, pp. 301-02.]

27 ⁶ The Captain's Academy program provided a strong additional component to
28 extracurricular athletic activities. This highly successful program targeted individual
team captains to learn, grow, and share leadership traits with their teammates and fellow
students. These academies offered leadership development and provided opportunities

1 Training⁷), all of which provided participants with training and skills that fostered
2 interracial contact in positive settings of shared interest. [*Id.* at 301.] The District also
3 addressed transportation concerns by utilizing activity buses to improve transportation to
4 after-school extracurricular activities.

5 In SY 15-16, the District continued its efforts to provide leadership training to
6 both students and coaches, and to explore more effective ways of surveying parents and
7 students to increase opportunities for participation – focusing specifically on increasing
8 the number of African American and Hispanic students in leadership clubs on its
9 campuses, particularly in the high schools, and recruiting participants through student
10 announcements and school websites. The highest participation levels for both groups
11 were in the Future Business Leadership Association (“FBLA”) and Student Council.
12 [AR 15-16, DAR, ECF 1958-1, p. 372.] The District continues to expand outreach
13 efforts through communications sent directly to homes, advertising during assemblies
14 and athletic events, and posting daily announcements and activities on school websites.
15 In a concerted effort to increase ELL participation in extracurricular activities, the
16 District also created advertising to encourage ELL involvement and translated the
17

18 for interracial contact in a positive setting. In SY 14-15 the District held two Captains
19 Academies. [AR 14-15, App. VIII-7, ECF 1852-3.] Catalina High School hosted the
20 Captains Academy in the fall of 2014, as did Duffy Elementary School in the spring of
21 2015. Athletic administrators selected student athletes based on their leadership abilities
22 as shown through team participation. Both academies were well represented by African
American and Hispanic students. Out of 42 students attending in the fall/winter of 2014,
nine were African American (21.8 percent), and eighteen were Hispanic (42.8 percent).
The spring academies had very similar numbers. [AR 14-15, ECF 1918-1, p. 302; AR
14-15, App. VIII-7, ECF 1852-3, pp. 19-73.]

23 ⁷ Pursuing Victory with Honor is a character education program that focuses on
24 five important pillars: Trustworthiness, Respect, Responsibility, Caring and Citizenship.
25 Coaches, sponsors, and students agree to abide by these principles during athletic
26 competition as well as throughout their daily lives. The District trained coaches and
27 coaches to disseminate the information to each student during practice and play.
28 Coaches nurtured these principles during practice and play and embedded them in the
rules of competition. Also, students in the Captain’s Academy received a deeper level of
training and then shared this information with their teammates. These character traits
helped to develop an atmosphere of positive learning for students and a culture of
kindness making schools a safe environment for learning. This program, through the
Arizona Interscholastic Association, embraced a healthy sport experience as the defining
feature of interscholastic athletics [AR 14-15, ECF 1918-1, p. 302.]

1 advertised flyers from English to Spanish and Swahili. [AR 15-16, App. VIII-2, VII-3,
2 ECF 1967-1, pp. 3-8.]

3 Based in part on the high level of interest in the Captain's Academy, the District
4 held a combined Captain's Academy event, the Harbor Experience, facilitated by a
5 group of young professionals and entrepreneurs who tour the country and give seminars
6 to students on character development, culture and climate on campuses, and leadership
7 opportunities through real-world life lessons. [AR 15-16, ECF 1958-1, pp. 372-73.]
8 Based on post-event assessments, the District learned that the sessions motivated
9 students to change the culture of their school, taught others how to start and maintain
10 successful school clubs or outside organizations, and showed students practical ways to
11 give back to their communities as young leaders. [*Id.*, p. 373.] A total of 346 high
12 school and middle school student leaders attended the Harbor Experience (66 percent
13 were members of the District's target group of African American and Hispanic
14 students). [*Id.*]

15 The District has consistently taken actions to eliminate barriers to participation in
16 extracurricular activities, including the elimination of transportation barriers and cost
17 barriers. In SY 13-14, the District partnered with the University of Arizona Sports
18 Physicians and Athlon Physical Therapy Group to provide low-cost physical
19 examinations to District students. Through the partnership, these organizations agreed
20 to provide physicals to students for a minimal cost of \$10.00 (and entirely free physicals
21 to students who could not afford that fee). The proceeds from families who could afford
22 the cost went directly back to the students' school to be used to help pay participation
23 fees or to fund any additional needs for the activity or club. The District has maintained
24 this partnership and, in SY 15-16, provided over 300 low- or no-cost physicals to
25 students.

26 The District has also taken steps to minimize participation fees as a barrier for
27 students. Since SY 13-14, the Interscholastics Director has provided training to every
28 principal, assistant principal, and athletic director on the District's policy that no student

1 be prohibited from participating in any extracurricular activity due to their inability to
2 pay fees. School principals are obligated to offer participation waivers to any student
3 who can demonstrate that paying the fee would cause a financial hardship for his or her
4 family. Since at least 2009, the District has worked in partnership with the Educational
5 Enrichment Foundation and other non-profit organizations to offer scholarships for
6 middle and high school students to cover participation fees.

7 **2. Providing a range of extracurricular activities at each school.**

8 In 2013, the District designed a survey to facilitate a needs assessment based on
9 the existing range of extracurricular activities offered at each school, including tutoring
10 services, and to identify additional processes, support or resources necessary to establish
11 additional extracurricular activities. The survey included questions related to both
12 interscholastics competition (sports) as well as non-competitive extracurricular activities
13 (*i.e.*, clubs, fine arts, intramurals and social groups). [AR 13-14, ECF 1686, p. 195.] In
14 October 2013, the District sent the survey to site administrators at all schools. [*Id.*] The
15 survey responses revealed that every District school offered after-school activities
16 during SY 13-14, with a wide range of sports, clubs, and fine arts activities in grades 6-
17 12 and more limited options in grades K-5. [AR 13-14, Apps. VIII-2, VIII-3, ECF
18 1690-8, pp. 16-56.] The District analyzed the responses and identified key areas for
19 improvement. To address the more limited range of activities in elementary and K-8
20 schools, the District worked with sites to identify needed supplies and supports. [AR
21 13-14, App. VIII-4, ECF 1690-8, p. 57.] Each school that requested assistance in
22 expanding their programs received additional support and resources from the
23 Interscholastics Department, including six racially concentrated schools and five
24 integrated schools. In SY 14-15 and 15-16, the District continued to work with sites to
25 provide needed support and resources to ensure schools could provide a wide range of
26 activities for students.

27 In addition, in SY 15-16, the District posted the Interscholastic/Academic Parent
28 Survey to gather another round of parent responses. [AR 15-16, ECF 1958-1, p. 375.]

In an effort to increase the number of survey responses, the District created more specific notices to parents and planned to send the revised notices through its ParentLink system to reach more parents, to work with school sites to improve the response rates, and to send staff directly to parent-teacher conferences and open houses to solicit survey responses. [*Id.*]

3. Providing transportation to support extracurricular activities.

The Interscholastics Department met regularly with the Transportation Department to ensure all students interested in extracurricular activities could receive necessary transportation to participate in these activities. As reported in AR 14-15 and 15-16, the Transportation Department committed to supporting extracurricular activities by providing activity buses to all integrated and magnet schools (“eligible schools”). [*Id.* pp. 364-75.] In 2013, the District set the following benchmarks:

School Year	Benchmark
2013-14	The District would provide an extracurricular activity bus to most “eligible schools” that requested an activity bus.
2014-15	The District would provide an activity bus to every eligible school that requested, or needed, an activity bus.
2015-16	The District would provide an additional activity bus to every eligible school with a demonstrated need for more than one.

[AR 13-14, ECF 1686, pp. 67-68.] Based on principal requests in SY 13-14, the District provided at least one activity bus for every eligible high school, middle school, all but one eligible K-8 school, and five of the 21 eligible elementary schools. [AR 13-14, App. III-2, ECF 1686-9, p. 2.] The District also provided at least one activity bus for thirteen non-eligible schools, including five racially concentrated schools. [*Id.*] The District continued to plan for improvements to the student information system during SY 14-15, along with mandatory staff training on entering student participation data, to allow staff to more effectively allocate activity buses to align with site-based need. [AR 13-14, ECF 1686, p. 72.]

1 In SY 14-15, the District met its benchmark of providing an activity bus to every
2 eligible school that requested, or needed, an activity bus. In September 2014, the
3 District audited its allocation of activity buses, contacted every eligible school that did
4 not have an activity bus, and added activity buses to schools that requested one or that
5 otherwise demonstrated a need. [AR 14-15, ECF 1918-1, p. 73.] In total, 22 of the 37
6 eligible schools requested and received activity buses; the remaining fifteen schools
7 indicated that activity buses were not required. [*Id.*; AR 14-15, App. III-6, ECF 1848-8,
8 pp. 10-11.]

9 In SY 15-16, upon request or based on identified need, the District further
10 increased the number of activity buses to integrated and magnet schools. [AR 15-16,
11 ECF 1958-1, p. 17; AR 15-16, App. III-9, ECF 1961-1, pp. 58-59.] The District added
12 activity buses, based on site request or identified need, at three integrated schools and
13 two racially concentrated schools that had not previously needed late buses. [AR 15-16,
14 ECF 1958-1, p. 89.]

15 The District regularly obtains and evaluates transportation data and adapts
16 activity bus routes and ride times, reorganizing buses or combining routes, thereby
17 reducing ride times for outlying students and improving efficiency. [*Id.*, p. 17.]

18 **4. Supporting equitable, voluntary tutoring.**

19 Where voluntary tutoring was provided, the District took steps to ensure that it
20 was provided equitably, and that it was supported with transportation where needed. In
21 SY 13-14, more than fifty documented, formal tutoring programs existed at TUSD
22 schools, serving over 3,500 students. [AR 14-15, ECF 1918-1, pp. 300-01; AR 14-15,
23 App. VIII-6, ECF 1852-3, pp. 17-18.] Additionally, several informal programs existed,
24 including teacher tutoring after school and District-established after-school study tables
25 for athletes and students involved in extracurricular after school activities. Participation
26 data for SY 13-14 indicated that tutoring was provided in an equitable manner as White,
27 African American, Hispanic, and Multi-Racial students participated at rates that
28

correlated, approximately, to their overall student population percentages, as shown in the table below:

2013-14	Student Population Percentage	Voluntary Tutoring Participation Rates
White	21%	11%
African-American	9%	8%
Hispanic	61%	69%
Multi-Racial	3%	2%

[AR 14-15, Table 8.6, ECF 1918-1, p. 300.] The District also provided activity buses for after-school tutoring to ensure that transportation did not serve as a major obstacle to participation. [*Id.*, p. 301.]

During SY 15-16, TUSD provided and offered many types of tutoring at 75 of its 84 schools, including but not limited to: 21st Century Program, State Tutoring, Magnet Funded, Title I Funded, and Site After-School Tutoring programs. [AR 15-16, ECF 1958-1, p. 370; AR 15-16, App. VIII-4, ECF 1967-1, pp. 10-11.] The District also continued its practice of providing study tables for high school students involved in extracurricular after-school activities to assist students with homework and make-up work. [AR 15-16, ECF 1958-1, pp. 370-71.]

The District also piloted the Interscholastics Tutoring program at three high schools and two middle schools to increase students' access to certified tutors. [*Id.*, p. 371.] In its inception, only a few students participated. Based on an evaluation of the pilot, the District developed the Interscholastics Tutoring program for SY 16-17, including expansion into additional schools (particularly those that previously did not have any formal tutoring programs), revising the tutor job description, and advertising for more tutors to participate. [*Id.*] In SY 16-17, the District planned to implement the program at all high schools and at middle schools that demonstrate the greatest need – particularly for African American and Hispanic students. [*Id.*, p. 370.]

5. Changes to the student information system.

1 In the spring of 2013, the District initiated changes to the former student
2 information system then in use (Mojave) to facilitate activity tracking pursuant to USP
3 requirements. [AR 12-13, App. 79, ECF 1554-1, pp. 1-5.] One of the primary identified
4 areas of concern was Mojave's inability to track extracurricular participation at K-8
5 levels. During the summer of 2013, the District revised Mojave to include participation
6 tracking capabilities for elementary and middle school students in time for the start of
7 SY 13-14. [AR 13-14, ECF 1686, p. 196.] The District further revised Mojave to
8 include the full range of budgeting and activity needs for activities at all levels, and
9 expanded the range of tracked activities to include sports, social clubs, student
10 publications and co-curricular activities, as required by the USP. [*Id.*] The District
11 notified staff of the new requirements for entering extracurricular participation data and,
12 as a result, there was a significant expansion of available participation data in all four
13 categories. [*Id.*] Additionally, the District developed and implemented an online
14 training module to improve consistent monitoring and reporting at all levels. [*Id.*] In
15 SY 14-15, more than one hundred staff members completed the training. [AR 14-15,
16 ECF 1918-1, p. 303; AR 14-15, Apps. VIII-8, VIII-9, ECF 1852-3, p. 118.]

17 In SY 15-16, the District strengthened its commitment to evidence-based
18 decision making through continued monitoring and reporting of student participation in
19 extracurricular activities to ensure that its strategies to improve activity availability and
20 diversity are effective. [AR 15-16, ECF 1958-1, p. 364.]

21 In each year's Annual Report, the District provided data reporting student
22 participation in a sampling of activities at each school, along with District-wide data,
23 disaggregated by race, ethnicity and ELL status. [AR 15-16, VIII-347, ECF 1958-1, p.
24 376; AR 15-16, Apps. VIII-1, VIII-4, VIII-5, VIII-6, ECF 1967-1, pp. 1-2, 12-18; AR
25 14-15, App. VIII-10, ECF 1852-3, p. 123.]

26 African American and Latino student participation rates have increased since the
27 adoption of the USP. Additionally, the percentages of African American and Latino
28

students participating in at least one activity is equal or close to each group's overall student population.

Unduplicated counts of students participating in at least one activity	African American Students	Latino Students
2013-14 Total Participation	10%	54%
2013-14 Total Enrollment	8%	60%
2015-16 Total Participation	9%	56%
2015-16 Total Enrollment	9%	61%

B. The District's Extracurricular Activities Policies And Efforts Are Consistent With Those Of Other Districts That Have Achieved Unitary Status.

The District's extracurricular activities policies and practices are similar to those of other districts that have achieved unitary status. *See, e.g., Everett v. Pitt County Bd. of Educ.*, 788 F.3d 132, 148-49 (4th Cir. 2015) (activities are available in all schools, and there are no race-based barriers to participation); *United States v. Franklin Parish Sch. Bd.*, 2013 WL 4017093 at *4 (W.D. La. Aug. 6, 2013) ("All students are free to participate in or try out for any activity on a completely voluntary basis and without any racial barriers or other requirements set by the [Franklin Parish] District. The [Franklin Parish] District has received no complaints regarding access to extracurricular activities.").

Similarly, here, the District has made and continues to make extracurricular activities available in all schools without any race-based barriers to participation. Likewise, students throughout the District are adequately informed about the availability of extracurricular activities. [AR 15-16, Table 8.1, ECF 1958-1, p. 366.] The District is unaware of any complaints of discrimination in extracurricular activities.

C. The District Is Committed To Providing Equitable Access To Its Extracurricular Activities For All Students, Regardless Of Race, Ethnicity Or ELL Status.

The District has long enshrined its commitment to equitable access to extracurricular activities in its actions and formal policies. Judge Frey found that any

1 discrimination at the high school level ended before 1950. [ECF 345, Ex. 1, p. 42.] The
2 District has formal policies adopted by the Governing Board which address the issue.

3 **1. Policy A – District mission, vision and values.**

4 The District's Mission Statement states, in part, that the "The District is
5 committed to inclusion and non-discrimination in all District activities. At all times,
6 District staff should work to ensure that staff, parents, students and members of the
7 public are included and welcome to participate in District activities." [ECF 1991-1;
8 adopted: 2005; last revised: 2013.]

9 **2. Policy AC – Non-discrimination.**

10 The District's non-discrimination policy prohibits discrimination based on
11 "disability, race, color, religion/religious beliefs, sex, sexual orientation, gender identity
12 or expression, age, or national origin" and sets out reporting procedures for individuals
13 who believe they have been discriminated against. The District is unaware of any such
14 complaints filed since the inception of the USP related to access, participation, or the
15 provision of extracurricular activities. [ECF 1991-2; adopted: 1995; last revised: 2014.]

16 **3. Policy JB – Equal educational opportunities and anti-**
17 **harassment.**

18 Policy JB states that participation in extracurricular activities is "dependent only
19 upon [students] maintaining the minimum academic and behavioral standards
20 established by the Board, and their individual ability in the extracurricular activity."
21 [ECF 1991-3; adopted: 2004; last revised: 2011.]

22 **4. Policy JJA – Student organizations, clubs and student**
23 **government.**

24 Policy JJA prohibits secret organizations and sets out the procedures for the
25 formation and operation of student organizations, clubs, and student government. [ECF
26 1991-4; adopted: 1960; last revised: 2013.]
27
28

1 **5. Policy JJIB – Interscholastic sports.**

2 Policy JJIB encourages “participation by as many students as possible” in
3 interscholastic sports. [ECF 1991-5; adopted: 2011; last revised: 2012.]

4 **6. Policy JJJ – Extracurricular activity eligibility.**

5 Policy JJJ identifies academic and behavioral standards upon which eligibility to
6 participate is based, and directs the Superintendent to establish regulations to ensure that
7 the “cultural traditions of students are considered when establishing or enforcing rules
8 related to participation in extracurricular activities” and that “[a]ll students have equal
9 access to extracurricular activities regardless of race, ethnicity or gender.” [ECF 1991-
10 6; adopted: 1960; last revised: 2012.] Regulation JJJ-R sets out guidelines for
11 participation in extracurricular activities. [ECF 1991-7; adopted: 2012.] Regulation
12 ADF-R restates the District’s commitments to diversity, equity, inclusivity, equal access
13 to activities, and understanding and acceptance of cultural differences. [ECF 1991-8;
14 adopted: 2006.]

15 **7. Policy JQ – Student fees, fines, and charges (and Regulations JQ-R1 and JQ-R2).**

16 Policy JQ and its accompanying regulations permit the District to collect
17 reasonable fees or cash contributions for extracurricular activities, but also recognizes
18 that some students may not be able to pay certain fees. [ECF 1991-9; adopted: 1960; last
19 Revised: 2011.] Regulation JQ-R2 reiterates the District’s commitment to “waive the
20 assessment of all or a part of any fee if it creates an economic hardship for a specific
21 student.” [ECF 1991-10; adopted: 2011.]

22 These policies, along with the District’s good faith compliance with the USP’s
23 Extracurricular Activities provisions, demonstrate that the District operates a unitary
24 Extracurricular Activities program and that there is no danger that the District will
25 operate a dual program if the Court withdraws its supervision over this area of the USP.
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27
28

1 **V. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE**
2 **PROVISIONS OF THE USP REGARDING FAMILY AND COMMUNITY**
3 **ENGAGEMENT.**

4 Section VII of the USP requires the District to adopt strategies to increase family
5 and community engagement (“FACE”) in schools, including: (a) developing and
6 implementing an outreach plan to families; (b) providing information to families about
7 the services, programs, and courses of instruction available in the District and included
8 in the USP; (c) learning from families how best to meet the needs of their children; and
9 (d) collaborating with local colleges, universities, and community groups to provide
10 information and guidance to improve the educational outcomes of African American
11 and Hispanic students, including ELL students, while providing relevant information to
12 their families. The specific obligations set out in Section VII are divided into four
13 categories: personnel requirements, FACE service requirements, translation and
14 interpretation service requirements, and reporting requirements.

15 **A. District Compliance.**

16 The District has complied, in good faith, with each facet of Section VII: (1) the
17 District has hired qualified personnel to review existing, and design and implement new,
18 FACE services and institutions; (2) the District, led by those personnel, has designed
19 and implemented those services and institutions; (3) the District has budgeted for
20 translation and interpretation services while also providing additional services upon
21 request; and (4) the District has met mandatory reporting obligations in each of its
22 Annual Reports. Through its compliance with Section VII, as well as its other family
23 outreach efforts (such as those made in connection with its receipt of funding under Title
24 I of the Elementary and Secondary Education Act), the District has established a FACE
25 program that empowers parents to make informed decisions about their children’s
26 educational future at the District and beyond.
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28

1 **1. The District has hired the personnel required under Section**
2 **VII(B) of the USP.**

3 Section VII(B)(1) of the USP required the District to designate a District Office
4 employee as the FEC by April 1, 2013. [ECF 1713, p. 50.] The FEC, who must be
5 located at a Family Center or “at another reasonable location,” was required to review
6 the District’s FACE programs, resources, and practices, with a focus on African
7 American and Hispanic students, ELL students, and families with students who are
8 struggling, disengaged, or at risk of dropping out. [*Id.*] The FEC also must have
9 participated in the development and implementation of the outreach and recruitment
10 plan (the Marketing, Outreach and Recruitment or “MORE” Plan) and the District
11 Family Center (“DFC”) Plan. [*Id.*]

12 A qualified individual has served as the FEC throughout the period required by
13 the USP. In the spring of 2013, the District initially designated as the FEC Teresa
14 Guerrero, who at the time was the District’s Title I Family Engagement Coordinator.
15 *See* FACE Plan at 6 [ECF 1852-1, p. 6.] Ms. Guerrero worked throughout the summer
16 of 2013 to begin implementing the requirements of Section VII. [*Id.*]

17 Noreen Wiedenfeld replaced Ms. Guerrero in the fall of 2013. [*Id.*; AR 13-14,
18 ECF 1686, p. 179]. Ms. Weidenfeld had coordinated the development of family
19 engagement activities for several years as the District’s Director of Student Placement
20 and Community Outreach. [AR 13-14, App. VII-1, ECF 1690-7, p. 1.] In the fall of
21 2013, Ms. Wiedenfeld began conducting the requisite review of FACE programs,
22 resources, and practices that lead to the development of the Family and Community
23 Engagement Plan (“FACE Plan”). [AR 13-14, ECF 1686, p. 179.] As part of a cross-
24 functional team, Ms. Wiedenfeld participated in the development and implementation of
25 revised marketing, outreach, and recruitment strategies that would eventually become
26 part of the District’s MORE Plan. When Ms. Wiedenfeld retired after SY 13-14, the
27 District designated Dr. Dani Tari as the interim FEC. [AR 14-15, ECF 1918-1, p. 279.]
28

1 On January 15, 2015, the District hired Alma Iniguez to serve as the Director of
2 Family and Community Outreach (“DFCO”), which now performs all of the duties of
3 the FEC. [*Id.*] Ms. Iniguez, who is bilingual in English and Spanish, has extensive
4 experience working with families and the community, most recently as a Title I Project
5 Facilitator at a Parent Center in Las Vegas, Nevada. [*Id.*] As described in greater detail
6 below, Ms. Iniguez has performed all of her FEC duties via her role as the DFCO,
7 primarily through her administration of the FACE Plan. Ms. Iniguez is located at one of
8 the District’s Family Centers. [*Id.*]

9 The USP does not require the District to hire personnel other than the FEC.
10 However, the District has exceeded its Section VII(B)(1) obligations by expanding its
11 FACE staff to include a Family Engagement Director, who is supported by a Family
12 Center Program Coordinator, as well as many more support staff. [AR 15-16, ECF
13 1958-1, p. 347.] The District believes that employing a robust FACE staff allows it to
14 take a multi-tiered approach to FACE, including both general outreach to all families
15 and targeted outreach to African American and Hispanic families. [*Id.*, pp. 347-48.]

16 **2. The District has developed and implemented the FACE services**
17 **and institutions required under Section VII(C) of the USP.**

18 Section VII(C) of the USP requires the District to meet certain FACE service
19 requirements. [ECF 1713, pp. 51-52.] These requirements fall under three categories:
20 requirements related to the DFC Plan; requirements imposed on the FEC separate from
21 the DFC Plan; and requirements imposed on the District as a whole separate from the
22 DFC Plan.

23 **a. DFC Plan services.**

24 Section VII(C)(1)(a) of the USP required the District to create a plan to expand
25 its existing, and establish new, Family Centers. [*Id.*, p. 51.] The District developed its
26 DFC Plan, which was ultimately combined with the other plans required under Section
27 VII(C)(1)(a) to create the FACE Plan. Absent objection from all sides, the District
28 finalized the FACE Plan in March 2014. [AR 13-14, ECF 1686, p. 181.] After further

1 collaboration with the Special Master and Plaintiffs, and informed by further
2 consultation and recommendations from an outside consultant (Margit Birge of the
3 Region IX Equity Assistance Center at WestEd), the District further revised the plan in
4 September of 2014.

5 1. Under Section VII(C)(1)(a)(i) of the USP, the DFC Plan must indicate
6 where new Family Centers will be located and whether existing Family Centers should
7 be consolidated or relocated. [ECF 1713, p. 51.] The FACE Plan complies with this
8 requirement. The Plan indicates that, after a review of District demographic data, the
9 District determined a need to establish Family Centers in strategic locations across the
10 community. *See* FACE Plan [ECF 1852-1, p. 24.] The Plan envisioned a two-year
11 rollout for the Centers. [*Id.*] The District initially would create two Centers: one in the
12 southwest area of the District, which had a fast-growing student population, and one in
13 an area near South Tucson, where the highest percentage of students qualifying for free
14 or reduced lunch attended school. [*Id.*] The District then would engage in discussions,
15 in consultation with external experts, to determine the appropriate locations for the third
16 and fourth Centers. [*Id.*]

17 The District built all four planned Centers in high-need areas: (1) the Wakefield
18 Family Resource Center, which sits in a predominantly Hispanic neighborhood, opened
19 on April 29, 2015; (2) the Palo Verde Family Resource Center, which sits in an area
20 with a high concentration of African American families, opened on January 21, 2016;
21 (3) the Catalina Family Resource Center, located amid a high concentration of refugee
22 families, opened on May 13, 2016; and (4) the Southwest Family Resource Center,
23 located near the Tohono O'odham and Pasqua Yaqui reservations and well-situated to
24 serve many Native and Hispanic families, opened on May 23, 2016. [AR 15-16, ECF
25 1958-1, pp. 352-53.] As explained further below, the District's four Family Centers
26 now serve as the hubs of its FACE efforts.

2. Under Sections VII(C)(1)(a)(ii)-(vi) of the USP, the DFC Plan must provide for the creation and distribution of materials that provide families with information regarding:

- enrollment options and the availability of transportation;
- Advanced Learning Experiences (“ALEs”), including informational sessions on ALEs and information on UHS and the complaint process related to ALEs;
- student discipline policies and procedures, including the revised Guidelines for Student Rights and Responsibilities (“GSRR”);
- the curricular and student support services offered in Section V(C) of the USP, student engagement and support, including information on academic and behavioral support, dropout prevention services, African American and Latino student support services, and culturally relevant courses and polices related to inclusion and non-discrimination;
- educational options for ELL children, including the availability of dual language programs and other programs designed for ELLs.

[ECF 1713, p. 51.]

The FACE Plan complies with this requirement. Under the Plan, each Family Center provides full access to new or revised materials about programs and educational options throughout the District, including (but not limited to) the information listed above. *See* FACE Plan [ECF 1852-1, pp. 24-25.] The Plan also requires FACE leaders and staff to meet quarterly to review information resources, revise and create a distribution plan, implement the distribution plan, and monitor progress. [*Id.*, p. 30.] The District has fully implemented its information dissemination plan: all of the information listed above is now provided at Family Centers in English and Spanish. [AR 14-15, ECF 1918-1, p. 281; AR 14-15, App. VII-10, ECF 1852-1, p. 59.]

3. Under Section VII(C)(1)(a)(vii) of the USP, the DFC Plan must include strategies for how teachers and principals can learn from families regarding how to meet the needs of their children. [ECF 1713, p. 51.] The FACE Plan complies with this requirement. The Plan envisions that District personnel will be trained on fundamentals such as understanding and working with bias, understanding student characteristics and needs, and partnering with families. [FACE Plan, ECF 1852-1, p. 26.] The Plan

1 contemplates that this training will deliver strategies for how teachers and principals can
2 learn from families regarding how to meet the needs of their children. [*Id.*] The Plan
3 also requires FACE leaders and staff to meet quarterly to ensure that trainings for
4 District employees include the content required under this section. [*Id.*, p. 31.]

5 In addition to providing these trainings, the District has made other efforts to help
6 District employees meet the needs of parents and their children. In SY 14-15, The
7 District's Department of Culturally Relevant Pedagogy & Instruction presented seven
8 professional development sessions on culturally responsive teaching to select
9 certificated staff and administrators. [*Id.*] The presentations included training modules
10 that addressed effective ways for staff and administrators to develop culturally
11 responsive teaching practices and student engagement techniques. [*Id.*] The District
12 also has provided Culture and Climate training for all administrators via its Student
13 Equity department. [*Id.*]

14 The District's Family Engagement and Community Outreach Department also
15 conducts an annual needs assessment to determine the needs of students from their
16 parents. During SY 15-16, Family Engagement and Community Outreach staff
17 provided needs assessment surveys to parents at the Family Centers, District events, and
18 community events. [AR 15-16, ECF 1958-1, p. 351.] The District revised the survey in
19 January 2016 to include information about the location of its four Family Centers. [*Id.*]
20 The District also has trained staff to elicit needs information from families through
21 conversation. [*Id.*] Based on this feedback, the District made adjustments to its
22 programming for SY 16-17 to better address the needs of families and students. [*Id.*, pp.
23 351-52.]

24 The District also conducts surveys to assess the effectiveness of the quarterly
25 information events that it provides to parents of African American and Hispanic
26 Children (discussed further below). At the end of each event, African American Student
27 Services ("AASS") and Mexican American Student Services ("MASS") student success
28 specialists collect surveys from parents regarding their interests for incorporation into

1 future information sessions and support. [AR 15-16, ECF 1958-1, p. 271.] AASS and
2 MASS will use the survey feedback to guide implementation of quarterly information
3 sessions in SY 16-17 and improve the quality of each event. [*Id.*] For example, based
4 on the results of these surveys, AASS has decided to host at least one webinar during
5 SY 16-17 for parents unable to physically attend a quarterly information event. [*Id.*]

6 4. Under Section VII(C)(1)(a)(viii) of the USP, the DFC Plan must detail
7 how Family Centers will be staffed, including language requirements for all staff and
8 whether staff will be under the supervision of the FEC. [ECF 1713, p. 51.] The FACE
9 Plan complies with this requirement. The Plan provides that the Family Centers will be
10 staffed with District personnel who can explain the many educational and support
11 options available and help families navigate the school system. *See* FACE Plan [ECF
12 1852-1, p. 25.] The District will allocate staff, including Title I and non-Title I staff
13 with the ability to provide proactive and language-accessible support, throughout the
14 Centers as needed. [*Id.*] The Plan also requires all Center staff to be trained in language
15 accessibility by September 1, 2014, and to be initially supervised by the FEC. [*Id.*, p. 22
16 n.11.]

17 The District has made every effort to staff its Family Centers with employees
18 who can explain the many educational and support options available and help families
19 navigate the school system. The District ensures families using the Centers have access
20 to services in the appropriate language, and several staff members are bilingual in
21 Spanish and English. [AR 15-16, ECF 1958-1, p. 354.] The District also offers
22 translation and interpretation services in the language of registered guests for regularly
23 scheduled classes or events at the Centers. [*Id.*] The Centers coordinated with the
24 Language Acquisition Department to provide a training update in May 2016 to ensure
25 that all Center staff were adequately trained in language accessibility. [*Id.*] The District
26 has continued to seek out bilingual and multilingual employees to staff the Centers, and
27 has informed all administrators of the process and procedures related to the enrollment
28 of new students and families who speak a language other than English. [*Id.*]

b. FEC services.

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1. Section VII(C)(1)(b) of the USP required the FEC to review the District's existing FACE programs, resources, and practices, with a focus on programs, resources and practices for African American and Latino students, including ELL students, and families, particularly those for (i) students who are struggling, disengaged, or at risk of dropping out and (ii) students who face additional challenges because of a lack of access to technology. [ECF 1713, pp. 51-52.] The review included information on the location of programs and resources, the personnel assigned to FACE efforts, funding allocated, and the data systems in place to provide information on outreach to and engagement with families and communities. [*Id.*, p. 52.]

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As detailed in the FACE Plan, the FEC conducted the required review of the District's existing FACE and support programs, resources, and practices. [ECF 1852-1, p. 6.] The district-wide review focused on programs, resources and practices for African American and Hispanic students, including ELL students, and families. [*Id.*, p. 7.] The review included information on the location of programs and resources, the personnel assigned to FACE efforts, funding allocations, and the data systems in place to provide information on outreach to and engagement with families and communities. [*Id.*] A full description of the methodology and results of the review can be found at pages 6-14 of the FACE Plan. [*Id.*, pp. 6-14.]

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2. Section VII(C)(1)(c) of the USP required the FEC to develop and implement a plan to track FACE data. [ECF 1713, p. 52.] The Section also requires the District to revise Mojave to allow FACE data to be tracked by student. [*Id.*] The District developed the Family Engagement Data Tracking ("FEDT") Plan, incorporated with the other plans required under Section VII(C)(1)(a) of the USP as the FACE Plan. Absent objection from all sides, the District finalized the FACE Plan in March 2014. [AR 13-14, ECF 1686, p. 181.]

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The FEDT Plan sets out the District's intentions for developing and implementing ongoing FACE data assessments and creates a schedule for the

1 monitoring and evaluation of data. [ECF 1852-1, pp. 27-28.] The Plan requires the
2 District to conduct ongoing assessments using multiple forms of data, including surveys
3 similar to the Harvard Graduate School of Education Pre-K-12 Family School
4 Relationships Survey, TUSDStats and Parent Link, the TUSD School Quality Survey,
5 Title 1 family engagement documents, the School Family Engagement Activity Report,
6 Family Center usage, and feedback from family events and trainings. [*Id.*] The Plan
7 also establishes a detailed data collection schedule, which provides for monthly,
8 quarterly, annual, and event-based data review and analysis. [*Id.*, p. 28.]

9 While the USP initially contemplated that the District would upgrade Mojave to
10 support the tracking of FACE data by student, the District later decided to phase out
11 Mojave in favor of a more advanced student information system, Synergy, into which
12 the District integrated FACE tracking. [AR 13-14, ECF 1686, p. 184.] The District
13 purchased and began using the new system for SY 16-17. [AR 15-16, ECF 1958-1, p.
14 357.] Family Engagement and Community Outreach staff are working with Technology
15 Services to implement an online system for tracking Family Center use across all
16 locations. [*Id.*, pp. 357-58.] In the meantime, the District has tracked attendance at
17 Family Centers using Microsoft Excel by asking Center staff to input data from physical
18 sign-in sheets into electronic spreadsheets that are sortable by family, service, school,
19 location, and date.

20 3. Section VII(C)(1)(c) of the USP required the FEC to develop and
21 implement a plan to reorganize or increase FACE resources, including consolidating
22 additional resources at the Family Centers, to ensure equitable access to programs and
23 services and to concentrate resources on school sites and in areas where data indicates
24 the greatest need. [ECF 1713, p. 52.] The District combined this plan with the other
25 plans required under Section VII(C)(1)(a) to create the FACE Plan, finalized in March
26 2014. [AR 13-14, ECF 1686, p. 181.]

27 The FACE Plan outlines the Plan to Reorganize Family Engagement Resources,
28 Programs, and Practices. *See* FACE Plan [ECF 1852-1, pp. 14-23.] The FEC ultimately

1 decided to reorganize the District's FACE resources and programs to implement best
2 practices. [*Id.*, p. 22.] The full Plan is available at pages 14-23 of the FACE Plan; in
3 sum, the FEC recommended (1) creating district-wide strategies; (2) building school
4 capacity to engage families; (3) actually engaging families; (4) monitoring for
5 effectiveness; and (5) expanding the role of Family Centers. [*Id.*, pp. 14-23.]

6 **c. District services.**

7 1. Section VII(C)(1)(e) of the USP requires the District to collaborate with
8 local colleges and universities to provide parents with information about the college
9 enrollment process, including by disseminating that information at Family Centers.
10 [ECF 1713, p. 52.]

11 The District has made consistent efforts to collaborate with various colleges and
12 universities from around Arizona. In its first annual report, the District established plans
13 to collaborate with the University of Arizona and Pima Community College recruiting
14 divisions. [AR 12-13, ECF 1549-1, p. 66.] Throughout SY 13-14, the District worked
15 with those institutions, as well as other non-State colleges and universities, to provide
16 parents with information on college recruitment, the application process, and
17 scholarships. [AR 13-14, ECF 1686, p. 184.] The District distributed informational
18 flyers and other materials throughout the year and held special higher education-focused
19 events such as College Night and the Black College Tour. [*Id.*] The District also held
20 its annual flagship higher education event, Parent University, which provides K-12
21 students and families an opportunity to learn about what the District and local colleges
22 offer students and families to prepare for college and beyond. [*Id.*; FACE Plan, ECF
23 1852-1, p. 9.]

24 During SY 14-15, the District began to tie its higher education-focused activities
25 into its expanding Family Center curriculum. As contemplated by the USP, the District
26 began disseminating information about the college enrollment process at Family
27 Centers. *See* FACE Plan [ECF 1852-1, p. 33.] The District assembled a team of FACE
28 leaders and staff to establish partnerships with local colleges and universities, ensuring

1 that the Centers have the most current and relevant information about higher education
2 enrollment. [*Id.*] The District also increased its outreach to higher education
3 institutions. For example, when the Wakefield Family Center opened on April 29, 2015,
4 the District invited representatives from Northern Arizona University, Pima Community
5 College, and other schools to attend the Open House. [AR 14-15, ECF 1918-1, p. 280;
6 AR 14-15, App. VII-9, ECF 1852-1, pp. 56-58.]

7 The District continued expanding its higher education-focused activities during
8 SY 15-16 by offering college and career readiness workshops, ensuring college
9 enrollment representatives attended Family Center events, and holding more higher
10 education-focused events. [AR 15-16, ECF 1958-1, p. 355.] The District was involved
11 in a total of eight college and career readiness events during the year, with more than
12 850 people attending the events. [*Id.*] These events were advertised by District staff on
13 monthly calendars, on the District Facebook page, and through promotional materials at
14 the Family Centers. [*Id.*] The District also ramped up its efforts to provide information
15 regarding financial aid and support, regularly announcing college scholarship
16 information on its Facebook page. [*Id.*] Staff focused in particular on scholarship
17 opportunities for African American, Hispanic, and Native American students. [*Id.*]

18 To further support the District's efforts to collaborate with colleges and
19 universities, AASS partnered with several community-based organizations to connect
20 high school students with college students. [*Id.*, p. 275.] These organizations included
21 the Tucson Graduate Chapter of the Alpha Phi Alpha Fraternity and the Tucson
22 Southern Arizona Black College Community Support Group, both of which organized
23 one-day workshops to provide leadership development and connect high school students
24 to current undergraduate and graduate students and alumnae. [*Id.*] AASS also partnered
25 with Thrive Generations to host three eight-week leadership development seminars for
26 middle and high school students. [*Id.*] In addition, the AASS team collaborated with
27 the State of Black Arizona, the Southern Arizona Black College Community Support
28

1 Group, the Arizona Mentor Society, Tucson Parks and Recreation, and The Grrrls
2 Project. [*Id.*]

3 The MASS Department also assisted community and college partners with
4 planning conferences and recruiting students to attend the Arizona César E. Chávez
5 Holiday Coalition Youth Leadership Conference and the League of United Latin
6 American Citizens Youth Leadership Week. [*Id.*, p. 276.] During the Cesar E. Chavez
7 Youth Leadership Week, which was held March 7-10, 2016 throughout the District, 40
8 presenters spoke to 6,637 students about Cesar Chavez and Dolores Huerta. [*Id.*]
9 MASS also helped plan, recruit, and supervise students who attended the 27th Annual
10 Youth Leadership Conference on March 11, 2016, at Pima Community College West
11 Campus. [*Id.*] Of the 1,357 middle school and high school students who attended, 944
12 were students from the District. The District's MASS director also delivered a
13 presentation at the conference on material related to the César E. Chávez Holiday
14 Coalition and gave information on the importance of attending college. [*Id.*]

15 2. Section VII(C)(1)(f) of the USP requires the District to provide access at
16 Family Centers to computers for families to complete open enrollment/magnet
17 applications. [ECF 1713, p. 52.] The District has complied with this requirement. The
18 District now provides access to a full computer lab at each of its Family Centers for use
19 to complete and submit open enrollment/magnet applications. [AR 15-16, ECF 1958-1,
20 pp. 353-54.] The Centers also offer workshops and individual support to help families
21 obtain information about school choice and transportation options in order to complete
22 these applications with full knowledge and awareness of the available opportunities.
23 [*Id.*] The Centers publish magnet and open enrollment information on their Facebook
24 page, and Center staff promote and attend magnet fairs, including fairs at Tucson High
25 Magnet School, African American Student Services' Parent University at Pima
26 Community College, and District magnet fairs at the Children's Museum of Tucson.
27 [*Id.*, p. 354.]
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1 3. Section VII(C)(1)(g) requires the District to disseminate the information
2 identified in Section VII(C)(1) and in Section II of the USP, in all Major Languages, on
3 the District's website, and through other locations and media, as appropriate. [ECF
4 1713, p. 52.] The District has substantially complied with this requirement. The
5 District's website provides its open enrollment/magnet application in all Major
6 Languages. See TUSD Website [*Enroll Your Child*, TUCSON UNIFIED SCHOOL
7 DISTRICT (last visited March 1, 2017), available at [http://tusd1.org/contents/distinfo/
8 enroll.html](http://tusd1.org/contents/distinfo/enroll.html).] The website also provides, in all Major Languages, information on the
9 transportation options available to students to accommodate school choice. [*Id.*]
10 Indeed, the District recently updated the school choice application with information
11 about unique school programs and resources. [AR 15-16, ECF 1958-1, p. 59.] The
12 revisions included specific information about updates and programs at each school to
13 help parents and students make informed decisions about where to apply and enroll.
14 [*Id.*] And, in addition to information about open enrollment and magnet schools, the
15 District has made other important information and policies, such as the GSRR, available
16 in all Major Languages at school sites, the central office, Family Centers, and on the
17 District's website. [*Id.*, p. 320.]

18 **3. Translation and interpretation services requirements.**

19 Section VII(D)(1) of the USP imposes three interrelated requirements with which
20 the District has complied: district-level budgeting for translation and interpretation
21 services, provision of translation and interpretation services, and retention of translators
22 and interpreters. [ECF 1713, p. 52.]

23 a. Section VII(D)(1) of the USP requires the District to budget for translation
24 and interpretation services. [*Id.*] As evidenced by its annual USP budgets, the District
25 has complied with this requirement. [ECF 1469-1, p. 18; ECF 1691-2, p. 196; ECF
26 1852-6, p. 8; ECF 1948-1, p. 10.]

27 b. Section VII(D)(1) of the USP requires the District to provide translation or
28 interpretation of District documents or services when requested by schools, to retain

1 translators and interpreters in Major Languages, and to address translation and
2 interpretation in other languages on a case-by-case basis through outside agencies.
3 [ECF 1713, p. 52.]

4 The District complies with these requirements. During SY 15-16, the District
5 provided 3,088 oral interpretations and translations. [AR 15-16, ECF 1958-1, p. 361.]
6 Included in that number were 1,903 individual interpretation events, such as parent
7 conferences, discipline hearings, and Exceptional Education student meetings, and 259
8 group interpretation events, such as quarterly information events or Governing Board
9 meetings. [*Id.*] Full translation and interpretation statistics for SY 14-15 and SY 15-16
10 are attached as appendices to AR 14-15 and AR 15-16. [AR 14-15, Apps. VII-29, VII-
11 30, ECF 1852-2, pp. 77-87; AR 15-16, Apps. VII-23, VII-24 ECF 1966-1, pp. 101-27.]

12 The District retains translators for each Major Language to translate all essential
13 documents, such as its disciplinary and other district policies, open enrollment form,
14 transportation brochure, informational guide, health forms, Gifted and Talented
15 Education forms, as well as PowerPoint presentations, transcripts, and many other
16 documents. [AR 15-16, ECF 1958-1, p. 360.] The District also provides timely
17 translations on request for non-essential documents and for essential documents that
18 require translation into lower-incidence languages. [*Id.*] During SY 15-16, the District
19 provided 1,185 translations of written documents on request, averaging approximately
20 seven per day. [*Id.*, p. 361.] For students who speak less common languages, the
21 District contracted with an authorized vendor to provide interpretation services by
22 phone. [*Id.*] Vendors were contracted for 80 interpretation events during SY 15-16.
23 [*Id.*] In total, the District translated 6,111 pages into the many languages spoken by
24 students at the District during SY 15-16. [*Id.*]

25 **4. Reporting requirements.**

26 The District has complied with the mandatory reporting requirements imposed by
27 Section VII(E)(1)(a)-(d) of the USP, (ECF 1713, p. 53), in each of its four Annual
28 Reports.

1 i. Section VII(E)(1)(a) of the USP requires the District to provide
2 copies of all job descriptions, explanations of responsibilities, and credentials for all
3 persons hired or assigned to fulfill Section VII of the USP, identified by name, job title,
4 previous job title, as well as others considered for each position. [*Id.*] The District
5 complied with this requirement by attaching to each Annual Report an appendix
6 containing this information. [AR 12-13, App. 75, ECF 1553-10, pp. 1-86; AR 13-14,
7 App. VII-7, ECF 1690-7, pp. 94-161; AR 14-15, App. VII-37, ECF 1852-2, pp. 99-104;
8 AR 15-16, App. VII-27, ECF 1966-1, pp. 150-53.]

9 ii. Section VII(E)(1)(b) of the USP requires the District to provide
10 copies of all assessments, analyses, and plans developed pursuant to Section VII of the
11 USP. [ECF 1713, p. 53.] The District complied with this requirement by attaching to
12 AR 13-14 and AR 14-15 appendices containing this information. [AR 13-14, Apps.
13 VII-2, VII-3, VII-4, VII-10, ECF 1690-7, pp. 4-71, 179-181; AR 14-15, App. VII-38,
14 ECF 1852-2, pp. 105-06.] This requirement was not applicable to AR 12-13 because the
15 District's FACE assessments, analyses, and plans were still being developed during SY
16 12-13. [AR 12-13, ECF 1549-1, p. 65.] This requirement was not applicable to AR 15-
17 16 because the District did not develop any assessments, analyses, or plans during SY
18 15-16. [AR 15-16, ECF 1958-1, p. 362.]

19 iii. Section VII(E)(1)(c) of the USP requires the District to provide
20 copies of all policies and procedures amended pursuant to Section VII of the USP.
21 [ECF 1713, p. 53.] The District complied with this requirement by attaching to AR 13-
22 14 and AR 14-15 appendices containing this information. [AR 13-14, App. VII-8, ECF
23 1690-7, pp. 162-65; AR 14-15, App. VII-39, ECF 1852-2, pp. 107-11.] This
24 requirement was not applicable to AR 12-13 and AR 15-16 because there were no
25 amendments to policies or procedures pursuant to the requirements of Section VII
26 during SY 12-13 and SY 15-16. [AR 12-13, ECF 1549-1, p. 66; AR 15-16, ECF 1958-
27 1, pp. 362-63.]

iv. Section VII(E)(1)(d) of the USP requires the District to provide analyses of the scope and effectiveness of services provided by the Family Centers. [ECF 1713, p. 53.] The District complied with this requirement by attaching to AR 13-14, AR 14-15, and AR 15-16 appendices containing this information. [AR 13-14, App. VII-9, ECF 1690-7, pp. 166-74; AR 14-15, App. VII-40, ECF 1852-2, p. 112; AR 15-16, App. VII-28, ECF 1966-1, pp. 154-56.] This requirement was not applicable to AR 12-13 because the District had not yet designated any Family Centers in SY 12-13. [AR 12-13, ECF 1549-1, p. 66.]

B. The Institutions, Policies, Services, And Community Relationships That The District Has Established Through Its Good Faith Compliance With Section VII Of The USP Evidence Its Commitment To FACE.

Although the District seeks and is entitled to a declaration of unitary status with respect to FACE, the District will continue to cultivate its FACE institutions and services long after it is required to do so under Section VII of the USP. Indeed, the District has built a firm commitment to FACE through its good faith compliance with Section VII, as well as its Title I and other family outreach efforts. FACE activities and services now “permeate the work of the District at all levels.” [AR 14-15, ECF 1918-1, p. 279.]

The anchors of the District’s FACE efforts are its four Family Centers. The Centers, in which the District has invested considerable resources, serve as the headquarters of its FACE programs and services. The Centers “provide one-stop service to families seeking information about community resources, school choice options, assistance in navigating the school system, and skills and strategies to enhance students’ academic and social achievement.” [AR 15-16, ECF 1958-1, p. 352.] Each Center has a full FACE staff dedicated to providing quality service to strengthen and support students and their families, often in times of great stress. [*Id.*] The staff at each Center “provide information to families and more importantly, facilitate classes, workshops, and meetings that provide academic, parenting, health and wellness, and other support to

1 District families.” [*Id.*, p. 353.] “Each [Center] offers a computer lab, a child care room
2 where care is provided during parent classes, classrooms, and a clothing bank.” [*Id.*]
3 The District’s investment in its Family Centers has paid dividends, as parent and student
4 attendance at the Centers has steadily improved. Collectively, the four Centers held
5 more than 500 class sessions and tallied nearly 6,800 family visits during SY 15-16.
6 [*Id.*, p. 26.]

7 The District also makes substantial FACE efforts in connection with its
8 compliance with Title I. In SY 16-17, the District budgeted for over \$1 million in Title I
9 spending for parent engagement efforts alone. These efforts are made largely through the
10 Title I school community liaisons present at each of the District’s schools. These
11 liaisons train in family engagement at the beginning and midway points of the school
12 year. [*Id.*, p. 140.] All Title I liaison training is derived from Title I requirements,
13 which mandate the use of research-based best practices, relying in part on the work of
14 Dr. Joyce Epstein, an expert in school, family, and community partnerships at Johns
15 Hopkins University. [*Id.*] In addition, District staff attend major Title I conferences,
16 such as the three-day October 2015 Title I Mega Conference where they learned about
17 disengaged and at-risk student populations and effective ways to promote family
18 engagement strategies. [*Id.*, p. 145.]

19 In order to implement Title I family engagement strategies, a Continuous
20 Improvement Plan (“CIP”) is developed for each District school. CIPs provide
21 academic family engagement action steps specific to the needs of the student
22 populations at each school. CIPs outline action steps such as biweekly parent phone
23 calls, quarterly parent meetings, parent training in Synergy, TUSD Stats, and other
24 resources, provision of materials and instruction on how to best support academics at
25 home, and the utilization of social media, such as Twitter, Facebook, and Snapchat, to
26 reach out to parents and family engagement stakeholders. CIPs are reviewed by Parent
27 Teacher Associations and School Councils, and their feedback is incorporated.
28

1 Also critical to the District's FACE efforts is the work of its AASS and MASS
2 departments. Those departments work with Title I coordinators to plan, organize, and
3 implement quarterly parent information events to increase family engagement
4 opportunities and help parents of African American and Hispanic students improve
5 educational outcomes for their children. [*Id.*, p. 23.] Held at various schools and
6 community locations, the quarterly events provided parents with strategies for
7 supporting their child in school, such as navigating MASS and AASS support and
8 ALEs, and offered workshops about college and career readiness, such as Parent
9 University. [*Id.*] The District also held resource fairs at each quarterly parent session
10 where community agencies and TUSD departments shared the resources and programs
11 they offer families and students. [*Id.*, p. 267-68.] Parents were given time to interact
12 with all vendors to request information or materials. [*Id.* p. 268.]

13 In addition to the quarterly informational events, the AASS collaborated with
14 local community members and organizations to host an African American Parent
15 Conference on August 8, 2015. [*Id.*, p. 291.] The event featured workshops for parents,
16 educators, and the community, including on topics such as parent engagement and
17 advocacy, safe and secure learning environments, and opportunities for parents and the
18 community to engage in TUSD schools. [*Id.*] Also present at the conference were
19 several resource vendors, who provided additional support to parents, including
20 curriculum and student support resources. [*Id.*]

21 Further evidencing its commitment to FACE, the District has made great strides
22 to engrain itself in the community by developing relationships with community partners.
23 "Recognizing the importance of both District and community resources in providing
24 services for families, the Family Engagement and Community Outreach Department
25 continued to seek out and foster community partnerships during SY 15-16[.] The
26 department increased its database from 45 community partners in June 2015 to 131 in
27 April 2016." [AR 15-16, ECF 1958-1, p. 356; AR 15-16, App. VII-17, ECF 1966-1, pp.
28 78-83.] "The department worked with these partners to schedule classes, workshops,

1 and other offerings at the [Family Centers]; link resources to families; and connect
2 homeless, neglected, and delinquent youth to support they needed.” [AR 15-16, ECF
3 1958-1, p. 356.] District representatives attended 22 community events between
4 September 2015 and June 2016 to promote the District and increase enrollment. [*Id.*, p.
5 66.] Staff knowledgeable about schools and programs manned booths and tents and
6 engaged with families, providing them with information on educational and enrichment
7 opportunities in the District. [*Id.*]

8 In sum, the District’s FACE institutions and activities are now an indispensable
9 element of the services that the District provides to students, parents, and the
10 community. The District expects its FACE program to flourish long after the Court
11 declares that the District has reached unitary status in this area.

12 **VI. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE**
13 **PROVISIONS OF THE USP REGARDING FACILITIES.**

14 Section IX(A) of the USP requires the District to develop and maintain two
15 facilities-related indices to compare the condition of schools in the District, and in turn
16 to use those two indices to create a Multi-Year Facilities Plan to guide the District’s
17 capital expenditures on facilities in a manner consistent with the overall goals of the
18 USP. The two indices are known as the Facilities Condition Index (“FCI”) and the
19 Educational Suitability Score (“ESS”).

20 **A. The Facilities Condition Index.**

21 For several years prior to the entry of the USP, the District had used a facilities
22 condition index to rate the condition of its schools. The USP required the District to
23 amend the existing FCI “to include, at minimum, the following: (i) location, number and
24 condition of portable classrooms, and (ii) existence and repair status of heating and
25 cooling system (identifying evaporative or air conditioning).” [ECF 1713, p. 54.] Once
26 amended, the District is required to “assess the conditions of each school site biennially”
27 using the amended FCI. [*Id.*]
28

1 In the summer of 2013, the District submitted a revised FCI to the Special Master
2 and parties for review and feedback. The District incorporated their feedback and
3 suggestions, and submitted a new revision in October 2013. This successful
4 collaboration resulted in a final, approved version that was used during SY 13-14 to
5 assess and score each of the District's school sites. The results were reported in the
6 District's Annual Report for that year. [AR 13-14, App. IX-4, ECF 1691, pp. 79-81.]

7 When the District initially created the FCI, it did not yet have a Technology
8 Condition Index ("TCI"). Instead, the FIC contained an assessment of communications
9 technology at each site. Technology communications systems are now evaluated by the
10 TCI (discussed in section VII below), which duplicated the FCI assessment for this
11 category. Accordingly, during SY 15-16, the District's Architecture and Engineering
12 team reduced the weight given to the communication category from 15 percent to 5
13 percent, with the 5 percent reflecting the facility-related responsibilities rather than the
14 technology infrastructure. The team then increased the grounds category, which
15 includes playgrounds and athletic fields, from 5 percent to 10 percent. Although
16 revisions to these weights are not significant, they are more accurate. The District does
17 not believe that the changes have yet substantively affected the allocation of any District
18 funds for repair and improvement. [AR 15-16, ECF 1958-1, p. 379.]

19 The FCI provides an overall composite condition rating of the facility. The FCI
20 scores the condition of a series of facility components, using a rating scale from one
21 (low) to five (high). The composite score is derived from the individual component
22 scores, by weighting each component by a percentage. The current weights are: grounds
23 (10%), parking lots and drives (5%), roofing (20%), building structures (30%), building
24 systems (20%), special systems (10%) and technology-communications systems (5%).
25 A school site's composite score is derived by multiplying each component score by the
26 weighting percentage, and adding the resulting amounts together. The FCI also tracks
27 which sites are racially-concentrated sites, as directed by the USP. [AR 15-16, App. IX-
28 3, ECF 1968-1, pp. 61-65.]

1 The District reassessed all facilities during the SY 15-16, as required by the USP,
2 and adjusted the FCI to reflect current conditions, which included approximately fifteen
3 changes to facilities since the prior assessment, including the repurposing of some sites,
4 the sale of portables, and configuration changes. The adjusted FCI results were reported
5 in the District's Annual Report. [AR 15-16, App. IX-16, ECF 1968-1, pp.166-68.] The
6 next scheduled full re-assessment will take place during SY 17-18. In the interim, as
7 known circumstances change (a roof leak develops, or some other event affecting the
8 FCI score for a school), the index is dynamically adjusted to reflect those developments.

9 **B. The Educational Suitability Score.**

10 The USP required the District to develop an Educational Suitability Score
11 ("ESS") for each school "that evaluates: (i) the quality of the grounds, including
12 playgrounds and playfields and other outdoor areas, and their usability for school-related
13 activities; (ii) library condition; (iii) capacity and utilization of classrooms and other
14 rooms used for school-related activities; (iv) textbooks and other learning resources; (v)
15 existence and quality of special facilities and laboratories (e.g., art, music, band and
16 shop rooms, gymnasium, auditoriums, theaters, science and language labs); (vi) capacity
17 and use of cafeteria or other eating space(s); and (vii) current fire and safety conditions,
18 and asbestos abatement plans." [ECF 1713, p. 54.] Once developed, the USP requires
19 the District to "assess the conditions of each school site biennially" using the ESS. [*Id.*]

20 Immediately after completing the amended FCI in October 2013, the District
21 formed a committee to begin working on the ESS. The committee researched similar
22 tools used by other districts to use as a baseline for understanding the unique needs of
23 the District along with the unique requirements of the USP. Those resources included
24 tools used by the Kentucky Department of Education, the Wyoming Department of
25 Education, the Boston Public Schools, and the Houston Independent School District,
26 which was seen as the most appropriate program model for the District. The committee
27 used the research to help develop criteria to evaluate the seven components identified by
28 the USP. [AR 13-14, ECF 1686, p. 202.]

1 The District expanded the ESS beyond minimum USP mandates by including
2 additional critical educational spaces, such as exceptional education resource classrooms
3 and self-contained classrooms. Recognizing that the non-instructional spaces at schools
4 also play a critical role in the overall suitability of a school, the Committee added to the
5 checklist these needed auxiliary spaces for counseling, tutoring, and health services. In
6 January and February 2014, the committee piloted the ESS at Safford and Booth-Fickett
7 schools and made further revisions based on the results of the pilot. [*Id.*]

8 The ESS was finalized via a collaborative process involving all of the parties in
9 this action. In the fall 2014, the Plaintiffs asked the District to change the proposed ESS
10 structure to weight the scores more heavily towards the classroom and less on the non-
11 instructional space. The District agreed, and the final ESS was approved by the Special
12 Master and the parties in late 2014. [AR 14-15, ECF 1918-1, p. 311.]

13 The ESS allows the District to assess the educational effectiveness of the design
14 of school facilities under an educationally relevant set of guidelines. The ESS evaluates
15 all seven categories listed in the USP. [AR 14-15, ECF 1918-1, p. 310.] The weighting
16 of individual component scores is more heavily directed towards classroom and
17 instructional space and less towards non-instructional space: general classroom are
18 given a weight of 17%, but non-instructional space receives a weight of 2%. As in the
19 FCI, each score is multiplied by the weight factor, all are added together, and then
20 divided by 100 to get the composite score. [AR 14-15, ECF 1918-1, p. 311.]

21 The District assembled a team of former administrators to ensure ESS
22 determinations were made with consistency and by personnel well-versed in educational
23 facilities. The Architecture and Engineering Department worked with the Professional
24 Development Department to create a two-day training course for the team. [AR 14-15,
25 App. IX-5, ECF 1852-4, pp. 31-49.] Each evaluator received a copy of the manual, the
26 ESS Rubric, and School Site Plans. In addition to the training materials, the team
27 created a set of questions to query school administrators prior to site visits by the team.
28 [AR 14-15, ECF 1918-1, p. 311.]

1 The evaluation team attended training in January, 2015, and developed a solid
2 understanding of the criteria used to assess the components identified by the ESS, and
3 collaborated to be sure there was uniformity in the scoring process. [AR 14-15, App. IX-
4 6, ECF 1852-4, pp. 50-53.] In January 2015, the Evaluation Team performed the first
5 evaluations of the ESS at ten randomly selected schools, and then reconvened to make
6 adjustments and recalibrate on how to record the data. The team completed District-
7 wide school evaluations by February 25, 2015. [AR 14-15, ECF 1918-1, p. 312.] The
8 USP requires biennial assessments, and thus the next District-wide ESS evaluation is
9 scheduled for this year.

10 **C. The Multi-Year Facilities Plan.**

11 The USP requires the District to “develop a multi-year plan for facilities repairs
12 and improvements with priority on facility conditions that impact the health and safety
13 of a school’s students and on schools that score below a 2.0 on the FCI and/or below the
14 District average on the ESS. The District shall give the next priority to Racially
15 Concentrated Schools that score below 2.5 on the FCI.” [ECF 1713, pp. 54-55.] Thus,
16 the key inputs to the MYFP were the ESS and FCI scores of each school in the District.

17 Upon completion of the first district-wide ESS scoring in February, 2015, the
18 District submitted a proposed Multi-Year Facilities Plan (“MYFP”) to the Special
19 Master and Plaintiffs. The District recommended, and the Plaintiffs agreed, that the ESS
20 and FCI tools should have separate flows rather than a combined flow. The District
21 evaluated the FCI scores to identify the schools with the lowest scores and rank them
22 according to the flowchart defined by the USP. In the same manner, the District
23 evaluated the ESS scores to identify the schools with the lowest scores. Based on
24 analysis of the FCI and ESS scores, the District then defined the projects needed to raise
25 the FCI or ESS scores and quantified the dollars needed for each project. [AR 14-15,
26 ECF 1918-1, p. 312.] This resulted in a list of repair and improvement projects
27 prioritized by the criteria listed in the USP. The MYFP generally assigns priorities in
28 the following order: (1) resolution of health and safety issues at any school, (2) schools

that score below 2.0 on the FCI or below the District average on the ESS, and (3) racially concentrated schools that score below 2.5 on the FCI. The MYFP was approved by the Special Master and the parties. [ECF 1777-1, pp. 5, 3.]

Actual completed projects are dependent upon the capital dollars available for improvements. Given a defined level of capital dollars, projects are completed in the order defined by the MYFP. The current MYFP is posted on the District website and in the record at ECF 1968-1.

D. The MYFP In Action.

Capital funding for the District from all sources has suffered a significant downturn over the past several years. [AR 14-15, ECF 1918-1, p. 307.] As a result, the District has had funds only for the most pressing issues. The following chart lists the repair and improvement projects completed since the development of the MYFP, and the MYFP priority level for the project:

Project Name/Description	USP/MYFP Priority Level
Miller Elementary Roof	health and safety issue
Valencia Middle School Boiler Retube	health and safety issue
Tucson High Boiler Replacement	health and safety issue
Pueblo Gardens Elementary Roof	RC school below 2.5
Pueblo Gardens Elementary Parking Lot	RC school below 2.5
Bonillas Elementary Roof	RC school below 2.5
Bonillas Elementary Parking Lot	RC school below 2.5
Van Buskirk Elementary Roof	RC school above 2.5

The District also used the FCI to guide the selection of schools for the Adopt-A-School initiative for SY 13-14 and 14-15. Six school campuses were selected for the Adopt-A-School initiative. Three of these schools are racially concentrated, and two are integrated schools. On designated weekends, community, and TUSD volunteers pitched in to do basic repairs and clean-up on the following school campuses: Holladay Elementary, Davis Elementary, Pistor Middle School, Santa Rita High School (SY 13-14, AR 13-14, ECF 1686, pp. 200-01.); Pueblo Gardens Elementary, Lineweaver Elementary, Gale Elementary, Cavett Elementary, Bonillas Elementary and

1 Myers/Ganoung Elementary (SY 14-15). Typical work completed was general grounds
 2 cleanup, restriping of cement courts, indoor paint repair, exterior paint repair, and
 3 planting of trees and shrubs. [AR 14-15, ECF 1918-1, p. 310.]

4 The District amended its FCI as required, developed and implemented an ESS as
 5 required, and used the results in framing an MYFP as required.⁸ The District has
 6 followed the MYFP in determining how to spend its admittedly limited repair and
 7 improvement funds in a manner consistent with the goals of the USP. The District has
 8 complied in good faith all respects with the USP requirements, and respectfully submits
 9 that the Court should find the District in unitary status and terminate supervision in this
 10 area.

11 **VII. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE**
 12 **PROVISIONS OF THE USP REGARDING TECHNOLOGY.**

13 Section IX(B) of the USP requires the District to develop and maintain a
 14 Technology Conditions Index to compare schools in the District on technology and
 15 technology conditions, and in turn to use that index to create a Multi-Year Technology
 16 Plan to guide enhancements and improvements to the District's technology.⁹ [ECF
 17 1713, p. 55.]

18 **A. The Technology Condition Index.**

19 The USP required the District to "develop a Technology Conditions Index
 20 ("TCI"), which rates technology and technology conditions in schools along multiple
 21 technological dimensions and provides a composite score for each school. The TCI
 22

23 ⁸ The District has also included USP-required information about its facilities
 24 operations in its annual reports. [AR 13-14, App. IX 1-11, ECF 1691; AR 13-14, App.
 IX 1-11, ECF 1852-4; AR 15-16, App. 16-20, ECF 1968-1.]

25 ⁹ This section of the USP also contains requirements for professional
 26 development in the use of technology in the classroom. Although the District has
 27 provided expanded and accelerated technology professional development which
 28 complies with the USP in this area, the District believes that it is more appropriate to
 consider this technology professional development in the larger context of overall
 professional development set forth in Section IV of the USP. Thus, the District does not
 seek termination of court supervision over technology professional development at this
 time.

1 shall include, at minimum, the following: (i) student access to computers and other
 2 learning devices (e.g., smart boards); the location of computers and learning devices (lab
 3 or classroom or both); (ii) availability of wireless and broadband Internet in a school;
 4 (iii) availability of research-based educational software or courseware; and (iv) teacher
 5 proficiency in facilitating student learning with technology.” [Id.] Once developed, the
 6 District was required to “assess the technology in each school biannually using the
 7 TCI.” [Id.]

8 Initial review indicated that no other district in the country had created or
 9 implemented a TCI. The District evaluated prospects for finding an outside consultant
 10 with sufficient background or expertise in this area to justify floating a Request for
 11 Proposals. Discussions with several vendors revealed a lack of current experience in
 12 both the design and implementation of a TCI instrument. The District thus undertook
 13 the project in house. A working TCI prototype was developed by February 2014,
 14 submitted to the Plaintiffs and Special Master, and approved. [AR 13-14, ECF 1686, p.
 15 203.]

16 The TCI creates a composite score for each school, made up of multiple
 17 technological dimensions. These dimensions included a complete inventory of the
 18 District’s technology hardware and their condition (*e.g.*, computers, printers, scanners,
 19 smartboards, response-devices, projectors, document cameras, multi-media devices).
 20 These dimensions also included software resources available to teachers such as
 21 instructional support, credit recovery, assessment, and Microsoft Office software. Based
 22 on this information, the District calculated a weighted composite score as a whole and
 23 for each school. The weighting for each component of the TCI is listed below:

24	Classroom technology inventory (equipment and software)	26%
25	Lab technology inventory (equipment and software)	26%
26	Software use	5%
26	Teacher proficiency (comfort and use of classroom technology)	42%

27 [AR 14-15, ECF 1918-1, pp. 314-15.] Teacher proficiency and comfort with technology
 28 in the classroom were both assessed to gauge aptitude and ease of integration into daily

1 routines. Technology Services created a proficiency survey, which was administered to
2 District teachers. The survey requested teachers to rate their comfort level utilizing
3 instructional technology on a scale from zero (not comfortable at all) to five (the highest
4 comfort level). Additionally, teachers were provided the opportunity to explain their
5 current comfort level regarding instructional technology, which was captured in
6 narrative format. [*Id.*]

7 The TCI has been updated continuously, starting in SY 13-14, with new data
8 based on current conditions and new purchases, reflecting the substantial continuing
9 investments in technology made by the District.

10 **B. The Multi-Year Technology Plan.**

11 The USP requires the District to “develop a multi-year Technology Plan that
12 provides for enhancements and improvements to the District’s technology, with priority
13 given to basic maintenance and required repairs and to Racially Concentrated Schools
14 that score below the District average on the TCI.” [ECF 1713, p. 55.] The results of the
15 District’s assessments using the TCI form the principal basis for implementation of the
16 MYTP.

17 The District analyzed the results of the 2014-15 TCI and developed the MYTP.
18 The District submitted this plan to the Court in February 2015. *See* Multi-Year
19 Technology Plan [ECF 1778 and 1778-1.] There were no objections to the MYTP from
20 the Special Master or the Plaintiffs. The MYTP contained two primary
21 recommendations.

22 1. Technological Upgrades. Based on an analysis of the TCI classroom and
23 lab resource inventory scores, the MYTP recommended that fourteen racially
24 concentrated sites, whose ratings fell below the District average, receive computer
25 hardware upgrades over a three year period. [AR 14-15, ECF 1918-1, p. 316.]

26 2. Teacher Technology Liaisons (“TTLs”). To address issues with respect to
27 teacher proficiency, the MYTP provided for at least one classroom teacher at each
28 school to serve as a TTL with up to two additional liaisons available for Elementary and

K-8 schools with student populations of 400 or more. High schools with student populations of 1,100 or more received three or four TTLs. Based on a train-the-trainer model, TTLs received training either in person or online regarding how to integrate various hardware and software applications to improve teacher use and proficiency with technology in the classroom. [*Id.*]

C. The TCI and MYTP In Action.

In SY 13-14, despite the fact that the TCI was not yet complete, the District was able to complete a partial assessment using the TCI with regard to computers in classrooms (other technology tools were not yet included in the survey). Looking at only distribution, location, and quality of computers at school sites, the data indicated that at the end of SY 13-14, 20% of racially concentrated schools, and 18% of non-racially concentrated schools, scored below a “3”¹⁰ on the TCI instrument. These initial numbers were encouraging in that overall disparities appeared to be relatively small. The table below compares the mean TCI scores between racially concentrated and non-racially concentrated schools across elementary, middle, K-8/K-12, and high school categories:

Preliminary Data--Average TCI scores SY 13-14 (computers only)

	Racially Concentrated	Not Racially Concentrated
Elementary	3.29	3.60
Middle, K-8 & K-12	3.34	3.44
High School	3.00	2.18

[AR 13-14, App. IX-6, ECF 1691, pp. 106-09.] Average scores for all racially concentrated schools were at or above the 3.0 threshold.

¹⁰ The 2013-14 TCI weighting defines a score of “3” as being in Acceptable Condition: “Technology rated at 3 has had proper preventative maintenance and attention to work orders keeps it in acceptable condition. The hardware is compatible with essential TUSD technology and network environment. It is supportable, with replacement parts available from the manufacturer. Accessories are available. The software works and is relevant. Any safety and/or ergonomic issues are very minor. The technology supports the educational mission.” [AR 13-14, App. IX-5, ECF 1691, p. 84.]

During SY 14-15, the District completed the full TCI for the first time. The completed TCI was reported in the District's Annual Report for that year. [AR 14-15, App. IX-8, ECF 1852-4, pp. 58-64.] Average composite scores increased substantially. Thirty-nine schools scored below the District average rating of 3.67. Nineteen of these schools (49%) were racially concentrated and twenty (51%) were not. The average TCI score by school level and racial concentration status for computers is provided in the following table:

Average TCI scores SY 14-15		
	Racially Concentrated	Not Racially Concentrated
Elementary	3.58	3.72
Middle, K-8 & K-12	3.68	3.65
High	3.72	3.64
District	3.67	

[AR 14-15, ECF 1918-1, p. 315.] This shows substantial equality across all schools. Using data generated from TCI instrument scores, the District made informed decisions regarding much needed hardware upgrades at District schools. As a result, during SY 14-15, the District provided \$1.8 million in technological improvements to all fourteen racially concentrated schools identified in the MYTP as below the District average. [*Id.*]

Results for SY 15-16 continued to show improvement. The overall TCI composite rating for the District increased from 3.67 in SY 14-15 to 3.9 for SY 15-16. The District attributed the growth primarily to two factors: new device upgrades and improvements in teacher proficiency with technology. The District increased the number of available laptops for use in the classrooms at schools identified as racially concentrated and elementary schools, based on the results of the SY 14-15 TCI. As the District deployed new devices to the approved campuses, it identified and excluded "legacy" hardware, which dated from 2005-08, from the TCI inventory. The legacy hardware did not meet the minimum Arizona Department of Education specifications for conducting AzMERIT online testing and were no longer deemed to be within

acceptable limits of current software platforms. The second contributing factor was an overall increase in teacher technology proficiency from 3.9 in SY 14-15 to 4.1 in SY 15-16 for an overall growth of 7 percent. [AR 15-16, ECF 1958-1, p. 380.]

In SY 14-15, only seventeen of the 36 racially concentrated schools rated above the TCI district average; by the end of SY 15-16, the District had increased this number to 30 schools. In SY 15-16, 34 of 50 non-racially concentrated schools exceeded the TCI district average, up from 29 schools in SY 14-15. The TCI score for racially concentrated schools grew by 77 percent compared to those for the non-racially concentrated schools, which increased by 17 percent between SY 14-15 and SY 15-16 (*see* Table 9.1 below). The District attributed this increase to the approved procurement in SY 14-15 of student laptops and desktops for those racially concentrated schools that fell below the TCI 2014-15 district average, together with the procurement of one Computers on Wheels (COW) housing 30 laptops for all elementary schools:

Number of Schools Above the TCI District Average

Campus Integration	SY 14-15 Schools Above TCI District Avg.	SY 15-16 SY Schools Above TCI District Avg.	Year over Year Growth
Racially Concentrated	17 of 36	30 of 36	77%
Non-Racially Concentrated	29 of 50	34 of 50	17%

[AR 15-16, ECF 1958-1, p. 381] The District developed and implemented its TCI as required, and used the results in framing a Multi-Year Technology Plan as required. The District has followed the MYTP in determining enhancements and improvements to the District's technology, with priority given to basic maintenance and required repairs and to Racially Concentrated Schools that score below the District average on the TCI.

The total increase in available teaching technology was substantial:

Technology Upgrades Following Completion of MYTP

School Level	SY 14-15		SY 15-16					
	Carts	Laptops	Carts	Laptops	Doc. Cameras	Printer Maint. Kits	Head-phones	Projectors
Elementary	75	2241	98	2940	165	277	4470	201
Middle/K-8	28	840	131	3923	203	191	4373	196
High School	13	390	109	3270	374	168	3420	199
Grand Total	116	3471	338	10133	742	636	12263	596

The District has complied in good faith all respects with the USP requirements, and respectfully submits that the Court should find the District in unitary status and terminate supervision in this area.

VIII. THE DISTRICT HAS COMPLIED IN GOOD FAITH WITH THE PROVISIONS OF THE USP REGARDING ITS EVIDENCE BASED ACCOUNTABILITY SYSTEM.

A. USP Provisions.

Section X(A) of the USP requires the District to maintain an Evidence Based Accountability System (“EBAS”) for use in assessing progress and compliance with other aspects of the USP. [ECF 1713, p. 56.] This is defined as follows:

16. “Evidence-Based Accountability System” and “EBAS” refer to the universe of data to be included in Mojave pursuant to this Order, and to be used for monitoring the District’s compliance with and success under this Order. EBAS shall include, but is not limited to, the following: student characteristics (e.g., race, ethnicity, age, grade level, years attending District schools, disability status, ELL status, LEP family status, transportation needs), student academic access and achievement (e.g., standardized test scores, grade point average, grade(s) retained, enrollment in ALE by ALE type); services and interventions received (e.g., individualized education plan (IEP), services for students with disabilities, ELL services, reclassified ELLs); and student behavior (e.g., tardies, absences, disciplinary infractions, positive behavioral interventions), and any other information concerning the administrators and certified staff who regularly engaged with the student, including but not limited to the student’s regularly assigned teachers.

....

1 33. “Mojave” refers to the District-wide electronic student
2 information system used for academic and behavioral data or
3 any similar system by any name used by the District for such
4 academic and behavioral data.

5 USP Appendix A. [ECF 1450-1, pp. 3, 5.] The District was required to review its
6 existing student and other data information systems, determine what modifications were
7 necessary to meet the USP requirements, implement those modifications, and report
8 changes and progress in implementation. [ECF 1713, p. 55-56.] The District is also
9 required to train all administrators, certificated staff, and where appropriate,
10 paraprofessionals on the use of EBAS, and evaluate them on the use of the system. [*Id.*]

11 **B. District Compliance.**

12 There are three major elements to the District’s compliance with the USP: first,
13 the development of the EBAS itself; second, the addition of custom “dashboards”
14 allowing easier access and use of the underlying data collected and managed by the
15 EBAS software, thus expanding the universe of users and the frequency of use of the
16 data, and finally, the implementation of a common, cloud-based data storage structure
17 used across all the major components of the District’s many software systems, setting
18 the stage for further integration as technology develops in the coming years.

19 **1. The development of EBAS.**

20 The student information system in use at the time the USP was entered was
21 known as Mojave (thus the use of that term in the USP to refer generally to the District’s
22 student information system). Mojave had been developed locally in Tucson for the
23 District, had been in use for a number of years (AR 13-14, ECF 1686, p. 213), and was
24 recognized as one of the best student information systems in the state (AR 14-15, ECF
25 1918-1, p. 326).

26 Mojave already had collection and reporting capabilities for a number of the key
27 measurements required by the USP. However, in March 2013, the District engaged an
28 outside consultant firm, Davidson Services, LLC, to conduct a needs analysis, to
 determine what modifications and additions to Mojave were needed in order to meet the

1 requirements of the USP. The Davidson firm analyzed the existing system, matched it
2 against the USP requirements, interviewed over 50 District employees, and reported its
3 conclusions back to the District in May 2013. [AR 12-13, App. 86, ECF 1554-5, pp. 45-
4 109.]

5 Based on this report, the District identified changes and additions to be made to
6 the existing Mojave system:

7 **a. Classification change.**

8 By agreement with the parties, the District supplemented its demographic
9 classifications to ensure that students who identify as both Hispanic (ethnically) and
10 African American (racially) are tracked for USP purposes as members of the African
11 American class if they so identify. This change was implemented during SY 12-13. [AR
12 12-13, ECF 1549-1, p. 72.]

13 **b. Intervention tracking.**

14 The District strengthened Mojave's ability to track interventions and special
15 services on a student by student basis by implementing the "Intervention Block" in
16 addition to the Grant Tracker application which predated the USP. This change was
17 implemented during SY12-13. [*Id.*]

18 **c. Transportation.**

19 The District added individual student transportation information and eligibility
20 status to the information about each student maintained by the system. This change was
21 implemented during SY 12-13. [*Id.*]

22 **d. Watchpoint.**

23 The District added the Watchpoint system as a pilot program, to produce alerts,
24 flags, and other programmed signals automatically, to indicate when students do not
25 meet pre-determined goals or expectations for academic performance or behavioral
26 concerns. Watchpoint was implemented during SY 13-14 in Mojave. [AR 13-14, ECF
27 1686, p. 214.] The District determined that the system over-identified students through
28 all grade levels. During SY 14-15, a decision was made to discontinue the development

1 of Watchpoint due to the anticipated adoption of a new student information system
2 which met the new Arizona Department of Education requirements for compatibility
3 with the state data platforms, discussed below. In connection with the implementation
4 of the new student information systems, a new program replaced the Watchpoint
5 functionality, with better results.

6 **e. Extracurricular tracking.**

7 The District added the ability to track participation in extracurricular activity for
8 elementary and middle school students, and for non-AIA athletics for high schools. This
9 change was implemented during SY 13-14. [*Id.*]

10 In July of 2014, the Arizona Department of Education announced new statewide
11 interface requirements for student information systems, to permit integration with the
12 new data platforms to be used by ADE. Mojave did not meet the new requirements (and
13 modification would have been uncertain and expensive), so the District purchased a new
14 student information system, Synergy, that was specifically designed to interact with the
15 new state data platform. Developed and maintained by Edupoint, Synergy was procured
16 through a cooperative contract with ADE. [AR 15-16, ECF 1958-1, p. 388.] During SY
17 14-15, the District conducted a gap analysis to identify any functionality in Mojave that
18 would not be supported by Synergy. As a result, the District identified that the
19 intervention module in Synergy was not as robust as the District required to meet the
20 needs of the USP. Accordingly, the District completed a procurement process and
21 selected the vendor BrightBytes and its application Clarity to support automatic flagging
22 of at-risk students and workflow tracking of interventions. [*Id.*]

23 The District went live with the new student information system, using the
24 Synergy student information integrated with Clarity, as planned at the beginning of SY
25 16-17. The Clarity application is a leading edge technology using predictive analytics
26 providing an easy to use dashboard for automatically identifying at risk students by risk
27 level via Clarity “Early Warning” module. The proprietary predictive analytics
28 algorithms are tuned for accurate identification of at risk students or potential drop out

students by leveraging machine rule based computational learning engines. The Early Warning module works on the principal of the bigger the data set or more data points per student the finer tuned and more accurate the predictive outcomes will be for a district since it is based off the district's demographics. The District successfully uploaded twenty years of highly accurate Mojave student data into Clarity's cloud based data warehouse resulting in a highly accurate flagging of at risk students while providing an easy to use dashboard to drill down and identify the high risk areas within the three domains of academics, attendance and behavior. Clarity also provides current national research-based suggestions of interventions to address the high risk areas, providing facilitators and administrators differentiating approaches.

EBAS Requirements of USP	Synergy	BrightBytes Clarity	DashBoards
Student Characteristics			
Race	X	X	X
Ethnicity	X	X	X
Age	X	X	X
Grade Level	X	X	X
Years Attending District Schools	X	X	X
Disability Status	X		X
ELL Status	X		X
LEP Family Status	X		X
Transportation Needs	X		X
Academic Achievement			
Standardized Test Scores	X	X	X
Grade Point Average	X	X	X
Grade(s) Retained	X	X	X
Enrollment in ALE by ALE type	X		X
Services and Interventions			
Individualized Education Plan	X		X
Services for Students with Disabilities	X		X
ELL Services	X		X
Reclassified ELLs	X		X
Student Behavior			
Tardies	X	X	X
Absences	X	X	X
Disciplinary Infractions	X	X	X
Positive Behavioral Interventions	X	X	

2. The addition of dashboards for greater access and ease of use.

In order to increase access and ease of use, the District created a series of simple, intuitive user interfaces to the data collected and managed by the EBAS software. These interfaces, or “dashboards,” are web-based platforms accessible to all District staff (with appropriate authorization limitations) through the District’s Sharepoint intranet software. They have various pre-set information and reports with information that is continuously updated from District databases, including legacy applications such as TUSDStats and Mojave systems. [AR 14-15, ECF 1918-1, p. 326.] The District went live with Synergy in SY 16-17 and this resulted in a series of new platform upgrades and data integration. The District is in the process of releasing an upgraded TUSDStats, providing the same information in a cleaner and more robust format. The interfaces include separate live-data dashboards on enrollment, class size, and student discipline. Staff members aggregated all of the EBAS components to review data on District-wide, grade level, or individual school bases, including dynamic aggregations by selected values.

The Enrollment Dashboard reports current year enrollment compared to school capacity and student demographics. The Enrollment Dashboard publishes dynamic charts and graphs comparing school and District enrollment by student ethnicity/race, gender, placement, Exceptional Education status, ELL status, grade, school type, birth country, and state. The charts parse data horizontally and vertically with aggregation and disaggregation possibilities built into each chart. The charts dynamically show student counts by each value. [AR 14-15, ECF 1918-1, p. 327.]

The Enrollment Dashboard produces visual information to quickly assess results based on the chosen value. The visual information includes charting, graphing, and Key Performance Indicators (“KPIs”). KPIs flagged data in color for quick identification of levels. Levels denoted whether a value is high, medium, or low based on user defined measurements. The charts and graphs illustrate individual data values in columns for

1 printing, export, and/or email output. Many charts, graphs, and reports include specific,
2 individual student information. [*Id.*]

3 The Class Dashboard reports details on current year class size by District, school,
4 teacher, and student schedules. Some KPIs allow administrators to evaluate class sizes
5 in real time and make adjustments (“leveling”) where needed to ensure equitable class
6 size across school sites. The Class Dashboard incorporates many of the same
7 capabilities as the Enrollment Dashboard. The Class Size Dashboard quickly assesses
8 capacity, class size, and students completed schedules. The Data Dashboard includes
9 reports to determine teacher load and student scheduling. [*Id.*]

10 The Class Dashboard filters by school type, school and credit area with
11 breakdowns for each teacher and created charts that detailed:

- 12 • how full schools were and what percentage of capacity is used;
- 13 • how many of the classes were filled to the established norm;
- 14 • what percentage of students have filled schedules, including details at the
schedule level; and
- 15 • which teachers were “overbooked” by the class type.

16 The Discipline Dashboard stores multiple year information on student discipline,
17 incidents, violations and actions broken down by year, school, school type, action type,
18 violation, ethnicity/race, and gender. The Discipline Dashboard manages data from 2009
19 to present. Additionally, the School Risk Ratio Scorecard demonstrated the unique
student incident rates by ethnicity. [*Id.*, pp. 327-28.]

20 The Discipline Dashboard produces KPIs that quickly identified problem areas
21 by gender, violation, and time periods with color-coded charts. The charts further broke
22 down action by category and individual actions. The dashboard selected and/or grouped
23 discipline data by year, quarter, month, week or individual dates. The dashboard groups
24 or selects information by infraction and by magnet school status. The charts also listed
25 data by violation category or individual violations. [*Id.*, p. 328.] The dashboards
26 produce specialized reports like Power View Reports, Excel Pivot Tables, and SQL
27 Server Reporting Services reports. Many of the reports, as manipulated by end users,
28 produced new types of reports for others to use. Staff members produced and published

1 these new reports to show specific data sets to their colleagues. The reports included
2 dynamic graphical representations of data that were easily manipulated by staff
3 members. The reports produce data with additional functionality for users to subscribe
4 to a report (email delivery) or be alerted via email when a threshold has surpassed. Staff
5 members print reports that can be exported into Excel, PDF or other formats, emailed, or
6 converted to Powerpoint presentations. [*Id.*]

7 On June 1, 2015, the District trained all TUSD principals during the ILA meeting
8 on how to use the USP Discipline Dashboard. The District also provided additional in-
9 depth training to directors from Student Services, Elementary School Leadership, and
10 Secondary School Leadership on June 23, 2015. The District administered training for
11 the EBAS Dashboard in group and individual settings. [*Id.*, p. 329.]

12 **3. The implementation of a common data repository.**

13 The most recent innovation in the District's EBAS system is the addition of a
14 common repository, or data warehouse, to store data from all of the District's major IT
15 systems. The data warehouse will include data from the District's older, legacy systems,
16 including Mojave, PeopleSoft, Lawson, Tienet, MapNet and ATI. The data warehouse
17 will also contain and integrate data from newer systems which have replaced the older
18 systems, including Infinite Visions (enterprise resource planning, including human
19 resources and finance), Synergy (student information system), Versatrans
20 (transportation) and School City (online testing). This integration of older, legacy data
21 with current data allows analysis across time and systems previously only possible with
22 manual comparisons.

23 In May 2015, in its research of EBAS technologies, the District found the vendor
24 Ed-Fi Alliance ("EdFi"). EdFi is a non-profit organization funded by the Michael and
25 Susan Dell Foundation that provides school districts and state educational departments
26 with a complete Operational Data Stores ("ODS") for a data warehouse architecture for
27 SIS and ERP and pre-defined data dashboards for teachers, principals, and central
28

1 administration. EdFi also provides an Application Program Interface (“API”) to interact
2 with other application and data sources at no cost. [AR 15-16, ECF 1958-1, p. 389.]

3 School districts across the nation and state education departments use the EdFi
4 Alliance ODS platform, which also serves as the new ODS infrastructure for the ADE
5 AzEDS platform. EdFi is a fully documented application and has a dedicated staff to
6 continue enhancing the application and provide full support at zero cost. The EdFi ODS
7 platform is fully compatible and optimized to run on the Microsoft Azure cloud
8 infrastructure. The District began implementation at the beginning of SY 16-17,
9 eliminating the need to purchase dedicated hardware and, in return, creating the ability
10 to buy a full-service data warehouse infrastructure within the Microsoft cloud data
11 center. [*Id.*]

12 For SY 15-16, Technology Services staff worked to ensure that the existing data
13 dashboard functionality (supported by SharePoint) remained functional while the
14 District prepared to move to the fully integrated EdFi ODS platform. To that end, in fall
15 2015, the District contracted with an outside vendor to obtain the technological services
16 required to assess the current SharePoint infrastructure that supported the data
17 warehouse. The specialist conducted an initial assessment and made recommendations
18 for the redesign of SharePoint infrastructure to allow for the latest Microsoft offerings
19 with stronger and easier-to-use analytical tools and for faster ad-hoc reporting to
20 supplement the dashboard data. [*Id.*, pp. 389-90.]

21 The resilience and reporting abilities of EBAS have proven themselves over and
22 over in the past two years, providing the basis for countless internal queries and
23 decisions, and supporting the effort to respond to a veritable blizzard of external
24 information requests from the parties and the Special Master. The EBAS has become
25 completely integrated into the assessment and decision making structure of the District,
26 and will continue to evolve to support those activities in the future. The District has
27 substantially complied with its obligations related to its Evidence Based Accountability
28

1 System under the USP, and the Court should feel no hesitation in withdrawing formal
2 supervision over this aspect of District operations.

3
4 **Conclusion**

5 The District has complied in good faith with the provisions of the USP governing
6 its operations in the areas of transportation, extra-curricular activities, family and
7 community engagement, facilities, technology and its evidence-based accountability
8 system. There are no remaining vestiges of discrimination in these areas which can be
9 causally linked to the *de jure* violations which occurred more than 40 years ago.
10 Accordingly, the District respectfully requests that the Court declare that the District is
11 in partial unitary status, and withdraw its supervision over District operations, in these
12 areas.

13 DATED this 7th day of March, 2017.

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CERTIFICATE OF SERVICE

The foregoing document was lodged with the Court electronically through the CM/ECF system this 7th day of March, 2017, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ Diane Linn
Employee of Steptoe & Johnson LLP