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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs,
v.
United States of America,
Plaintiff-Intervenors,
v.
Anita Lohr, et al.,
Defendants,
Sidney L. Sutton, et al.,
Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS'
OBJECTIONS TO THE TUCSON
UNIFIED SCHOOL DISTRICT'S USP
BUDGET FOR THE 2017-18 SCHOOL
YEAR**

Hon. David C. Bury

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

Case No. CV 74-204 TUC DCB

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9
10 **INTRODUCTION**

11 On June 28, 2017, TUSD filed its Governing Board approved 2017-18 910(G)
12 (“USP” or “Deseg”) budget together with a great deal of paper consisting of earlier
13 iterations of that budget, final and earlier versions of the District’s magnet and transition
14 school plans, information provided to the Plaintiffs and the Special Master in response to
15 their requests, comments and objections by the Plaintiffs and the Special Master, budget
16 process schedules and revisions, and other related material. (Doc. 2028.) Notably missing
17 (and also unaccountably ignored during TUSD’s final budget process) were the Mendoza
18 Plaintiffs’ May 24, 2017 Comments and Objections to Magnet School and Revised
19 Transition Plans (“5/24 Magnet School Objections”). (A copy of the 5/24 Magnet School
20 Objections is attached as Exhibit A.¹) Mendoza Plaintiffs therefore begin these objections

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24 ¹ Mendoza Plaintiffs anticipate that the District may assert that it failed to address their
25 objections to the magnet and transition plans and the proposed funding for those plans
26 because they were not labeled “continuing objections” under the budget process. To this
27 there are at least two responses: (1) Mendoza Plaintiffs’ May 24, 2017 statement of
28 “continuing objections”, a copy of which is attached as Exhibit B, expressly stated (on
page 1) that they would separately address comments and objections relating to the revised
transition and magnet plans, and (2) They delivered those comments and objections
relating to the revised transition and magnet plans to the District at the very same time they
delivered their “continuing objections” to the balance of the 910 (G) budget. (See emails

1 by addressing matters relating to the magnet and transition schools that should have been –
2 but were not – included in the 2017-18 budget and then proceed to their other objections..

3 **TUSD HAS FAILED TO ADEQUATELY ADDRESS AND FUND INITIATIVES**
4 **TO RAISE ACADEMIC ACHIEVEMENT, CLOSE THE ACHIEVEMENT GAP,**
5 **AND INCREASE THE INTEGRATION IN ITS MAGNET SCHOOLS**

6 A cursory review of the TUSD transition and magnet school plans (*see*, Doc. 2028-
7 1 at 232-531) reveals that far more analysis of student achievement and its implications for
8 needed school programs and learning initiatives to improve that achievement informs the
9 transition school plans –and their budgets -- than the magnet school plans. Upon receipt
10 of the first drafts of the plans, Mendoza Plaintiffs raised their grave concerns about the
11 District’s apparent lack of attention to the preparation of the magnet school plans. (*See*
12 Doc. 2028-3 at 986-997.) But what is particularly important here in considering the 2017-
13 18 Deseg budget is that on the very first page of the 5/24 Magnet School Objections,
14 Mendoza Plaintiffs stated the following:

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17 **“OBJECTION TO MAGNET AND TRANSITION SCHOOL REVISED PLANS**

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19 **The May revisions to the March magnet and transition school plans remove**
20 **approximately \$1.5 million from the total magnet and transition school budgets.**
21 **Mendoza Plaintiffs object to this action and request that this sum be restored.**

22 The intent of the objections that both the Special Master and the Plaintiffs
23 articulated with respect to items in the March budgets like transition coordinators and
24 personnel to curate display cases was not to reduce the overall amount allocated to these
schools but, rather, to identify funds that can be used to pay for direct services to students
in the form of programs and personnel to improve the academic achievement of the

25 dated May 24, 2017 at 3:51 and 3:53 pm, attached hereto as Exhibits C and D,
26 respectively.) Further, given the significant attention Mendoza Plaintiffs have paid to the
27 magnet (and transition) school plans throughout these proceedings, including during the
28 2017-18 budget process, *see, e.g.*, Mendoza Plaintiffs’ Comments on TUSD USP 2017-18
Draft Budget #2 (“Draft #2 Comments”), attached as Exhibit E at 13-23, the District
should have been expecting Mendoza Plaintiff comments on its revised 2017-18 magnet
school and transition plans.

1 African American and Latino students attending these schools and close the achievement
2 gap.

3 The District asserts that it will be revising the achievement goals of these schools
4 once the results of the 2016-17 AzMerit tests become available. Mendoza Plaintiffs urge
5 the District to devote the \$1.5 million it has pulled from the budgets of these schools to
6 aggressively pursue initiatives to improve educational outcomes based on the needs that
7 emerge from an assessment of the 2016-17 test results.”

8 5/24 Magnet School Objections, Exhibit A, at 1; emphasis added.

9 The 5/24 Magnet School Objections at 7- 9 also contained in its discussion of the
10 magnet school plans a separate sub-section labeled “Budget Amounts” which stated:

11 **“Notwithstanding an earlier representation that it would hold the total magnet
12 school budget (after deductions for the transition schools) constant with last year, it
13 appears that the District has reduced the total amount of 910(G) funds to be allocated
14 to the magnet schools by about \$540,000....²”**

15 **Mendoza Plaintiffs object to this total reduction and urge the District to
16 allocate the approximately \$540,000 to programs in the magnet schools that will
17 provide direct services to students to more aggressively target the achievement gaps
18 in so many of the magnet schools and to provide the summer learning opportunities
19 (and Jump Start and similar summer transition programs) that the Special Master
20 and the Plaintiffs have repeatedly urged the District to pursue....”**

21 5/24 Magnet School Objections, Exhibit A, at 7-9; emphasis added.

22 The District ignored that objection, stating in its Magnet and Transition Plan Cover
23 Letter accompanying the final magnet and transition plans (“M/T Cover Letter”) that it

24 ² It is important to stress that this deduction is separate from the amounts in certain school
25 budgets that have been “reallocated to 16-17 SY”. Mendoza Plaintiffs compared the
26 versions of the magnet school budgets for Booth-Fickett and Carrillo (the schools with the
27 largest “reallocations”) and determined that the sums to be “reallocated” were not in the
28 March 2017 versions of their budgets. Thus, it appears that they were separately added to
the May versions of the budgets (so that they could then be “reallocated” to 2016-17). The
approximately \$540,000 reduction in total magnet school budgets from March to May
therefore has nothing to do with, and is separate from, the accounting results of the
added/reallocated sums. (This is further confirmed by the Magnet School Budget
Comparisons attached to the District’s Responses to Mendoza Plaintiff Comments on
Magnets (“TUSD Magnet School Responses”) (attached as Exhibit F) that shows that
exclusive of the “reallocated” sums, the total for all the March 2017 magnet plans came to
\$8,001,894.. By contrast, as shown in Appendix A hereto, the final magnet school budgets
now allocate a total of \$7,493,308 to the magnet schools, exclusive of those same
“reallocated” amounts.)

1 made “no changes” to the final magnet plans from the May versions that the Mendoza
2 Plaintiffs had reviewed and to which they made objection. (Doc. 2028-1 at 227.)³

3 As this Court well knows, Mendoza Plaintiffs have long been focused on the
4 inadequacy of the District’s magnet school plans and their failure to devote sufficient
5 funding to asset based strategies to raise student academic performance and close the
6 achievement gap. (*See, e.g.*, Stipulation Regarding Magnet School Enrollment Data and
7 Magnet School Supplemented Improvement Plans, Doc. 1865, at 6:18-24 and Mendoza
8 Plaintiffs’ Comments Regarding TUSD’s 2016-17 Magnet School Improvement Plans,
9 Doc. 1948-13.)
10
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12 Yet, this year, **without having undertaken any assessment of student**
13 **achievement at its magnet schools**⁴ and therefore lacking any informed understanding of
14 what efforts might be required to address previously acknowledged achievement deficits in
15 many of the magnet schools, the District provided an initial set of magnet school budgets
16 that reduced total funding for these schools below that for those same schools in the 2016-
17 17 school year and then, after Mendoza Plaintiffs objected to these overall reductions,
18 further reduced the total level of proposed funding. The 2016-17 budget allocated
19 \$8,158,815 to the total group of magnet schools remaining after the removal of magnet
20 status from six schools. (Mendoza Plaintiffs’ Comments on TUSD USP 2017-18 Draft
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23 ³ Notwithstanding the statement of “no changes”, as a consequence of what the M/T
24 Cover Letter refers to as “adjustments” generally to the benefits line (*id.*), just over
25 \$114,282 was added to the total budget for magnet schools above what had been proposed
26 in May. For clarity of the record and because certain of the reported amounts will be
27 referred to later in these Objections, the June changes and the resulting magnet school
28 budgets are set forth in the chart attached hereto as Appendix A.

⁴ *See*, TUSD Magnet School Responses (Doc. 2028-2 at 988), asserting in response to
Mendoza Plaintiffs’ objection to the failure to have undertaken any analysis of student
performance at the magnet schools, that “[c]ertain details (including goals) of the magnet
plans will be updated after the results of the AzMERIT become available.”

1 Budget #2, Exhibit E at 16.) The draft magnet school budgets delivered in March 2017
2 allocated \$7,920,188 to these schools. (*Id.*) The final budgets for these schools reduced
3 that total to \$7,493,308.⁵ (Appendix A.)

4 Rather than repeat here the extensive discussion of achievement goals (or, more
5 accurately, the absence thereof) and the need to fashion educational initiatives to increase
6 academic performance that Mendoza Plaintiffs included in the comments and objections
7 they provided to the District, Mendoza Plaintiffs respectfully invite the Court's attention to
8 Mendoza Plaintiffs' Comments on TUSD USP 2017-18 Draft Budget #2, Exhibit E at 13-
9 15 and Exhibit A hereto at 4-6.

10 As noted in Exhibit A and is clear from Mendoza Plaintiffs' Comments on TUSD
11 USP 2017-18 Draft Budget #2, Mendoza Plaintiffs did question certain proposed
12 allocations in the initial magnet school budgets. However, the intent of those comments
13 and objections was not to reduce the overall amounts allocated to those schools but, rather,
14 to identify funds that could be used to improve the academic achievement of the African
15 American and Latino students attending those schools and close the achievement gap.

16 Although the sum is not large, an example of the sort of proposed expenditure of
17 910(G) funds to which the Mendoza Plaintiffs (and the Special Master) objected (and
18 which, for reasons Mendoza Plaintiffs cannot understand, the District persists in stating it
19 plans to fund with desegregation dollars) is a "part-time assistance curator" (at a cost of
20 about \$12,500) to maintain display cases and galleries at Tucson Magnet High School.

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27 ⁵ While a couple of schools (Palo Verde and Tully) have final budgets that are higher than
28 reductions of approximately \$100,000 per school.

1 They also questioned (and continue to question) expenditures for supplies and furniture
2 that appear to be instances of improper “supplanting” rather than permissible
3 “supplementation.”⁶ Even as they questioned some proposed 910(G) allocations, in most
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7 ⁶ For example, the Booth-Fickett plan includes an entry for otherwise unspecified
8 “instructional supplies” and provides as the first listed “justification” for this expense to
9 “improve overall achievement for all students.” (Doc. 2028-1 at 472.) A math/science
10 magnet, it also states that the again otherwise unspecified math and science supplies will
11 “enrich student learning and improve student achievement” but it is unclear whether these
12 are different or otherwise distinct from math and science supplies and “student agendas”
13 that one would expect to find in any school teaching math and science in the District.
14 Moreover there is no explanation for why this \$43,500 entry for additional supplies is in
15 the plan given that the school also is receiving \$45,000 worth of document cameras,
16 projectors, 3D software, laptops, and promethean boards as a consequence of the
17 “reallocation” of 2016-17 funds. (*Id.* at 474.) (Mendoza Plaintiffs respectfully suggest that
18 some of those “supplanting” funds improperly allocated to “supplies” could well be spent
19 to enrich the school’s meagre family engagement activities that are referenced below.)

20 Similarly, the Davis plan includes entries to purchase materials for an after school tutoring
21 program and “supplies and materials” that are “culturally relevant” to “strengthen Tier I
22 and Tier II learning opportunities” for a total of about \$14,500. (*Id.* at 488.) In a District
23 that is committed to “culturally relevant” curriculum, Mendoza Plaintiffs believe these
24 expenses “supplant” even in a school that is Spanish immersion.

25 Another example of what appears to be “supplanting” is found in the Tucson High budget
26 which includes \$20,000 for “curricula and supplemental instructional materials that are
27 research-based; enhance classroom instruction; and reflect standards for science,
28 mathematics, and fine and performing arts education developed by national professional
organizations.” (*Id.* at 525.) One would hope this describes all curricula and supplemental
instructional materials purchased for use in the District. As such these proposed expenses
improperly supplant.

The magnet plans also continue to include a heavy and relatively expensive reliance on
outside consultants to provide training and guidance that should be available within the
District. Thus, for example, the Booth-Fickett plan allocates over \$50,000 for a consultant
to provide EEI Training, new teacher support, EEI classroom observations and support.
(Doc. 2028-1 at 473.) Yet, EEI (Essential Elements of Instruction) already is included in
the District’s overall approach to professional development. See 2017-18 USP Budget
Narrative – January 20, 2017, (“Jan. Budget Narrative”), Doc. 2028-3 at 81. Further, it
does not appear that the engagement of this consultant has been included in the process
that the District says it has developed to “share with the Special Master its justification for
hiring 910G-funded, outside consultants on an ongoing basis....” (Summary of District
Responses to Special Master Recommendations, Doc. 2028-5 at 2.)

Mendoza Plaintiffs cite these examples to demonstrate that there are funds in the existing
magnet school budgets that should be redirected to more appropriate 910(G) activities but
in doing so they do not intend to suggest that the magnet schools do not require significant
additional funding to address the educational needs of their students.

1 instances in their comments, Mendoza Plaintiffs noted areas in which increased funding
2 appeared warranted to support the magnet schools in their educational missions.⁷

3
4 While it remains difficult to determine an appropriate level of funding for each
5 individual magnet school absent assessment of its current status with respect to integration
6 and academic achievement, Mendoza Plaintiffs request that the District be ordered to
7 allocate the same total amount to the magnet schools as a group that it allocated to these
8 schools in 2016-17 with the understanding that the additional sums will be applied to
9 focused efforts to attain integration and achievement goals AFTER updated plans
10 reflecting essential assessment of current integration and achievement status have been
11 provided to the Plaintiffs and the Special Master for review and comment. Further,
12 Appendix A shows that there are significant differences in the per student desegregation
13 magnet school budget allocation between schools. While programmatic and achievement
14 levels, among other factors, warrant some distinctions among schools, Mendoza Plaintiffs
15 request that the District also be directed to consider whether the disparities in per student
16 allocations among the magnet schools suggest that certain schools warrant relatively more
17 of the additional total funding to be provided to these schools.
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25 ⁷ They also expressly noted the absence of any discussion and updating of integration goals
26 (Exhibit A at 1 -3) and the failure of the “family engagement” component of the plans to
27 focus on the “learning-centric family engagement” efforts championed by the District’s
28 own Family Engagement Plan rather than the sorts of assemblies and school events that
have a lesser effect on learning outcomes. (*Id.* at 6-7.) Mendoza Plaintiffs address the
family engagement component of the magnet school plans below.

1 **THE MAGNET PLANS FAIL TO ADEQUATELY ADDRESS FAMILY**
2 **ENGAGEMENT**

3 The USP recognizes that “[f]amily and community engagement is a critical
4 component of student success.” (USP Section VII, A, 1.) Yet, with one or two exceptions,
5 the magnet plans are silent to slim on this important (and required) initiative. And,
6 notwithstanding that its Family and Community Engagement (“FACE”) Plan (a copy of
7 which is Exhibit G hereto), has long stated that there should be a family engagement point
8 of contact at each school (FACE Plan, Exhibit G, at 18), the District this coming year is
9 only now creating community liaison support positions and providing a \$3000 stipend in
10 19 schools to compensate existing personnel for taking on these added duties. (Jan.
11 Budget Narrative , Doc. 2028-3, at 73.) It appears from the narrative that some magnet
12 schools in which the principal has been serving as the “acting liaison” will be receiving
13 such stipends (*id.*) but Mendoza Plaintiffs have not located reference to those stipends in
14 the magnet plans. Nor, again with a few exceptions, have they seen reference to a
15 community or family liaison in the plans. As noted above, the references to family
16 engagement in many of the magnet plans are non-existent to skimpy. For example:
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21 The only reference to family engagement that the Mendoza Plaintiffs found in the
22 Bonillas plan is \$2000 for stipends for teachers who attend evening family engagement
23 opportunities. (Doc. 2028-1 at 466.)
24

25 Similarly, the Booth-Fickett plan includes a similar \$3000 stipend as well as a
26 \$1,000 entry for supplies so that the school can communicate with families through a
27 monthly newsletter but nothing more. (*Id.* at 472.)
28

1 A few schools, for example Palo Verde (*id.* at 513) and Tully (*id.* at 529) include a
2 “School Community Liaison” to be funded through Title I in their itemization of FTEs to
3 be included in the plan but then make no reference to what that School Community Liaison
4 will be doing (or, indeed mention family engagement at all) in the balance of the plan.⁸
5

6 That schools like those referenced above could and should be doing more in their
7 plans to address family engagement is confirmed by the few plans that already do so. For
8 example, the Borton plan includes in a list of family engagement activities that “[f]amilies
9 will be invited to participate in content/curriculum nights, including quarterly Parent
10 Informational Meetings and two meetings about Title I in the first semester.” (*Id.* at 531.)
11 And Dodge, which includes a community liaison position in its plan states, that that
12 liaison will, among other responsibilities “assist in promoting and supporting parents with
13 strategies to help their child be more successful in school”. (*Id.* at 531.) This undertaking
14 approaches that recommended by the District’s own FACE Plan.
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17
18 The FACE Plan clearly states that based on research and best practices, “schools
19 should strengthen families’ knowledge and skills to support and extend their children’s
20 learning” and recommends, *inter alia*, that each school, having designated a family
21 engagement point of contact, “create a learning-centric environment to support the
22 academic success of all students” (FACE Plan, Exhibit G, at 18.)
23

24 ⁸ Like Booth-Fickett, discussed above in footnote 6, it appears that Palo Verde already has
25 at least some money in its plan that can be redirected to family engagement efforts. Even
26 as its plan includes \$5,325 to “outfit classrooms with furniture and equipment that reflects
27 the needs of the students” and is “conducive to cooperative learning” (Doc. 2028-1 at 515),
28 an expense Mendoza Plaintiffs respectfully suggest might be of less priority than other
potential expenditures to raise student achievement), it already has been “reallocated”
\$3,654 “to outfit classrooms with furniture and equipment that reflects the needs of
students....” (*Id.* at 516.)

1 the District has made a modest increase to the Pueblo transition school budget (taking it
2 from \$343,500 to \$361,556) and a more substantial increase to that of Utterback
3 (increasing it from \$279,100 to \$435,400) even as it has decreased the proposed budgets
4 for all of Ochoa, Robison, Safford, and Cholla.⁹
5

6 In the M/T Cover Letter accompanying its recent filing, TUSD attempts to
7 demonstrate that funding for the transition plans is adequate by identifying additional
8 sources of funding (what it labels as “Deseg (non-transition)” money, 910(G) funding for
9 ALE or AVID programs, and Title I funds). (M/T Cover Letter, Doc. 2028-1 at 228.)
10 However, what it fails to state is that the total “Deseg” and Title 1 money being allocated
11 to the transition schools for 2017-18 is less than that which each received in the 2016-17
12 school year. (Mendoza Plaintiffs understand that there are certain expenses, for example,
13 specifically related to magnet school program or that of magnet school coordinator, that a
14 transition school would not have, but they do not believe that this explains the significant
15 reduction in funding from 2016-17 to what is proposed for 2017-18.)
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19 They draw their conclusion about reduced and inadequate funding by comparing the
20 total amounts set forth in the proposed 2017-18 budgets for the transition schools,
21 inclusive of the reported “additional funding” (M/T Cover Letter, Doc. 2028-1 at 228 and
22 Doc. 2028-1 at 232-462) to the amounts shown for those same schools under the headings
23 Deseg and Title I in the TUSD Complete Budget Book, Fiscal Year 2016-17, the relevant
24 pages of which are attached as Exhibit H. This comparison reveals:
25
26

27 _____
28 ⁹ Mendoza Plaintiffs are comparing the transition school budgets dated March 9, 2017
(Doc. 2028-3 at 186-393) with those dated June 8, 2017 (Doc. 2028-1 at 232-462).

1 a proposed budget for Ochoa of \$346,225, inclusive of additional funding v. total
2 Deseg and Title I money for Ochoa of \$460,709 in 2016-17;

3 a proposed budget for Robison of \$485,056, inclusive of additional funding v. total
4 Deseg and Title I money for Robison of \$633,562 in 2016-17;

5 a proposed budget for Safford of \$1,009,628, inclusive of additional funding v.
6 total Deseg and Title I money for Safford of \$1,547,067 in 2016-17;

7 a proposed budget for Utterback of \$839,638, inclusive of additional funding v.
8 total Deseg and Title I money for Utterback of \$1,130,634 in 2016-17;

9 a proposed budget for Cholla of \$1,277,095, inclusive of additional funding v. total
10 Deseg and Title I money for Cholla of \$2,330,210 in 2016-17; and

11 a proposed budget for Pueblo of \$817,384, inclusive of additional funding v. a
12 total of Deseg and Title 1 money for Pueblo of \$1,981,165 in 2016-17.

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18 These comparisons underscore Mendoza Plaintiffs' continuing concern that the
19 transition schools are underfunded. Of particular note in that regard are Pueblo, Utterback,
20 and Cholla.

21
22 Cholla

23
24 Mendoza Plaintiffs objected to the proposed reduction in IB certified staff from 11
25 FTE in the March plan to 6 FTE in the May plan. (5/24 Magnet School Objections, Exhibit
26 A, at 18-19.) The final June plan increases the FTE from 6 to 7.6 (Doc. 2028-1 at 392.)
27 (They noted the addition of an RTI (response to intervention) teacher in the Title 1 portion
28

1 of the May budget and now see the addition of an AVID FTE as well but do not believe
2 that this additional staff mitigates the effect of the cut.)

3 Mendoza Plaintiffs heard the District state at the April, 2017 meeting of the parties
4 and the Special Master in Tucson that it will not cut IB classes but will, instead, increase
5 class size but they do not believe that is sufficient justification for the magnitude of the
6 proposed cut especially at a time when the District is expanding the program, including by
7 pursuing the IB Middle Years Programme for 9th and 10th graders and applying for the IB
8 Career-Related Programme for 2017-18. (Thus, for example, in the 2015-16 Annual
9 Report (Doc. 1958-1), it states at page V-154: “The total number of students in the IB
10 Programme at Cholla increased by 58 percent in one year...” See pages V-155 and V-156
11 for references to the expanded programs; see also Doc. 2028-1 at 392 discussing planned
12 program expansion.)

13
14
15 Mendoza Plaintiffs also have serious concerns about whether the 7.6 proposed
16 teachers with larger classes than in the past will have adequate time to pursue the action
17 steps set forth in the approved Cholla plan, including, that “[t]eachers will provide
18 individualized feedback to students to refine their progress and ultimate success on final IB
19 assessments; ...Provide tutoring hours before and after school.” (Doc. 2028-1 at 419.)
20
21 They therefore ask that the District be directed to increase the number of IB teachers.
22

23 Pueblo

24 Mendoza Plaintiffs observed that both the March and May Pueblo plans appeared
25 very weak when compared to the other transition school plans and particularly noted issues
26 relating to the school’s math program.. (5/24 Magnet School Objections, Exhibit A, at 19-
27 20.) Thereafter, the District revised the math portion of the plan. (M/T Cover Letter, Doc.
28

1 2028-1 at 228 and Pueblo Plan, Doc. 2018-1, at 445 *et seq.*) The plan does not add
2 personnel but instead states that it will better train its existing math teachers, ask its
3 Instructional Data and Intervention Specialist to review data, identify students in need of
4 additional math support throughout the day, and meet with these students, and has
5 significantly increased the work load and responsibilities of the single math intervention
6 teacher in its budget, including stating this teacher now will be teaching intervention
7 classes at the same time that the algebra 1, algebra 2, and geometry classes are in session.
8 Mendoza Plaintiffs question the capacity of the single math interventionist to successfully
9 do all that now is set out in the revised plan in a school whose enrollment exceeds 1700
10 and urge the District to revisit the staffing (and funding) for the Pueblo math program. In
11 that regard they also note that the only addition to the budget to address the demands of the
12 enhanced math program is an approximately \$18,000 cost for added duty tutors (for both
13 math and ELA). As a point of comparison, Booth-Fickett, with an enrollment of just over
14 1000, has budgeted \$45,500 for tutoring. (Doc. 2028-1 at 472.)

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18 An effort and expenditure comparable to that at Booth-Fickett may be appropriate
19 to address another Mendoza Plaintiff concern about the Pueblo plan that was not the
20 subject of any changes or remediation between May and June. The Pueblo plan provides
21 for students performing in the bottom 25% to be identified each semester and put in a
22 separate “support class.” (Doc. 2028-1 at 445). It includes no funding for aggressive
23 interventions during the year in the non-“support” classes (although it now is possible that
24 the math intervention teacher may play a role here as well) to provide additional assistance
25 to these students before they start to fail, and appears to rely primarily on AmeriCorps
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1 volunteers, supervised by a certified math teacher, to provide tutoring for these students
2 rather than budget for more teachers to provide this assistance directly. (*Id.* at 445.)

3 Mendoza Plaintiffs have previously noted that the Pueblo plan should be more
4 robust. They therefore request that the District be directed to revisit the Pueblo plan and
5 address its continuing failure to aggressively seek to improve student achievement.
6

7 Utterback

8 The Utterback transition plan approved by this Court clearly stated as a “Goal for
9 All Students” under the heading “School Goals and Measurable Objectives” that it would
10 “[c]ontinue to provide quality instructional and fine arts programs to improve student
11 achievement and to support students as lifelong learners...Fine and performing arts
12 provides opportunities for school/community/family engagement which furthers student
13 achievement through improved attendance and familial support.” (Doc. 1984-1 at 100.) It
14 continued: “Enrollment will increase for the following electives as measured by student
15 registration: (a) band/orchestra; (b) visual arts; (c) theatre: (d) choral music; and (e)
16 dance.” (*Id.*) The plan anticipated that five teachers would be on staff to provide these
17 educational opportunities. (*Id.* at 106.) However, between January and March, the District
18 altered the Court-approved Utterback plan to entirely eliminate the goal related to the fine
19 arts programs and the contemplated five teachers.
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23 The Mendoza Plaintiffs objected to this action in their comments on the March
24 plans, writing:

25 “the plan, rather than addressing how the arts could be meaningfully integrated into the
26 school curriculum, as both Mendoza Plaintiffs and the Special Master had recommended,
27 now simply eliminates them, striking through the portions of the plan that had previously
28 referenced courses in band/orchestra, visual arts, theatre, choral music, and dance. Yet, in
its response to Dr. Hawley’s comments on the transition plans, the District wrote: “The
District...is seeking to maintain robust fine arts electives which fulfill several purposes”

1 and that “the master schedule will be created to support content level planning for
2 Professional Learning Communities (PLC) while students are in their elective classes.”
(TUSD Document labeled Dr. Hawley’s January 31, 2017 Comments and TUSD
Responses Re: Transition Plans at 4.)

3 The District offers no explanation for its decision to strip these programs from
4 Utterback. The consequence not only is to deprive Utterback students of these electives.
5 It also is to put a school that is racially concentrated (with Latino students comprising 80%
6 of the student body and African Americans 7.6%) in an inferior position as compared to
7 other District middle schools, with larger percentages of white students. A study of the
8 web site for Magee Middle School, whose student body is 44% white, shows that it has
teachers offering courses in the following areas: band, theatre, orchestra, and art.
Similarly, the web site for Doolen Middle School, whose student body is 32% white, lists
teachers offering courses in band, media art, and orchestra. Surely, if TUSD could find the
money to offer such electives at Doolen and Magee, it can find the money to offer those
electives at Utterback.”

9 Draft #2 Comments, Exhibit E at 4.

10 Mendoza Plaintiffs again addressed this issue in the 5/24 Magnet School

11 Objections, Exhibit A, at 21, writing:

12 “Mendoza Plaintiffs continue to believe that the Utterback plan is under-resourced
13 and therefore inadequate. They have previously commented on and objected to the
14 District’s decision to remove from the Court-approved plan, 5 FTEs to support the fine and
15 performing arts program. (And they do not find the District’s statement that fine arts
16 electives are still in the school’s master schedule and that, based on demand, the District
will fund [from unidentified sources] teachers to teach fine arts electives (Magnet and
Transition Plan Cover Letter at 4) a satisfactory response.)

17 They believe that a comparison with the Safford plan is revealing. They recognize
18 that Safford’s student body is 783 and Utterback’s 532 so that more personnel and
resources are appropriately included in the Safford plan than the Utterback plan. They also
19 recognize that Safford has challenges in raising student achievement, having most recently
received a grade of “C” on state exams. However, the same is even more true for
20 Utterback, which was rated “D”. Further, they acknowledge that Safford is a K-8 while
Utterback is a middle school. All that said, as of now, the District plans to spend \$997.96
per student in 910(G) funds at Safford as compared with \$524.62 at Utterback. The
21 Safford plan includes two math interventionists, one for grades K-5, the other for grades
K-8. The Utterback plan includes one math interventionist. The Utterback plan includes
22 no other FTE entries (and related expenses) to support student math achievement (although
there is an AVID teacher). However, the Safford plan also includes an additional four
23 FTE RTIs to provide ELA/Math classes for Tier II intervention for struggling students and
three FTE teacher assistants. Mendoza Plaintiffs do not suggest that identical personnel
24 and numbers should be in the Utterback plan but the Safford plan does suggest that
Utterback is not yet adequately resourced.”

25 Thereafter, the District attempted to address the fact that Utterback is under
26 resourced by adopting a Special Master suggestion that it add teachers to support a seven-
27

1 period day. An ELA intervention teacher also was added to the plan. (M/T Cover Letter,
2 Doc. 2028-1 at 228.)

3 While the recent additions to the Utterback plan are a meaningful improvement,
4 Mendoza Plaintiffs remain concerned about the stripping of arts programs from the school
5 and ask that the District be directed to include the same level of fine and performing arts
6 classes and opportunities at Utterback as is available at schools like Doolen and Magee.
7

8 **REVISIONS TO THE DISTRICT’S PROPOSED FORMULA FOR TEACHER**
9 **MENTORS FOR THE PURPOSE OF REDUCING THE NUMBER OF MENTORS**
10 **OR TO ELIMINATE PRIORITIES FOR RACIALLY CONCENTRATED**
11 **SCHOOLS MAY RESULT IN AN INADEQUATE NUMBER OF MENTORS AND**
12 **IMPEDE EFFORTS TO IMPROVE ACHIEVEMENT AT RACIALLY**
13 **CONCENTRATED SCHOOLS**

14 *Reduction of Mentors*

15 The District has developed a point-based formula for determining its need for
16 mentors for first and second year teachers, which prioritizes mentorship for those
17 beginning teachers in schools where students are performing below the District average
18 and racially concentrated schools. (See Doc . 2028-4 at 2-3.) Mendoza Plaintiffs
19 understand, however, that because the Special Master has asserted that the 38 mentors
20 proposed under the District’s formula for 2017-18 “may be excessive” (See Doc. 2028-5 at
21 1; emphasis added), TUSD is considering and may propose to reduce the number of
22 mentors for the 2017-18 school year. However, it is equally true that the number of
23 mentors under the District formula may fall short of what is needed. Indeed, each of the
24 Special Master and District appear to understand that this is a distinct possibility. (See
25 Special Master’s March 28, 2017 memo attached as Exhibit I, at 3 (acknowledging that the
26 District’s point system resulted in an inadequate number of teacher mentors last year);
27
28

1 Doc. 2028-5 (District response stating that the Special Master’s statement that 38 mentors
2 “may be excessive” “may be correct (38 would have been excessive for 2014-15) or
3 incorrect (38 would not have been sufficient for 2016-17”).) This is because the District
4 cannot know with certainty at this point in the year how many first year teachers it will
5 employ and where they will be assigned.
6

7 Because Mendoza Plaintiffs believe it preferable to have extra mentoring available
8 to meet TUSD’s USP-obligations to provide support to beginning teachers than to fall
9 short of meeting mentoring needs, they object to any District proposal that would increase
10 the likelihood that it would fall short in the make to reduce the number of 2017-18 school
11 year.
12

13
14 *Mendoza Plaintiffs Oppose the Elimination of Mentoring Priority for Beginning*
15 *Teachers at Racially Concentrated Schools*
16

17 Mendoza Plaintiffs understand that because the Special Master has commented both
18 that beginning teachers at racially concentrated schools do not face exceptional challenges
19 (Doc. 2028-1 (Special Master June 11, 2017 memo re: Formula for Mentor Expenditures)
20 at 205) and that some racially concentrated schools are high-performing, the District also is
21 considering revising its point-based system to eliminate the priority under that system for
22 first- and second-year teachers at racially concentrated schools.
23

24
25 The Mendoza Plaintiffs understand that in proposing a formula that would provide
26 additional mentoring at racially concentrated schools, the District was attempting to
27 improve quality of instruction and academic achievement at those schools, a goal which
28

1 would help students in the Mendoza class academically and would increase the likelihood
2 that those schools would attract students of other races/ethnicities to attend those schools
3 and bring them closer to being integrated.¹⁰ Further, while first year teachers at the
4 racially concentrated schools that are high-performing may in theory have effective role
5 models, the Mendoza Plaintiffs are not aware of anything in place to ensure beginning
6 teacher exposure to and learning from such role models will occur and nothing that ensures
7 that someone will be available to these new teachers to help them learn and implement the
8 culturally responsive pedagogy that it is particularly important to practice in such schools.
9
10 The Mendoza Plaintiffs therefore object to any revision in the District's formula that
11 would eliminate the priority for mentoring of first- and second-year teachers at racially
12 concentrated schools.
13

14
15 **REDUCTION IN THE NUMBER OF STUDENT SUCCESS SPECIALISTS AND**
16 **REORGANIZATION OF THE AASS AND MASS DEPARTMENTS**

17 The District had informed the Plaintiffs and the Special Master that as part of the
18 budget process it intended to reduce the number of student success specialists, redefine
19 their roles and responsibilities, and reorganize the AASS and MASS Departments.
20 However, it was not until it delivered its 2017-18 USP Budget, Final Draft Cover Letter –
21 June 16, 2017 (Doc. 2028-1 at 1-41) that the District shared its vision for the reorganized
22 Departments and a general description of the revised job of the student success specialist.
23
24 (*Id.* at 4-6)
25

26 ¹⁰ Indeed, both this Court and the Special Master have recognized that high achieving
27 schools are more likely to attract a diverse student body. (*See, e.g.*, Order dated 3/13/17
28 (Doc. 1996) at 2: 25-28 where when discussing transition schools, the Court wrote: “The
Court agrees with the Special Master that improving the academic achievement of students
in these schools is one effective means of promoting integration.”)

1 Because most of the issues presented by the reduction, redefinition, and
2 reorganization are not budgetary, Mendoza Plaintiffs will not address them here but will
3 separately pursue them with the District, the Special Master and the other Plaintiffs.
4 However, they do offer the following observations/objections that may have budgetary
5 implications.
6

7 Mendoza Plaintiffs believe that it is important to enhance the stature and visibility
8 of the AASS and MASS Departments, consistent with the concept expressed by the
9 Special Master and at least partially embraced by the District that these Departments
10 should “serve as consultants and provide insight with respect to culturally responsive
11 practices whether it be manifest in teaching, curriculum, coaching, administering
12 discipline, working with families, or developing future district policies and procedures.
13 The Special Master would have this office report directly to the Superintendent for both
14 practical and symbolic reasons.” (Recommendation of Special Master Regarding Version 3
15 of 910G Budget, Doc. 2020, at 2.) Currently, the AASS Department is housed in the
16 basement of Palo Verde Magnet High School and the MASS is located at Wakefield
17 Middle School. Mendoza Plaintiffs believe that both Departments should be moved to
18 locations with greater visibility and that communicate increased stature. To the extent this
19 requires expenditures in 2017-18, funds to accomplish this should be included in the
20 budget.
21
22
23

24 Mendoza Plaintiffs remain concerned that the District’s description of the
25 Departments and their personnel remains more slanted toward a deficit model than an asset
26 model and that the family engagement activities are not sufficiently “learning centric” and
27 focused on empowering families in their interactions with the District and its personnel.
28

1 As noted above, the District says that it will be designating point persons for family
2 engagement at some schools. In addition, the magnet and transition schools have (or
3 should have) family engagement personnel, and Title I personnel are called on to serve in
4 that role. As Mendoza Plaintiffs stated in their May 24, 2017 Objections and Comments
5 Re: Special Master Recommendation Concerning Draft #3 of the TUSD 2017-18 Budget
6 and Statement of “Continuing Objections” (Doc. 2028-2 at 210), they believe that the
7 MASS and AASS Departments should ensure that the persons filling those roles are
8 appropriately trained in culturally responsive practices and should serve as an on-going
9 resource for them. To the extent more personnel or other expenses are necessary to
10 accomplish this, such costs should be included in the 2017-18 budget.
11

12
13 **THERE IS INADEQUATE SHOWING THAT A SELF-CONTAINED GATE**
14 **PROGRAM AT WHEELER WILL HAVE SUFFICIENT INTEGRATIVE IMPACT**
15 **TO JUSTIFY EXPANDING THE GATE PROGRAM AT THAT SCHOOL**

16 Mendoza Plaintiffs support the creation of new opportunities for Latino and African
17 American students to attend self-contained GATE classes. But they question the overall
18 integrative impact of a decision to place a self-contained GATE program at Wheeler, and
19 based on the information provided by the District, disagree with the Special Master’s
20 decision to support that expenditure because it “may have some integrative effect.”
21 (Special Master’s Recommendation, Doc. 2020, at 4:22-23). They therefore object to
22 inclusion of this expansion and the costs associated with it in the 2017-18 budget.
23

24
25 They note in the first instance that in its own analysis, the District states that the
26 impact of its proposal on “ethnic distribution” at Wheeler would be small. (Attachment A
27 to the District’s Responses to RFIs concerning the Budget Narrative, Document entitled
28

1 Impact of Opening Additional GATE Self-Contained Classrooms for Grades 1-3 at
2 Wheeler and Roberts/Naylor (“Impact Doc.”), Doc. 2028-2 at 179.)

3 Mendoza Plaintiffs’ concern derives from the fact that, based on the information
4 provided, it appears that the slight relative increase in white population and the slight
5 relative decrease in Latino population would result from the fact that more white children
6 than Latino children would benefit from providing self-contained GATE classes for those
7 currently on the waiting lists at Lineweaver and Kellond. (Per the chart on page 3 of the
8 Impact Doc. there would be a gain of 13 white children and a gain of 10 Latino children
9 (as well as a gain of five African American children).)¹¹ Given the locations of Lineweaver
10 and Kellond, and the nature of the proposal (which, as Mendoza Plaintiffs understand it,
11 calls for remapping the neighborhood school boundaries of Kellond and Lineweaver to
12 include Wheeler (Impact Doc. at 1)), this raises questions for the Mendoza Plaintiffs of
13 whether the waiting list is the best indication of the number of qualified students District-
14 wide who might benefit from an expansion of self-contained GATE or whether remapping
15 of the Lineweaver, Kellond, and Wheeler neighborhood boundaries is the most racially and
16 ethnically inclusive approach to self-contained GATE class expansion.
17
18
19
20

21 They therefore object to the proposal and ask that the District be directed to
22 undertake a fuller analysis, considering locations for self-contained GATE programs
23 beyond the schools in closest proximity to Lineweaver and Kellond, if the District does
24

25
26 ¹¹ More recent information provided by the District, based on more recent waiting list data,
27 suggests that while 13 white children would benefit, the number of Latino children moving
28 to Wheeler would be six and there would be no African Americans, although there would
be one multi-racial child. (TUSD Responses to Requests for Information, Doc. 2028-1 at
147.)

1 indeed intend to go forward with a proposal to expand the number of self-contained GATE
2 classrooms in the District.

3 **THE DISTRICT SHOULD COMMIT TO FUND SUMMER PROGRAMS TO**
4 **INCREASE STUDENT ACHIEVEMENT**

5 In his recommendations, the Special Master stated that summer learning programs
6 should be “an extraordinarily high priority” for the District because “[o]ne of the reasons
7 why it is so difficult for the District to reduce the achievement gap is that students from
8 low income families and communities lose achievement developed during the school year
9 in the summer. Summer learning loss affects low income students significantly more than
10 their better-off peers.” (Special Master Recommendations, Doc. 2020, at 5:2-7.) While
11 the District has stated that it “will work to increase its summer offerings for the summer of
12 2018” (Summary of District’s Responses to Special Master Recommendations, Doc. 2028-
13 5 at 2), it has not committed to do so. Mendoza Plaintiffs object to this failure to budget
14 for such programs now.
15

16
17 Further, although it is not specifically a summer program, they draw particular
18 attention to “Jump Start”, the ten day summer program for incoming 6th graders that is in
19 place at Dodge and Doolen, but not at other middle schools in the District. According to
20 the Dodge magnet school plan, that program “sets guidelines and expectations” for the
21 educational program at the school, “establishes relationships with teachers, and provides
22 remediation of basic skills in core classes.” Per the Dodge plan, the cost is approximately
23 \$16,000. (Doc. 2028-1 at 492.)
24

25
26 Mendoza Plaintiffs object to the District’s failure to have budgeted to expand this
27 program to other schools given what appears to be its success.
28

1 **THE DISTRICT HAS FAILED TO ADEQUATELY BUDGET FOR THE**
2 **EXPANSION OF THE DUAL LANGUAGE PROGRAM AT BLOOM**
3 **ELEMENTARY SCHOOL**

4 Mendoza Plaintiffs object to the District’s decision to budget for only one additional
5 dual language teacher at Bloom (to bring the total of such teachers to two). In its initial
6 presentation of the proposed 2017-18 Deseg budget, the District wrote: “Bloom will
7 expand their program by adding three TWDL classes for a total of four (one at
8 kindergarten and two at first grade; one kindergarten class began in 2016-17).” (Budget
9 Narrative, Doc. 2028 -2 at 65.) But thereafter, in March, when it delivered its next draft
10 of the budget, it stated: “The District is only budgeting for one additional dual-language
11 teacher, and will adjust based on enrollment in the fall (the District is still seeking to fill
12 four DL classes with four DL teachers).” (Draft #2 Cover Letter, 2017-18 USP Budget,
13 March 13, 2017, Doc. 2028-2 at 159.)

16 Budgets drive actions. Further, absent failures to fill other vacancies (and the
17 District already has stated it plans to use funds resulting from such failures to fund stipends
18 and summer activities (*id.* at 147), there can be no assurance funds will be available to hire
19 the needed teachers “in the fall.” Moreover, such an approach runs counter to the
20 District’s recently adopted Two Way Dual Language (“TWDL”) Plan because it accepts
21 the likelihood that there will be only single kindergarten and first grade classes at the
22 school notwithstanding the commitment to design a two classroom TWDL structure to
23 reduce programmatic isolation of the TWDL classes at a site. Further, it precludes the
24 likelihood of being able to send the teachers to the summer Two-Way Bilingual Immersion
25 Conference which is an important part of bilingual teacher professional development.
26
27
28

1 Given that the District will not be expanding the dual language program to Ochoa
2 this coming year, as it had originally proposed, it should redouble its efforts to recruit
3 students (and teachers) for the Bloom program and include the costs of these teachers in its
4 budget.

5 **TUSD HAS FAILED TO “DEVELOP A MEANINGFUL ITINERANT TEACHER -
6 CRC TEACHER RATIO SUFFICIENT TO MEET THE NEEDS OF THE
7 ITINERANT TEACHER MODEL... [IN] THE STIPULATED INTERVENTION
8 PLAN”**

9 In its December 27, 2016 Order (Doc. 1982) (“CRCs Order”), this Court recited the
10 Special Master’s concern that “TUSD offers **no program-based rational for estimating**
11 **that it needs one itinerant teacher for every ten CRC teachers**, except to say that this
12 ratio is within the 15 to 1 ratio generally recommended for peer assistance and review.”
13 (CRCs Order at 3:24-27; emphasis added.)¹² This Court therefore ordered the District to
14 develop a meaningful itinerant teacher-CRC teacher ratio sufficient to meet the needs of
15 the Itinerant Teacher Model in the CRC Intervention Plan (detailed in Doc. 1761, Exhibit 2
16 at 18.). (*Id.* at 4:23-26.)

17
18
19 Notwithstanding the Court’s instruction, the District again proposes to use “a ratio
20 of one CRC Teacher Mentor for every ten CRC Teachers” (Summary of District’s
21 Responses to Special Master Recommendations, Doc. 2028-5 at 1), without offering a
22 “program-based rational” for why the ratio is “meaningful.”¹³ Mendoza Plaintiffs believe
23

24
25
26 ¹² Because the Court was concerned with this reduction, it ordered that the Special Master
“review the District’s use of itinerant staff to *ensure full compliance with the Intervention
Plan’s Itinerant Teacher Model.*” (CRCs Order at 4:2-4; emphasis added.)

27 ¹³ As referenced in the CRCs Order, the CRC Intervention Plan contemplated the use of *12*
28 *CRC itinerant teachers* in the 2015-16 school year, which the District unilaterally reduced
to six. (CRCs Order at 3:16-18.) Now, notwithstanding the significant expansion of CRCs
and increase in new CRC teachers (*Id.* at 2:18-23), which should correspond to an increase

1 that to arrive at a “meaningful” itinerant teacher to CRC teacher ratio that is program-
 2 based, the District would need to determine the itinerant teacher FTE required to perform
 3 all tasks, including but not limited to mentoring, that are required of that position¹⁴ and
 4 then apply a mentoring ratio based on research to arrive at a total FTE equivalent required
 5 to meet the needs of the Itinerant Teacher Model. However, Mendoza Plaintiffs have seen
 6 no District analysis that has taken into account the many other duties of itinerant teachers
 7 besides mentoring. They therefore object to the District’s proposal to budget for 11 CRC
 8 itinerant teachers for the 2017-18 school year.

9
 10 **THE DISTRICT SHOULD NOT INCLUDE THE COSTS OF THE HIGHER**
 11 **GROUND CONSULTANT TO PROVIDE SERVICES TO STUDENTS IN THE**
 12 **DAEP, OR ANY OTHER, DISTRICT PROGRAM**

13
 14 In response to the Mendoza Plaintiffs’ inquiry, the District provided a justification
 15 for its proposed allocation of 910(G) funds to purchase consulting services from Higher
 16 Ground (Attachment to RFI 1321, Doc. 2028-2 at 54-57 (“HG Justification”).) The HG
 17 Justification raises serious concerns regarding the appropriateness of such services for
 18 students in DAEP. The HG Justification describes two sets of Social-Emotional Learning
 19 (“SEL”) lessons implemented during the “2nd semester of 2016-17.” (*Id.* at 54-55.) The
 20 District indicates that the lessons involve “evidence based curriculum” called “Thinking
 21 for a Change” and “Real Colors with Youth Crossroads.” (*Id.* at 55.) When Mendoza
 22
 23

24
 25 in needed mentorship, among CRC itinerant teachers’ other duties, the District proposes
 the use of 11 CRC itinerant teachers (Doc. 2028-5 at 1).

26 ¹⁴ In its Order, this Court listed the many duties CRC Itinerant Teachers are charged with,
 27 including, but not limited, to: “recruitment, parent engagement, and community outreach;
 28 provide district-wide models for CRC instruction for non-CRC teachers; develop
 curriculum... mentor new CRC teachers... conduct[] classroom observations once every
 two weeks...” (CRCs Order at 3:1-9.)

1 Plaintiffs reviewed the authority cited they learned that these programs have been found to
2 be effective with, and specifically target, youth and adults who have been involved in
3 the criminal justice system. (See <http://nicic.gov/t4c>;
4 http://ncti.org/programs/crossroads_juvenile.) Indeed, in connection with the latter
5 “lesson,” curricula is described as aimed at “reduc[ing] the criminogenic needs of
6 offenders.” (See http://ncti.org/programs/crossroads_juvenile.)
7

8 Thus it appears that the services that Higher Ground has been providing in the
9 2016-17 school year (and that the District proposes be provided in the 2017-18 school
10 year) are inappropriate and may result in stigmatizing DAEP students and causing them to
11 feel that they are criminals or have committed criminal acts. Further, from a brief review
12 of the webpages the District cites, Mendoza Plaintiffs do not see anything that suggests
13 there exists evidence to demonstrate the programs are effective with students who may be
14 exhibiting behavioral issues, but are not criminals and have committed no criminal act, or
15 that there exist effective versions of the programs tailored to and targeting students with no
16 criminal history.
17

18
19 Mendoza Plaintiffs therefore object to the use of 910g funds to purchase any
20 services or material from Higher Ground in the 2017-18 school year.
21

22 **CONDITIONAL OBJECTION TO THE EXTENT THE DISTRICT PROPOSES TO**
23 **USE “CARE/UPKEEP” ALLOCATIONS FOR FACILITIES MAINTENANCE**
24 **WITHOUT REGARD TO USP-REQUIRED FACILITIES PRIORITIES**

25 The District proposes the allocation of \$540,000 for “CARE/UPKEEP” for
26 maintenance of facilities for the 2017-18 school year.¹⁵ (Doc. 2028-2 at 113.) However,
27

28 ¹⁵ The Mendoza Plaintiffs understand that the District has included a similar budget entry
in past budget cycles. However, it was not until issues relating to the Multi-Year Facilities

1 the District has explained that “CARE/UPKEEP” activities are entirely separate from the
2 USP-mandated Multi-Year Facilities Plan (“MYFP”), although “CARE/UPKEEP”
3 activities may result in the identification of safety concerns which then become MYFP
4 issues that are addressed through MYFP procedures. (Response to RFI 1326, Doc. 2028-1
5 at 52.) The District further details that MYFP funding is in the [Architecture and
6 Engineering] Project Management group [as distinct from the group managing
7 “CARE/UPKEEP” activities], as is the *management of FCI, ESS, and the MYFP*
8 *monitoring and changes.*” (Response to RFI 1327, *id.* at 52; emphasis added.) In other
9 words, decisions about “CARE/UPKEEP” expenditures are made by a group that has no
10 USP responsibilities notwithstanding that the money is part of the USP Deseg budget. This
11 means that decisions about where and how to spend this money are not subject to the FCI
12 and ESS assessments of facility conditions and the resulting MYFP, which includes USP-
13 mandated priorities for such projects. (USP Section IX, A.)¹⁶ Based on the foregoing, it
14 does not appear that the “CARE/UPKEEP” allocation is intended to further the purposes of
15 the USP. Rather, the proposed allocation raises supplantation issues.

16
17
18
19 Moreover, District responses to Mendoza Plaintiffs’ inquiries on this topic suggest
20 that the USP-required priorities for repair projects under the MYFP do not apply to
21 facility-maintenance efforts that would be paid for with “CARE/UPKEEP” funds. (*See*
22 Doc. 2028-1 at 194-95 (asserting that “preventative maintenance” is “related” to the USP-

23 Plan evolved in the current budget cycle that Mendoza Plaintiffs became aware of the
24 nature of this proposed allocation.

25
26 ¹⁶ Those USP-mandated facility repair priorities are as follows: “facility conditions that
27 impact the health and safety of a school’s students and on schools that score below a 2.0 on
28 the FCI and/or below the District average on the ESS. The District shall next give priority
to Racially Concentrated Schools that score below 2.5 on the FCI.” (USP Section IX, A,
3.)

1 mandated priorities for unstated reasons).) Mendoza Plaintiffs do, however, appreciate
2 that by applying preventative maintenance, the District may avoid the need for more costly
3 repairs that would fall within a USP priority for facility repair projects, and which
4 therefore would be an appropriate use of 910(g) funds. But Mendoza Plaintiffs cannot
5 agree to the use of funds for facility maintenance in a manner inconsistent with the USP.
6 Therefore, to strike a balance between avoiding improper supplantation and addressing
7 facilities conditions before they become so serious as to fall under the the MYFP, the
8 Mendoza Plaintiffs conditionally object to the District's allocation for "CARE/UPKEEP"
9 only insofar as the District intends to use "CARE/UPKEEP" funds for maintenance at
10 schools not a priority under USP Section IX, A, 3 or that would not raise student health or
11 safety concerns if gone unaddressed.
12
13

14 **CONCLUSION**

15 For the reasons discussed above, Mendoza Plaintiffs request that this Court sustain
16 their objections to the 2017-18 Deseg budget and fully grant their requested relief.
17

18 Dated: July 19, 2017

19 MALDEF
20 JUAN RODRIGUEZ
21 THOMAS A. SAENZ

22 /s/ Juan Rodriguez
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28 *Attorney for Mendoza Plaintiffs*

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2017, I electronically submitted the foregoing Mendoza Plaintiffs' Objections to the Tucson Unified School District's USP Budget for the 2017-18 School Year to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: July 19, 2017

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