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14 UNITED STATES DISTRICT COURT  
 15 DISTRICT OF ARIZONA

16 Roy and Josie Fisher, et al., Plaintiffs,	4:74-cv-00090-DCB (Lead Case)
17 v.	
18 Tucson Unified School District No. 1, et al.,	
19 Defendants.	

20 Maria Mendoza, et al., Plaintiffs,	CV 74-204 TUC DCB (Consolidated Case)
21 v.	
22 Tucson Unified School District No. 1, et al.	
23 Defendants.	

24  
 25 **RESPONSE BY TUCSON UNIFIED SCHOOL DISTRICT**  
 26 **TO THE MENDOZA PLAINTIFFS' OBJECTIONS [ECF 2069]**  
 27 **TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATION**  
 28 **REGARDING ADVANCED LEARNING EXPERIENCES [ECF 2041]**

1 On August 3, 2017, the Special Master filed a Report and Recommendation on  
2 advanced learning experiences (ALE R&R) in Tucson Unified School District (the  
3 “District”). [ECF 2041.] On September 5, the Mendoza Plaintiffs filed objections  
4 (“Objection”) to the ALE R&R. [ECF 2069.] The District hereby responds to the  
5 Mendoza Plaintiffs’ objections thereto.

6 **I. Introduction.**

7 Judge Frey’s original findings of constitutionally prohibited conduct, on which  
8 any continuing jurisdiction of this Court must be based, were limited. [ECF 1239, p.2;  
9 ECF 345] Forty years ago, Judge Frey found that any impact of that limited improper  
10 conduct had by that time already largely been attenuated. [ECF 345, p. 70.] Indeed,  
11 Judge Frey found that the only vestige of the prohibited conduct remaining in 1978 was  
12 in enrollment levels at nine schools in the District. [ECF 345, p. 223.] Judge Frey made  
13 no findings that the prohibited conduct had resulted in any inequitable access to  
14 advanced learning experiences, or that there were any remaining vestiges of the prior  
15 conduct in the area of access to advanced learning experiences. [ECF 1239, p .2.]<sup>1</sup>

16 As the Special Master acknowledges, “the USP wording with respect to ALE  
17 focuses on access.” [ECF 2041, p. 4.]<sup>2</sup> However, the District does not agree with any  
18 implication that access can only be measured by participation results. To do so would  
19 make the District the guarantor of participation and success in the face of a host of  
20 factors which are unrelated to any constitutionally improper conduct by the District, but  
21 which directly and substantially impact participation and success in ALEs. In short,  
22 there is no evidence that the District has at any time, in any way, improperly limited

23 <sup>1</sup> Indeed, this Court noted that the very limited and specific findings of vestiges  
24 of *de jure* segregation made by Judge Frey were related to student assignment, ECF  
25 1239, p.2, and had been eliminated to the extent practicable by 1986, ECF 1239, pp. 16,  
18; ECF 1270, p. 6.

26 <sup>2</sup> Neither the R&R nor the Objection make any suggestion about goals to measure  
27 “access” to ALEs by race and ethnicity. References to “access” merely state that  
28 different ALEs exist at different schools but do not suggest that these differences  
correlate to race. The District is unaware of any allegations of discrimination in  
providing access to ALEs, as compared with arguments regarding participation or  
success in ALEs.

1 access to ALE for African American or Hispanic students. In these circumstances, the  
2 only compliance question must be whether the District took the steps required by the  
3 USP to encourage participation. Otherwise, we improperly transmute this case from its  
4 constitutional foundation into nothing more than an extended, expensive, court-  
5 supervised school district management exercise.

6 The United States Supreme Court in *Board of Education of Oklahoma City*  
7 *Public Schools v. Dowell*<sup>3</sup> and *Freeman v. Pitts*<sup>4</sup> established two well-known  
8 requirements for ending a desegregation decree: good faith, and the elimination of the  
9 vestiges of *de jure* discrimination to the extent practicable. “The first requirement—  
10 good faith compliance with the decree—focuses on behavior and process.” *Hampton v.*  
11 *Jefferson County Bd. of Educ.*, 102 F. Supp. 2d 358, 361 (W.D. Ky. 2000). “The second  
12 requirement—elimination of the vestiges of *de jure* segregation to the extent  
13 practicable—focuses on outcome or result.” *Id.* “In other words, federal courts should  
14 hold school boards accountable for their own bad conduct and its consequences, but not  
15 for all society’s other racial, economic, and educational ills.” *Id.* The only vestige of *de*  
16 *jure* segregation found in this case related to the assignment of students at nine schools,  
17 which, as detailed above, was completely unrelated to the District’s ALEs, and was  
18 eliminated thirty years ago.

19 Consequently, the Mendoza Plaintiffs’ calls for specific participation and  
20 academic results as a measurement of good faith seek inappropriately to measure the  
21 District’s good faith compliance with the USP based on the outcome or result of factors  
22 beyond the District’s control. No amount of good-faith compliance with a  
23 desegregation decree has eliminated gaps in successful completion of ALEs anywhere in  
24 the country. Indeed, performance-related tests are not the appropriate tests to be applied  
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27 <sup>3</sup> 498 U.S. 237, 249-50, 111 S.Ct. 630 (1991).

28 <sup>4</sup> 503 U.S. 467, 491, 112 S.Ct. 1430 (1992).

1 in deciding whether a previously segregated district has achieved unitary status.  
2 *Missouri v. Jenkins*, 515 U.S. 70, 101, 115 S. Ct. 2038, 2055 (1995).

3 “Just as demographic changes independent of de jure  
4 segregation will affect the racial composition of student  
5 assignments, so too will numerous external factors beyond  
6 the control of the [school district] and the State affect  
7 minority student achievement. **So long as these external  
8 factors are not the result of segregation, they do not  
9 figure in the remedial calculus. Insistence upon academic  
10 goals unrelated to the effects of legal segregation  
11 unwarrantably postpones the day when the [school  
12 district] will be able to operate on its own.**

13 *Id.* (Emphasis added and citations omitted).

14 As it relates to ALEs, there were no court findings of discrimination or vestiges  
15 thereof in the District, and the USP does not require that the District ensure parity or any  
16 other specific result in ALE participation or completion among races. Rather, the USP  
17 requires that the District strive to provide equal access to ALEs by (i) appointing an  
18 ALE Coordinator for the District, (ii) assessing its ALE programs, and (iii) developing  
19 and implementing a plan to encourage African American and Hispanic student  
20 participation in ALEs. This the District has done.<sup>5</sup> The District does not object to (and  
21 indeed strongly supports) participation goals as part of its ALE Plan, but *compliance*  
22 *with the USP* must be assessed not by whether the ALE Plan goals are attained, but  
23 whether the District has taken the required steps under the USP.

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<sup>5</sup> See AR 13-14, ECF 1686, p. 112 (District hired ALE Coordinator); AR 13-14, ECF 1686, p. 113 (District undertook an extensive review and assessment of all existing ALE programs, including the number of students enrolled in each ALE program disaggregated by grade level, race, ethnicity, and ELL status, the resources available to students, and the potential barriers to African American and Latino student success in ALEs); AR 13-14, ECF 1686, p. 113 (District drew on the findings and observations contained in the review and assessment, created ten subcommittees and worked with 12 experts to help develop an ALE Access and Recruitment Plan); and AR 14-15, App. V-1, ECF 1849-5 (included all USP-required elements in the ALE Plan, pp.23 (recommended accessible materials), 23 (coordinating with relevant administrators to distribute materials), 33 (holding community meetings and informational sessions regarding ALEs), 12, 20, 22, 26 (providing professional development to administrators and staff to identify and encourage African American and Latino student to enroll in ALEs), and 2-5, 7, 24, 27, 29 (ensuring equitable access to ALEs)).

1 **II. Responses to the Mendoza Plaintiffs' Objections to the ALE R&R.**

2 The Mendoza Plaintiffs argue that the District is not "adequately" addressing  
3 equal access to ALEs or the core USP requirements unless and until African American  
4 and Latino students reach parity in participation and "completion" in and of ALEs with  
5 White students. Although they acknowledge the fact that "the Court 'did not adopt  
6 [their] suggestion of parity' as the measure to be applied in assessing successful  
7 implementation of the USP," they nevertheless argue that notwithstanding the fact that  
8 participation by African American and Latino students in ALEs has increased  
9 throughout the life of the USP, unless the participation and "completion" rates of White  
10 students are decreased or increased at a lower rate, the District cannot satisfy the USP's  
11 requirements. Not only is this premise contrary to law and to the USP, it is contrary to  
12 the District's commitment to encourage and support success among all of its students,  
13 including its White students. Below are the District's responses to each of the Mendoza  
14 Plaintiffs' specific objections to the ALE R&R.

15 **A. The ALE R&R Adequately Addresses Equal Access to ALEs.**

16 The Mendoza Plaintiffs' argue that the ALE R&R fails to "adequately" address  
17 equal *access* to ALEs because it does not compare ALE *participation* of the District's  
18 White students with ALE *participation* of the District's African American and Latino  
19 students. The Mendoza Plaintiffs do not argue that there is not equal *access* to ALEs—  
20 the USP standard. There are and have been no complaints and no evidence suggesting  
21 there is not equal *access* to ALEs. And, ALE *participation* by African American and  
22 Latino students has grown significantly over the past five years. Nevertheless, the  
23 Mendoza Plaintiffs argue that because the ALE R&R does not compare the ALE  
24 participation of White students to that of African American and Latino students, The  
25 District cannot satisfy the USP's requirement of providing equal access to ALEs.

26 Not only is this not the standard, but it also in incorrect. The ALE R&R does  
27 address the rate of White student participation in ALEs, and it concludes that:

28

1           These differences in the enrollment of white students in ALE  
2           is not surprising and would be found in almost all districts  
3           where, as in Tucson, white families are more affluent and  
          parents have higher rates of the attainment in post-secondary  
          education [than] families of other races. The District cannot  
          change the socioeconomic status of families in the short run.

4           [ALE R&R, ECF 2041, p. 9.]

5           Nevertheless, the Mendoza Plaintiffs argue that the relative participation of  
6           African American and Latino students in ALEs as compared to the District's White  
7           students is a measure of the District's success in implementing the USP. Stated another  
8           way, neither equal access nor significantly increased ALE participation by African  
9           American and Latino student is sufficient if participation among the District's White  
10          students remains higher. The District respectfully yet fervently disagrees that this is the  
11          standard.

12          In a variation of their parity argument, the Mendoza Plaintiffs next argue that the  
13          District is not compliant with the USP if there is an alleged ALE "participation gap" – a  
14          measure not used by the USP or based on any legal citation in the Mendoza Plaintiffs'  
15          Objection. Indeed, the Mendoza Plaintiffs argue that there cannot even be a discussion  
16          of making goals, let alone reaching goals, until the Special Master and District show that  
17          African American and Latino participation in ALEs is growing faster than participation  
18          of White students in ALEs. [Objection, ECF 2069, p. 5.] Said differently, it is not  
19          enough that there are no racial, ethnic or other barriers to ALE participation, and it is not  
20          even enough that ALE participation has grown significantly for African American and  
21          Latino students over the past five years.<sup>6</sup> According to the Mendoza Plaintiffs'  
22          argument, because participation among the District's White students has grown at a  
23          slightly higher rate (5.6% for White students compared with a growth of 4.6% for  
24          Hispanic students and 3.5% for African American students), the District cannot satisfy  
25          the USP's equal access requirement. This is incorrect, and it is not the standard.

26  
27          <sup>6</sup> The Special Master also notes that although many districts create barriers to  
28          taking more rigorous classes, TUSD has no such obstacles (outside of GATE and UHS  
          requirements). [ALE R&R, ECF 2041, p. 9, n.2.]

1 Contrary to the Mendoza Plaintiffs' argument, the District does **not** "operate[]  
2 under a mandate to increase the relative participation of the Latino and African  
3 American students in ALEs in the District." [Objection, ECF 2069, p. 5.] Instead, the  
4 USP requires the District to provide equal access and support for ALEs, actions that  
5 focus on the District's behavior and process. The USP does not require the District to  
6 do something which is completely dependent on the decisions and actions of the  
7 students and their parents, and which is not done in any other school district in the  
8 country.<sup>7</sup> And it certainly does not require the District to discourage ALE participation  
9 among White students. As stated by the court in *Hampton*, "[p]romoting and achieving  
10 academic progress for all students, irrespective of race, is the central purpose of a public  
11 school system." 102 F. Supp. 2d. at 366. Or, as the Special Master concluded:

12 The point here is that setting goals the achievement of which  
13 are beyond the capabilities of schools to achieve is not fair  
14 [and] may direct attention away from actions the District can  
implement to increase participation of Latino and African  
American students in ALE.

15 [ALE R&R, ECF 2041, p. 10.]

16 In summary, the ALE R&R more than adequately addresses the USP requirement  
17 of equal access to ALEs, and it appropriately rejects the Mendoza Plaintiffs' call for  
18 parity in participation or any other standard that requires results beyond the District's  
19 control or that require a reduction in the participation of students based on race. As  
20 noted above, although the District gladly sets participation goals, those goals are  
21 separate and apart from the USP requirement of equal access (based on a Constitutional  
22 standard of equal treatment), and as much as the District strives to attain those higher

23 \_\_\_\_\_  
24 <sup>7</sup> As the Special Master explained in the ALE R&R:  
25 "Parity is not a reasonable goal for all students. Participation in ALEs is voluntary and  
26 choice is influenced by perceptions of likely attainment of the putative benefits of  
27 participating in a given ALE. These perceptions can be influenced by teachers and  
28 counselors and other educators, a point returned to later, but family and student  
perceptions of whether students will benefit from ALEs is importantly influenced by  
numerous factors including the prior experiences of family members, stereotype threat,  
and students' sense of academic confidence and competence." [ALE R&R, ECF 2041,  
p. 6.]

1 and more ambitious goals, attainment of those goals is not required to satisfy the USP.  
2 The Court should reject the Mendoza Plaintiffs' objection.

3 **B. The ALE R&R Adequately Addresses UHS Goals.**

4 The Mendoza Plaintiffs next argue that the ALE R&R fails to “adequately”  
5 address goals for UHS admission and retention of Latino and African American students  
6 at UHS. [Objection, ECF 2069, p. 6.] In making this argument, the Mendoza Plaintiffs  
7 again seek to change the USP standard for unitary status. Specifically, the Mendoza  
8 Plaintiffs argue that the District must satisfy its ambitious enrollment goals in the ALE  
9 Access and Recruitment Plan for African American and Latino students in UHS in order  
10 to satisfy the USP’s requirement of equal access and support. As noted above, although  
11 the District sets and seeks ambitious goals to improve the quality of education for all of  
12 its students—often with a focus on African American and Latino students – those goals  
13 are separate and apart from USP requirements. The fact that the District sets and seeks  
14 those goals demonstrates the District’s good faith compliance with USP requirements.

15 Contrary to the Mendoza Plaintiffs’ arguments, the ALE R&R does address goals  
16 for UHS. Specifically, the Special Master recommends that the 15% goal (explained on  
17 page 5 of the ALE R&R) “not be applied to UHS because admission is determined by an  
18 examination and prior academic performance.” [ALE R&R, ECF 2041, p. 6.] The  
19 special master is following the counsel of the *Hampton* court and several other courts  
20 and experts that seek to hold school districts accountable for their own actions and not  
21 for outcomes and results based on other societal factors. 102 F. Supp. 2d at 361 (“In  
22 other words, federal courts should hold school boards accountable for their own bad  
23 conduct and its consequences, but not for all society’s other racial, economic, and  
24 educational ills.”).

25 Moreover, as discussed by the ALE R&R, UHS is considered one of the best high  
26 schools in America, and it is also among the most racially and ethnically-diverse exam  
27 schools in America. [ALE R&R, ECF 2041, p. 20.] The ALE R&R also discusses the  
28 fact that the District has complied with the Court’s prior order requiring the District to



1 change admissions criteria (an action over which the District has control) to allow  
2 students who fell slightly below the 50 point admission bar to write short answer essays  
3 to demonstrate their qualifications. [Id.] “Between 2013-14 and 2016-17, Latino  
4 enrollment at UHS increased by 18% and African American enrollment by 20%.” [Id.]  
5 The Special Master also addressed UHS attrition rates, including that attrition rates  
6 among African American students went from 7% in 2013-14 to 3% in 2015-16, that  
7 attrition rates among Latino students at UHS in 2015-16 were 6%, and that graduation  
8 rates for African American and Latino students at UHS are higher than the graduation  
9 rates for high school students District-wide. [ALE R&R, ECF 2041, pp. 21-22.]

10 Indeed, the District’s efforts to support African American and Latino students at  
11 UHS are extensive. The District identified all first-generation college-bound Hispanic  
12 and African American students in August and September of 2016 and matched them  
13 with a teacher mentor on campus. All of the 210 students who received a mentor  
14 finished the year with class grades of a C or higher and committed to returning to UHS  
15 for the fall of 2017-18. Additionally, UHS students took 2,445 AP exams during SY 16-  
16 17, compared to 2,174 exams during SY 15-16. This was in large part due to the  
17 mentoring UHS first-generation college-bound students received. In fact, due in part to  
18 UHS’s various support and retention efforts, *the school had more National Hispanic*  
19 *Scholars in SY 16-17 than any other high school in the country.* [AR 16-17, ECF  
20 2057-1, p. 20.]

21 Although the ALE R&R may not say what the Mendoza Plaintiffs want it to say,  
22 it more than adequately addresses UHS admission and retention goals and results. The  
23 Court should reject this objection.

24 **C. The ALE R&R Appropriately Addresses ELL ALE Participation.**

25 Similar to the Mendoza Plaintiffs’ objection related to UHS goals, the Mendoza  
26 Plaintiffs say the ALE R&R does not appropriately address ELL ALE participation  
27 because the ALE R&R does not recommend the 15% goal (explained at page 5 of the  
28 ALE R&R). Rather than set an unworkable and unachievable goals that unfairly “direct

1 attention away from actions the District can implement to increase participation,” (ALE  
2 R&R, ECF 2041, p.10), the Special Master suggests that the parties meet to determine  
3 practicable goals to increase ELL ALE participation over the next three years using data  
4 on current ELL ALE participation. [ALE R&R, ECF 2041, p. 5.] As explained by the  
5 Special Master, the research, state and national data available regarding ALE  
6 participation by other groups (ethnic, racial, economic, etc.), is not available for ELL  
7 students. As a consequence, rather than create unworkable and unrealistic goals that  
8 distract from the Districts efforts and successes in increasing ELL ALE participation,  
9 the parties should meet together to determine practicable goals for improvements. The  
10 District is willing to work with the other parties and special master to determine such  
11 goals.

12 As detailed in the ALE R&R, the number of ELL students in each ALE varies by  
13 type of ALE and over time, though participation of Latino ELL students in ALEs meant  
14 to prepare students for enrollment and success in AP classes increased dramatically from  
15 14 students in 2013-14 to 150 students in 2016-17.<sup>8</sup> [Id. at p. 13.] The District’s good  
16 faith efforts to increase ELL ALE participation are bearing fruit, and the District  
17 remains committed both to the USP’s requirements to ensure equitable access to ALEs  
18 and also to the higher goals of increased ELL participation in ALEs.

19 **D. The ALE R&R Appropriately Reports on the IB Program.**

20 The Mendoza Plaintiffs also object to the Special Master’s report on the District’s  
21 IB program. Although the “Mendoza Plaintiffs support the IB Program at Cholla,” they  
22 object that the ALE R&R does not recommend specific measures that could improve the  
23 completion rate of minority students in the IB Program. [Objection, ECF 2069, p. 9]  
24 The Mendoza Plaintiffs recognize in their Objection that the IB program is located at  
25 Cholla, a school with a large Latino population, in order to provide a significant number  
26 of Latino students the opportunity to participate in this ALE, and they also acknowledge

27 \_\_\_\_\_  
28 <sup>8</sup> As noted above, the ALE R&R’s report of 126 students should have been 150  
students.

1 the “significant increase in enrollment in the program largely as a result of increased  
2 recruitment of 8<sup>th</sup> and 9<sup>th</sup> grade students.” [Id.] However, the Mendoza Plaintiffs argue  
3 for additional measures that could improve the minority students’ completion rates in  
4 the IB program.

5 As detailed in the District’s annual reports for SY 15-16 and 16-17, the District  
6 met the 20% and 15% goals set for SY 15-16 and SY 16-17, respectively. [AR 15-16,  
7 ECF 1958-1, p. 182; AR 16-17, ECF 2057-1, p. 203.] As described in the District’s  
8 annual reports, reaching these goals can be attributed to the District’s extensive efforts  
9 to recruit students to the IB program, and to make sure all students have equal access to  
10 the IB program. [AR 16-17, ECF 2057-1, p. 204.] The annual reports also detail  
11 District students’ successful participation in and completion of the IB program. [AR 15-  
12 16, ECF 1958-1, pp. 182-85; AR 16-17, ECF 2057-1, pp. 203-05.] And while the  
13 District continues to strive for success and improvement both in participation and  
14 completion in and of the IB program, and is willing to work with the parties and Special  
15 Master on continual improvement, the USP does not require the District to establish and  
16 reach participation and completion goals in order to comply in good faith.

17 **E. The ALE R&R Correctly Concludes the District Has Implemented All**  
18 **Provision of the ALE Action Plan and Supplement to increase**  
19 **Participation and Support in ALEs.**

20 The Mendoza Plaintiffs’ Objection voices disagreement with the Special  
21 Master’s finding that the District has implemented all the provisions of the ALE Action  
22 Plan and Supplement to increase participation and support in ALEs. [Objection, ECF  
23 2069, p. 8.] However, the District’s annual reports detail compliance with each of those  
24 provisions and others in order to provide equal access to ALEs (the USP standard) and  
25 to increase participation and support in ALEs. [AR 15-16, ECF 1958-1; AR 16-17, ECF  
26 2057-1.] The Mendoza Plaintiffs also attach an addendum to their Objection, listing  
27 areas where the District purportedly has not implemented provisions of the ALE Action  
28 Plan and Supplement. [ECF 2069-1.] However, as described in the District’s annual

1 reports, the District has implemented all of the provisions of the ALE Access and  
2 Recruitment Plan and Supplement.

3 **F. The ALE R&R Appropriately Discusses ALE Completion Rates.**

4 The Mendoza Plaintiffs also object that the ALE R&R purportedly does not  
5 address ALE completion rates. However, the ALE R&R clearly addresses ALE  
6 completion rates, albeit in a different way than the Mendoza Plaintiffs may have wanted.  
7 [ALE R&R, ECF 2041, p. 4. (“[T]he Court order that generated this R&R identified  
8 “completion rates” as an issue the R&R should address. This report includes  
9 information about some student outcomes on the assumption that “completion rates”  
10 implied results of participation in ALE.”)] After equating “completion rates” with  
11 participation results, the Special Master provides pages of details addressing African  
12 American and Latino student participation in various ALEs. The Mendoza Plaintiffs,  
13 however, equate “completion rates” with their position that the District and Special  
14 Master should discuss “the relative numbers of white vs. African American and Latino  
15 students earning a ‘C’ or better in at least one ALE class, or deemed ‘college ready.’”  
16 [Objection, ECF 2069, p. 10.]

17 As discussed above, the USP does not require parity among White, African  
18 American and Latino students in ALE participation or “completion rates.” Additionally,  
19 contrary to the representation made in the Mendoza Plaintiffs’ Objection, the District  
20 did not “expressly anticipate” comparing ALE participation between White students and  
21 African American and Latino students as part of an analysis of the District’s compliance  
22 with the USP. The District does not agree with the Mendoza Plaintiffs’ position that the  
23 USP requires the District to do more than strive to ensure equal access and support to  
24 ALEs for all of its students. Moreover, information regarding students’ participation in  
25 and completion of ALEs is detailed in the District’s annual reports, which the Mendoza  
26 Plaintiffs receive each year. The Court should also reject this objection.

27

28

1           **G.     The Objection Regarding AVID is Misplaced.**

2           The Mendoza Plaintiffs' final objection is that the ALE R&R should have  
3 recommended a more aggressive expansion of the District's AVID program. This  
4 objection is misplaced for several reasons. First, AVID is not an ALE, though the  
5 District utilizes AVID as an important part of the support for students in ALE programs.  
6 Additionally, the District has expanded AVID each year, as reported in each year's  
7 annual report. [AR 14-15, ECF 1918-1, p. 161; AR 15-16, ECF 1958-1, pp. 20, 153-54;  
8 AR 16-17, ECF 2057, pp. 220-22.] Moreover, the District plans to continue to expand  
9 AVID in the future, as it will add Booth Elementary School and Tucson High Magnet  
10 School as additional AVID sites for SY 17-18. [AR 16-17, ECF 2057-1, p.222.] The  
11 District continues to expand the successful AVID program, and the Mendoza Plaintiffs'  
12 objection in this regard is misplaced and should be rejected.

13           The District has complied and continues to comply with the USP's ALE  
14 requirements. The District has gone above and beyond USP requirements to establish  
15 and pursue additional ALE goals to improve the quality of education of all of its  
16 students, many with specific focuses to help African American and Latino students to  
17 succeed. The District continues to work with the other parties and special master to  
18 utilize ALEs in ways that improve the quality of education for its students. These good  
19 faith efforts to go above and beyond USP requirements in setting and achieving  
20 additional goals indicate the District's good faith efforts to improve the quality of  
21 education for all District students.

22           **III.   Suggested Revisions to the ALE R&R.**

23           Although the District does not object to the ALE R&R in a general sense, the  
24 District does suggest some minor corrections before adoption by the Court.

25           **A.     Types of ALE Offered At Various Schools.**

26           On page two of his report, the Special Master sets out a chart showing types of  
27 ALE offered at various schools. The chart should be amended as follows:  
28

- 1 • Dual credit courses are offered at Catalina, Pueblo, Rincon and Tucson  
2 High, as well as Santa Rita.
- 3 • Pre-AP advanced and Honors courses are offered at all middle schools and  
4 at 7 K-8 schools (Booth Fickett, Hollinger, McCorkle, Robins, Roskruge,  
5 Rose and Safford).
- 6 • Self-contained GATE programs are offered at 3 cluster schools in addition  
7 to the 10 schools cited.
- 8 • Resource GATE programs are offered at 15 middle and K-8 schools and  
9 all high schools.

10 **B. ALE Goals Should Be Applied by Grade-Level, not Individual**  
11 **Schools.**

12 The District believes that ALE goals should be applied by grade-level across the  
13 District, not by individual school. The District believes this is what the Special Master  
14 intended at the bottom of page 5 of his report and recommendation, but is concerned that  
15 this is not clear.

16 **C. Attainment of Goals.**

17 The language at lines 23-25 on page 10 of the report and recommendation should  
18 be slightly modified to read as follows:

19 Of the 15 African American programs, the District met the 15% goal in  
20 three cases. With respect to the 15 Latino programs, the District met the  
21 15% goal in 11. Of the programs where the 15% rule was not met for  
African-Americans, three of these came within 1% of meeting the goal.

22 **D. Self-Contained GATE Programs.**

23 The language at lines 5-8 on page 12 of the report and recommendation should be  
24 slightly modified to read as follows:

25 African American student enrollment in self-contained grade 1-5 GATE  
26 programs increased significantly – a 52% increase from 2015-16 to 2016-  
27 17 (an increase of 11 students); Latino students had a 40% increase (an  
28 increase of 75 students).

1                   **E.     Impact of Tully.**

2                   Contrary to the Special Master’s comment at lines 8-9 of page 12, the  
3 implementation of the new GATE program at Tully did not materially impact the  
4 numbers set forth in D above. Students who qualified for GATE services at Tully would  
5 have received GATE services at their home school or SC school.

6                   **F.     Progress.**

7                   The language at lines 17-22 on page 12 of the report and recommendation should  
8 be slightly modified to read as follows:

9                   Measuring progress by percentage changes in participation (the measure  
10 used to calculate progress toward the 15% goal) and treating one percent  
11 changes either way as inconsequential, for African American students,  
12 three ALE programs improved, three lost ground, and eight did not  
change. For Latino students, nine ALE programs indicated improvement,  
one lost ground, and four remained unchanged.

13                   **G.     Participation by Hispanic ELL Students.**

14                   The language at lines 14-15 on page 12 of the report and recommendation should  
15 be slightly modified to read as follows:

16                   Participation of Latino ELL students in ALE meant to prepare students for  
17 enrollment and success in AP classes increased dramatically, from 14 in  
2013-14 to 150 in 2016-17.

18                   **H.     Progress in Pullout GATE.**

19                   Contrary to the statement at lines 17-18 of page 15, the number of Latino  
20 students in pullout GATE increased from 727 in SY 15-16 to 832 in SY 16-17, and the  
21 number of African American students in pullout GATE increased from 79 to 86 over the  
22 same period.

23                   **I.     National Recognition for Increase in AP.**

24                   Contrary to the statement at 4-6 on page 17, the increase in AP courses offered  
25 was not solely because of two schools. In addition to UHS and Sahuaro, Catalina,  
26 Pueblo, Sabino and Tucson High all increased the number of AP courses offered.

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**J. Use of Grade Point Averages.**

On page 26 at lines 3 through 10, the Special Master recommends reducing cut scores related to grade point averages for self-contained and pullout GATE programs. However, this recommendation is not applicable because the District does not use grade point average as a factor for elementary school students.

**K. Expansion of GATE.**

Contrary to the statement at Line 7 on page 31, the District has been urgently and diligently expanding its GATE programs. In SY 16-17 the GATE Department implemented several strategies to expand GATE services, including Itinerant Push-In Services in kindergarten and continued GATE whole-grade testing, as noted above. In addition to these services, the department provided support to implement new GATE programs at Tully Elementary Magnet School, Wheeler Elementary School, and Roberts-Naylor K-8 School and began planning with site principals and teachers to expand cluster programs at five additional elementary sites in SY 17-18: Cavett, Grijalva, Maldonado, Myers Ganoung and Wright.

DATED this 27<sup>th</sup> day of September, 2017.

**STEPTOE & JOHNSON LLP**

By /s/ P. Bruce Converse  
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**CERTIFICATE OF SERVICE**

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The foregoing document was filed with the Court electronically through the  
CM/ECF system this 27<sup>th</sup> day of September, 2017, causing all parties or counsel to be  
served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ P. Bruce Converse  
Employee of Steptoe & Johnson LLP