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LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, California 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
634 S. Spring St.
11th Floor
Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

Attorneys for Mendoza Plaintiffs

**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 SPECIAL
MASTER'S 2016-17 ANNUAL REPORT
[ECF 2096]**

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

9
10 **INTRODUCTION**

11 The Mendoza Plaintiffs submit the following objections to the Special Master’s
12 2016-17 Annual Report (Doc. 2096) (“SMAR”).

13
14 Given the Court’s orders relating to the SMAR including its statement that “TUSD,
15 which bears the burden of showing it has attained unitary status, must move [the] Court to
16 end its oversight of the USP” (Order dated 5/25/17, Doc. 2025, at 2:12-15), Mendoza
17 Plaintiffs do not here address the important prerequisite for the withdrawal of judicial
18 oversight: that the District has “demonstrated, to the public and to the parties and students
19 of the once disfavored race, its good faith commitment to the whole of the [consent
20 decree].” (*Freeman v. Pitts*, 503 U. S. 467, 491 (1992).) Rather, they reserve their right
21 to address that critical issue at the appropriate time and here address only the issue of
22 “whether there has been full and satisfactory compliance with [the USP] in those aspects of
23 the [school]system where supervision is [proposed] to be withdrawn.” (*Id.*)

24
25 Because it is has been necessary to put their objections in context, so that the Court
26 can more easily locate those objections in what follows, the Mendoza Plaintiffs have set
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1 forth each of their objections in bold type. In submitting their objections, they also have
2 been mindful of the Court’s directive of December 19, 2017, that “objections must include
3 specific recommended actions that [the parties] believe are necessary for the District to
4 implement in order to attain unitary status.” (Doc. 2090 at 2:23-25, referencing
5 “Completion Plans”.) With respect to the Court’s directives relating to Completion Plans
6 they therefore have done the following: For each area of the USP as to which the Special
7 Master proposed a Completion Plan, they have included a section setting forth any
8 objections they have to that Plan and their proposed changes. Where they objected to a
9 finding that the District has fully implemented a USP provision, they have set forth the
10 basis for their objection and offered a proposed Completion Plan.
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13 Mindful of the Court’s statement in its December 2017 Order that after reviewing
14 the SMAR and the parties’ objections, it will “direct the Special Master to develop and/or
15 amend the Completion Plans accordingly” (Doc. 2090 at 2:25-27), they offer the following
16 general observation and recommendation. They believe that the unitary status process will
17 be best served going forward if all Completion Plans are specific (so that all concerned
18 know precisely what is required of the District), set deadlines, and provide a mechanism
19 pursuant to which performance can be verified and reported to the public. While they
20 have offered suggestions for additional specificity in some of what follows, they also
21 recognize that it would be extremely difficult for the Court to rule on the particulars of
22 each separate Completion Plan. In light of the success that the Mendoza Plaintiffs are
23 pleased to report they recently have experienced in negotiating with the District with
24 respect to a plan for the Mexican American Student Services Department, they respectfully
25 suggest that once the Court has had an opportunity to review the SMAR and the parties’
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1 objections, and rule thereon, that it direct the Special Master to work with the parties to
2 finalize the Completion Plans to provide the necessary level of detail and consistency
3 among them. (Mendoza Plaintiffs also respectfully suggest that this process may help
4 the District to demonstrate its good faith commitment to the unitary status plan and
5 process.)
6

7 Mendoza Plaintiffs recognize that the following objections are lengthy. They regret
8 the burden thereby placed on the Court, the Special Master, and the other parties but
9 believe that it has been important to document the areas in which District USP
10 implementation has not yet been adequate so that appropriate Completion Plans -- that will
11 bring the District to unitary status -- can be developed and implemented. In that regard,
12 they also note that in a number of areas --specifically Section IX of the USP (Facilities and
13 Technology), a portion of Section IV of the USP (Staff Reductions in Force, USP Section
14 IV, G), and with regard to the IB Program (included within USP Sections V, A, 2 and 4) --
15 they concur with the Special Master that either the District has sufficiently complied with
16 its USP obligations or has a relatively small (but important) number of concrete actions
17 will bring the District to the point of satisfactory compliance with the relevant provisions
18 of the USP.
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22 **STUDENT ASSIGNMENT – USP SECTION II**

23 **Mendoza Plaintiffs object to the recommendation that except for the USP**
24 **provisions relating to magnet schools the District be granted unitary status with**
25 **respect to Section II of the USP—Student Assignment. Based on the record before**
26 **this Court, the District should continue to remain under Court supervision with**
27 **respect to all of USP Section II.**
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4 The Nonmagnet Schools

5 For the purposes of his recommendation the Special Master separated the 13 magnet
6 schools from the remaining 69 schools in the District¹ but much of his discussion and
7 analysis lumps the two groups of schools together. Significantly, when the nonmagnet
8 schools -- the schools the Special Master recommends be released from Court
9 supervision—are viewed separately, a very different picture of their progress (or lack
10 thereof) toward integration emerges than that which is suggested in the SMAR.

11 Using data from the District’s first annual report under the USP (for the 2012-13
12 school year; Doc. 1549-5, Appendix 3) and from its report of 40th day enrollment for the
13 2017-18 school year (a copy of which is attached as Exhibit 1), Mendoza Plaintiffs
14 determined the percentage of TUSD students attending integrated nonmagnet schools. In
15 2012-13 that percentage was 18.3%. By the 2017-18 school year, it had **declined** to
16 16.7%².

17 In its analyses and for reasons not explained by either the Special Master or the
18 District, whose charts the Special Master attaches to the SMAR, the District starts its
19 presentations relating to school integration at different times in the life of the USP.
20 (*Compare* SMAR Tables II-1 and II-2 (starting year SY 13-14) with Table II-3 (starting
21 year SY 12-13) and Table II.1A (starting year SY 14-15).) Although Mendoza Plaintiffs
22 do not agree that 2014-15 is the appropriate year in which to begin analysis of USP
23 compliance, because Table II.1A has the most detailed enrollment information of the tables
24 appended to the SMAR and because the total number of schools in the District has been
25 constant since that time period, Mendoza Plaintiffs used it to engage in an analysis
26 comparable to the analysis they performed for the 2012-13 school year (simply omitting all

27 ¹ Mendoza Plaintiffs have excluded the alternative schools from this count both because
28 they were not included in the original USP appendices or the District’s initial annual report
and because enrollment at those schools is subject to unique sets of factors.

² Mendoza Plaintiffs did not tally the relative number of integrated schools because
schools were closed in the intervening years.

1 magnet schools from the data). That analysis reveals that the percentage of students
2 attending integrated nonmagnet schools was essentially constant (18%) between SY 12-13
3 and SY 14-15, notwithstanding the school closures in the intervening years, and that the
4 number of integrated schools in SY 2014-15 was 15 (and apparently also notwithstanding
5 changes in the manner in which the District says it reported race and ethnicity during that
6 time period.) More significantly, it shows that the decline to 16.7% in the percentage of
7 students attending integrated nonmagnet schools occurred **after** the 2014-15 school year
8 and that the number of integrated nonmagnet schools (again excluding the alternative
9 schools from all analysis) was virtually unchanged: 16.

10 Simply put, the data does not support the Special Master's finding that the District
11 has made progress in integrating its nonmagnet schools or his recommendation that the
12 District be relieved of Court supervision of the integration efforts at these schools.

13 **Given the foregoing (and the additional discussion below), Mendoza Plaintiffs**
14 **also object to the Special Master's finding that the "trends are clear" (SMAR at 9:6-**
15 **7) and that they support unitary status for the nonmagnet schools.** Notably, when he
16 references "trend-lines", the Special Master cites to Table II-3 in the appendix to his
17 report. (SMAR at 7:14.) But that table says nothing about integration in nonmagnet
18 schools (or even integration districtwide). To the contrary, Table II-3 presents data
19 relating **only** to magnet schools and does not purport to provide a trend line for changes
20 over time in the number of students enrolled in schools that meet the USP definition of
21 integration. Instead, it shows data relating to the levels of Latino enrollment in racially
22 concentrated magnet schools.³

23 The Special Master references TUSD's new prointegrative marketing approach
24 implemented in advance of the 2017-18 school year and the District's Court-mandated
25 undertaking to develop and implement integration initiatives as reasons why, in his view,
26 the District is making progress in integrating its nonmagnet schools. (SMAR at 8:2-17.)

27 ³ Mendoza Plaintiffs also looked at the relative number of students attending all racially
28 concentrated schools in the District in 2017-18 as compared to 2012-13, when the USP
was adopted. The change appears to be minimal: 45.3% in 2012-13 as compared to
43.6% in 2017-18. (For this analysis, Mendoza Plaintiffs again used Doc. 1549-5,
Appendix B, and Exhibit 1.)

1 However, as indicated above, there has been no such progress. Further, the Mendoza
2 Plaintiffs' review of enrollment data suggests that in certain instances schools became
3 integrated not because families were affirmatively seeking the benefits of education in an
4 integrated environment but, rather, because total school population declined and one racial
5 or ethnic group represented a greater proportion of that decline.

6 For example, Kellond Elementary School became integrated between the 2016-17
7 and 2017-18 school years. Between those two years, the total enrollment of the school
8 declined by 23; however, its white enrollment declined by 36 even as its Latino enrollment
9 increased by 21. Lineweaver Elementary School also became integrated between the
10 2016-17 and 2017-18 school years. Between those two years, its total enrollment declined
11 by 9; however its total enrollment of Latino students declined by only one student even as
12 its enrollment of white students declined by 14. (The referenced enrollment numbers are
13 found on Exhibit 1 (for 2017-18) and TUSD Enrollment by Ethnicity SY 16-17 Final 40th
14 Day, attached as Exhibit 2.) Such changes, adding to the reported percentage of TUSD
15 students attending integrated schools during the 2017-18 school year, do not appear to
16 reflect positive responses to District integration efforts. To the contrary, they suggest that
17 more analysis (and effort) is required before the District can be found to have done
18 everything reasonably practicable to further integrate its schools.

19 The SMAR itself confirms that the District has been slow to embrace initiatives that
20 could lead to greater integration of all of its schools. For example, in his discussion of
21 why he believes unitary status has not yet been attained with respect to the magnet school
22 component of Section II, the Special Master makes findings that apply more broadly to the
23 entirety of the District's Section II obligations.

24 He writes that it was not until recruitment for the 2017-18 school year that the
25 District in its marketing efforts referred to the significant research showing that attending
26 an integrated school provides students with important learning opportunities they would
27 not otherwise have. (SMAR at 10:10-12.) He also says that, as a result of demands by
28 Plaintiffs and pursuant to a requirement approved by the Court, the District "finally"
launched an "Integration Initiative" in the spring of 2016 – which he notes was more than
three years after the approval of the USP. (*Id.* at 10:13-14.)

1 Moreover, with respect to those integration initiatives, many of which involved
2 plans to use express buses to facilitate attendance at designated schools, Mendoza
3 Plaintiffs were surprised to learn, from the District's responses to their RFIs relating to its
4 2016-17 Annual Report ("2016-17 DAR"), that the District apparently is not able to report
5 on the race and ethnicity of the students riding the express buses or the effect the
6 enrollment of these students has had on the race and ethnicity of the schools they now are
7 attending. (See responses to RFIs # 1711-1714, 1572-73, jointly attached as Exhibit 3.)
8 In its responses to other information requests relating to the 2016-17 DAR, the District
9 also refers to 35 schools it specifically identified for receipt of marketing materials and
10 lists schools in which "special efforts" were made to increase integration. (See responses
11 to RFI's # 1569 and 1570, jointly attached as Exhibit 4.) **Mendoza Plaintiffs**
12 **additionally object to the Special Master's recommendation that the District be**
13 **relieved from further Court supervision with respect to its USP obligations to seek to**
14 **integrate its nonmagnet schools absent any analysis and assessment of the efficacy of**
15 **the integration and marketing efforts that the District undertook commencing in**
16 **2016-17.**

16 As noted above, notwithstanding his separate treatment of the magnet and
17 nonmagnet schools, the Special Master lumped them together in his discussion of the
18 District's tables relating to the number of integrated schools and percentage of
19 TUSD students attending those schools. (SMAR at 7:3-9 and 8:19-9:1.) Mendoza
20 Plaintiffs have a number of objections to the findings that the Special Master made
21 based on these tables in addition to those objections set forth above.

21 Mendoza Plaintiffs contend both (a) that too much is being made of a one-
22 year change in the data on percentage of students attending integrated schools
23 particularly given that, as the Special Master himself has noted, "a small change in
24 the percentage of students of a particular race ... can push a school from integrated
25 to racially concentrated – and vice versa" (SMAR at 7:11-13) and (b) that the
26 baseline data being used to assess progress in increasing the relative number of
27 students attending integrated schools is itself subject to further investigation and
28 consideration.

1 Mendoza Plaintiffs do not believe a one-year change is a sufficient basis on which
2 to make a determination of unitary status, particularly when the District is reporting that
3 the 2017-18 uptick in percentage of students attending integrated schools follows a year of
4 “downtick” (from 2015-16 to 2016-17). (See, SMAR Table II-2.) Additionally, as noted
5 above, (and consistent with this data point), the table on which the Special Master relies
6 does not support his finding with respect to a “trend.”

7 **With respect to the baseline data, Mendoza Plaintiffs object to the Special**
8 **Master having (a) placed particular reliance on Table II.1A, which begins with the**
9 **2014-15 school year, in making his findings, rather than focusing on the extent to**
10 **which students were attending integrated schools at the time the USP was adopted**
11 **and (b) accepted District presentations that use the 2013-14 school year as the**
12 **starting point for some of his assessment (see SMAR Tables II-1 and II-2) which not**
13 **only omit the 2012-13 USP base year but also include changes to how the District**
14 **presented that same data in its 2013-14 Annual Report that do not make sense to the**
15 **Mendoza Plaintiffs (or at least are not well explained)⁴ and are not addressed at all in**
16 **the SMAR .**

17 Using data in the District’s 2012-13 Annual Report (Doc. 1549-1, Appendix 3),
18 Mendoza Plaintiffs have calculated that during the first year the USP was implemented,
19 21.5% of the students attending school in the District were attending integrated schools.
20 Regardless of whether schools were closed or consolidated in the intervening years,
21 Mendoza Plaintiffs believe that that percentage is relevant to an assessment of how
22 effective the District has been in integrating its schools, particularly because all school
23 closings and attendance changes were subject to a desegregation impact analysis. Based
24 on the data they have reviewed, Mendoza Plaintiffs believe that that percentage increased

25 ⁴ In the 2016-17 DAR Annex, the District removed two schools from the list of integrated
26 schools reported in the 2013-14 DAR for the 2013-14 school year (Doc. 1686-8, page 96
27 of 151) and thereby reported a lower integration “baseline” number than seems warranted
28 based on Mendoza Plaintiffs’ current understanding, saying that the schools were
“integrated as compared to K-8 students, but not as compared to K-8 schools....” (2016-17
DAR Annex, Doc. 2075-2, page 7 of 81.)

1 to 22.3% (exclusive of alternative schools) in the following 2013-14 school year before
2 declining in 2014-15, 2015-16, and 2016-17.⁵ The Special Master never states what
3 percentage increase in the number of students attending integrated schools he believes is
4 appropriate or why. Rather, he reports that 25% of the students in the District are
5 attending integrated schools in 2017-18 and, based on his comparison with years in which
6 the District reports the percentage was 18% or 19%, apparently concludes that the District
7 has increased the percentage to the extent practicable. As noted, he fails to address the
8 higher percentages of students attending integrated schools in the earlier days of the USP
9 (or the District's change in the way it reported its data for 2013-14) and lumps magnet and
10 nonmagnet schools together to derive this percentage.

11 Further, as discussed above, in its most recent presentation on its asserted progress
12 in integrating its schools, the District removed two (unidentified) schools from the list of
13 integrated schools as reported in its 2013-14 Annual Report. Based on that adjustment,
14 the District reports that in 2013-14 only 18.9% of its students attended integrated schools.
15 It then uses that percentage to measure its progress from 2013-14 to the current 2017-18
16 school year. However, if all schools other than alternative schools reported as integrated
17 in the 2013-14 Annual Report are included in the analysis, 22.3% of the District's students
18 were attending integrated schools in 2013-14, and the reported progress up to 25% for the
19 2017-18 school year is not so great as reported by the District or found by the Special
20 Master.

21 Mendoza Plaintiffs' Proposed Completion Plan for USP Section II Relating to
22 Nonmagnet Schools

23 As noted above, the Special Master references the new prointegrative marketing
24 approach implemented in advance of the 2017-18 school year and the District's Court-
25 mandated undertaking to develop and implement integration initiatives. Further, in its
26 responses to information requests relating to its 2016-17 Annual Report, the District refers

27 ⁵ Mendoza Plaintiffs understand that there are some issues about consistency in the
28 reporting of racial and ethnic data over time. However, they also believe it is appropriate
to base an assessment of progress toward integration on the understanding of all concerned
that, as of the effective date of the USP, more than 20% of the students in the District were
attending an integrated school.

1 to the 35 schools it specifically identified for receipt of marketing materials and lists
2 schools in which “special efforts” were made to increase integration. (*See* responses to
3 RFIs 1569 and 1570, Exhibit 4.) However, no assessment of the efficacy of these efforts is
4 provided. Therefore:

5 (1) The District should assess the integrative outcomes of these efforts, report on
6 them to the Plaintiffs and the Special Master, and revise/ amend these efforts to the extent
7 warranted based on the results of its analysis.

8 (2) The foregoing assessment should be supplemented by a study of the schools that
9 have become integrated as of the 2016-17 and 2017-18 school years and the schools in
10 which racial concentration has diminished in those years to assess whether and to what
11 extent these changes are the result of demographic changes and to what extent they appear
12 to be the result of District integration initiatives.

13 (3) As part of this study, the District should consider whether and to what extent
14 “District Placement” (which Mendoza Plaintiffs understand to include the results of the
15 admissions process for oversubscribed schools) or bus routes should be modified to
16 further the integration of its schools.

17 (4) At its meeting on December 12, 2017, the Governing Board directed TUSD staff
18 to prepare a preliminary high school reconfiguration and restructuring plan. As part of the
19 completion plan for USP, Section II, that reconfiguration and restructuring plan should
20 seek to maximize the opportunities for TUSD high school students to attend an integrated
21 school.

22 (5) In reporting on the number of integrated schools and the percentage of students
23 attending integrated schools, the District should henceforth exclude its alternative schools
24 and their enrollment numbers from its analysis.

25 The Magnet Schools

26 The Mendoza Plaintiffs agree with the Special Master’s finding that the District has
27 not attained unitary status with respect to so much of USP Section II as relates to the
28 magnet schools.

1 Proposed Changes to Special Master’s Completion Plan for USP, Section II,
2 Magnet Schools

3 *A. Existing Magnet Schools*

4 **The Mendoza Plaintiffs object to the reference to the Court’s order relating to**
5 **magnet schools (Doc. 1753) in section A.1 of the proposed completion plan because it**
6 **stops too soon.** It should include the additional sentence: “TUSD does not object to
7 adding the Mendoza Plaintiffs’ proposed standard: ‘the achievement gap between racial
8 groups participating in magnet programs is less than the achievement gaps between racial
9 groups not participating in magnet programs.’” The cited reference in the completion plan
10 should therefore be Doc. (or ECF) 9:3- 10-2, and success in closing the achievement gap
11 should be one of the factors considered in evaluating magnet schools.

12 Mendoza Plaintiffs also believe that the same analysis of integration status must be
13 undertaken for the magnet schools that is suggested above for the nonmagnet schools.
14 Specifically, the District must seek to determine what actions and/or initiatives have
15 contributed to increased integration of some of the magnet schools and determine to what
16 extent such actions and/or initiatives should be enhanced and/or replicated --- or
17 reconsidered (given the data referenced in the following paragraphs). Further, there needs
18 to be greater understanding of whether positive changes in reported integrative status are
19 the results of demographics or the results of District action.

20 As the Special Master noted in the SMAR, “a small change in the percentage of
21 students of a particular race...can push a school from integrated to racially concentrated –
22 and vice versa.” (SMAR at 7:11-13.) This appears to have been the case, for example, for
23 Bonillas, which went from being racially concentrated in 2016-17 to integrated in
24 2017-18.⁶ Bonillas also lost overall enrollment between 2016-17 and 2017-18 (dropping
25 from 404 to 383). Significantly for the integration outcome, this included increases in the
26 school’s white and African American enrollments (up one and eight, respectively) even as
27 the Latino enrollment declined at a rate disproportionate to the total school decline (a

28 ⁶ All of the data in the following discussion is derived from the 40th day enrollment
information contained in Exhibits 1 and 3.

1 decline from 288 to 262 or 9% in Latino enrollment compared to a total school enrollment
2 decline of 4.7%).

3 Something similar and even more dramatic occurred at Davis which also went from
4 being racially concentrated in 2016-17 to integrated in 2017-18. Davis' total school
5 enrollment declined by 5.4% during that one year period (from 312 to 295) as both its white
6 and African American enrollments increased (from 49 to 61 or by 24% for the white
7 enrollment and from 13 to 16 or by 23% for its African American enrollment). During that
8 same period, however, the school's Latino enrollment declined by 13.3% (from 233 to 202).

9 Mendoza Plaintiffs believe that before magnet schools like Bonillas and Davis can be
10 said to have successfully integrated, it is incumbent on the District to study as part of its
11 completion plan, why Latino students are leaving these schools and where they are going.

12 Further, the Special Master should assess the extent to which each magnet school
13 implemented the integration initiatives set forth in its 2016-17 and 2017-18 magnet school
14 plans.

15 *B. Potential Magnet Schools or Programs*

16 Mendoza Plaintiffs do not object to this component of the proposed completion plan
17 but neither do they believe it is essential, particularly if it has the potential to divert resources
18 from a focus on ensuring that existing magnet schools and programs maximize their chances
19 of success in achieving the standards set in Doc. 1753 (as referenced in the proposed
20 Completion Plan). However, if this component is contained in a Completion Plan, Mendoza
21 Plaintiffs believe that a primary requirement must be a demonstration by TUSD of how any
22 proposed new magnet school or program will demonstrably increase the number of students
23 attending integrated schools in the District.

24 **TRANSPORTATION - USP SECTION III**

25 Mendoza Plaintiffs agree that unitary status for transportation should be deferred
26 until "full unitary status for all provisions of the USP involving transportation is
27 awarded". (SMAR 14:4-5.) **However, they object to the Special Master's finding that**
28 **the District has demonstrated satisfactory compliance with USP Section III. (SMAR**
at 13:19-20.)

1 They have previously noted their concerns with what appears to be incomplete
2 information and/or analysis and therefore the inability of the District to date to demonstrate
3 that it has used “transportation services as a critical component of the integration of its
4 schools.” (USP Section III, A, 1.)

5 For example, in discussing the District’s transportation integration initiatives, the
6 SMAR notes that “express shuttle options were introduced” (SMAR at 13:16); however,
7 the SMAR omits the fact that, as discussed above, the District claims to be unable to
8 report on the race and ethnicity of the students riding these express buses or the effect the
9 enrollment of those students has had on the racial and ethnic composition of the affected
10 schools (Magee, Drachman and Santa Rita). (*See* responses to RFIs 1711-14, 1572-73,
11 Exhibit 3.) Similarly, the SMAR states that “incentive transportation ridership has
12 increased” (SMAR at 13:14) but the appendices to the District’s Annual Reports indicate
13 that while incentive transportation did increase from 2014-15 to 2015-16 (793 to 856),
14 there was a decline from 2015-16 to 2016-17 (856 to 807). (*Compare* 2014-15 DAR,
15 Doc. 1848-8 at 7 of 23; 2015-16 DAR, Doc. 1961-1, at 53 of 59; and 2016-17 DAR, Doc.
16 2059-1 at 50 of 56.)

17 Additionally, as discussed at greater length below in connection with the GATE
18 program, the District’s Revised ALE Analysis notes that one of the reasons most frequently
19 given for why families decide not to send their qualified students to self-contained programs is
20 transportation. (Revised ALE Analysis (Doc. 2092-1) at 88.) According to the Revised ALE
21 Analysis, representatives of the TUSD GATE and Transportation Departments met to discuss
22 increasing alternative routes to reduce travel time to GATE sites but “[b]udget constraints
23 prevented significant transportation changes.” (*Id.*) **Mendoza Plaintiffs therefore further
24 object to the Special Master’s finding of satisfactory implementation of the transportation
25 provisions of the USP on the grounds that no such finding can be sustained until this
26 acknowledged issue with transportation to the self-contained GATE programs is
27 adequately addressed.**

28 Mendoza Plaintiffs believe that a completion plan must address all of these issues.

1 Mendoza Plaintiffs’ Proposed Completion Plan for USP Section III –
2 Transportation

3 (1) As noted in the Mendoza Plaintiffs’ comments on the nonmagnet school portion
4 of the completion plan for Student Assignment, the District should determine the race and
5 ethnicity of the students riding express buses that are included in its integration initiatives
6 (that is, express buses serving Magee, Drachman, Santa Rita) for each year such buses
7 have been in service and assess the effect the enrollment of the students riding the express
8 buses has had on the race and ethnicity of the student populations at these schools and
9 report the results to the Plaintiffs and the Special Master. It should also revise/amend its
10 use of express buses to the extent warranted based on the results of its analysis. Further, it
11 should determine whether such efforts or similar ones should be put in place at additional
12 or other schools.

13 (2) The District should study the use of incentive transportation and determine what
14 accounts for the decreased use of this integration transportation initiative in the 2016-17
15 school year, what the numbers are for the 2017-18 school year, and whether the results of
16 its analysis suggest that any changes in transportation routes or marketing of the
17 opportunity are warranted.

18 **ADMINISTRATIVE AND CERTIFICATED STAFF - USP SECTION IV**

19 **Mendoza Plaintiffs object to the recommendation that except for the areas of**
20 **school level teacher diversity, teacher attrition, grow-your-own programs, and the**
21 **placement of beginning teachers, the District be granted unitary status with respect**
22 **to the provisions of Section IV of the USP – Administrative and Certificated Staff.**

23 Based on the record before the Court, the District also should continue to remain under
24 Court supervision with respect to the recruitment of a diverse teacher and administrative
25 staff. **Mendoza Plaintiffs further object to findings and the Completion Plan relating**
26 **to the placement of beginning teachers and propose changes to the Completion Plan**
27 **concerning “grow-your-own” programs.**

28 Mendoza Plaintiffs note that they concur with the Special Master’s implicit finding
that the District has sufficiently complied with USP subsection IV, G (Reductions in
Force).

Recruitment of Diverse Teacher and Administrative Staff

1
2 While Mendoza Plaintiffs agree with the Special Master’s findings concerning the
3 lack of progress made “with respect to increasing the proportions of African American and
4 Latino teachers and administrators” over the last five years (SMAR at 14:15-16),
5 **Mendoza Plaintiffs object to the SMAR finding that “[t]he one exception to this**
6 **generalization is that the number of African American site-based administrators,**
7 **though small, has increased” (SMAR at 14:18-19) because it adopts an approach**
8 **inconsistent with the USP and ignores a corresponding drop in non-site**
9 **administrators.**

10 Unlike the data on which the Special Master based his unitary status
11 recommendation, the USP and its reporting requirements make no distinction between site-
12 and non-site based administrators. (*See, e.g.*, USP Section IV, C (Outreach and
13 Recruitment); SMAR Table IV-1 (Doc. 2096-3).) Indeed, if one looks at aggregate
14 African American administrator data from the 2013-14 school year to November 1, 2017
15 (the range of dates in Table IV-1 to the December 13, 2017 *draft SMAR*), there has been
16 zero increase in African American administrators at TUSD over the last approximately
17 four years. (*See* Table IV-1 to Draft SMAR attached as Exhibit 5.) (Mendoza Plaintiffs
18 note that Table IV-1 (Doc. 2096-3) to the SMAR contains data as recent as “8/31/2017”
19 and reflects a total of 19 African American administrators while Table IV-1 to the *draft*
20 SMAR reflects data as recent as “11/1/17” and reflects a total of 17 African American
21 administrators. Mendoza Plaintiffs find themselves confused about why, in connection
22 with the SMAR, the Special Master relied on data that is less recent than the data relied on
23 in the draft SMAR, particularly as these data sets suggest that the additional two African
24 administrators reported in Table IV-1 to the SMAR were individuals who held
25 administrator positions at the beginning of the 2017-18 school year, but left their
26 administrator positions very soon thereafter.)

27 Further, Mendoza Plaintiffs’ recently learned of the District’s acknowledgement of
28 the existence of a teacher “blacklist,” which apparently barred approximately 900 people
from obtaining employment at TUSD without any valid justifications. (*See*
<https://www.edweek.org/ew/articles/2018/01/16/tucson-district-kept-secret-do-not->

1 hire.html?cmp=enl-enl-eu-news3&M=58346322&U=2637636.)⁷ Plainly given past
2 TUSD assertions that the District has had difficulty fulfilling the USP objective to recruit a
3 diverse teaching and administrative staff because of teacher shortages the apparently
4 improperly “blacklisted” teachers would have been an extremely useful pool from which
5 the District could have furthered this objective of the USP.

6 Beyond hampering the overarching objective to recruit a diverse staff, Mendoza
7 Plaintiffs believe that the maintenance of a “blacklist” has necessarily limited progress that
8 could have been made with respect to various specific USP requirements, including, as
9 relevant here, use of applicant pools from which the District was to encourage individuals
10 to apply for open positions (USP Section IV, D, 2), site-level teacher diversity (USP
11 Section IV, E, 5), and use of invitations to retired staff to return to fill open positions (USP
12 Section IV, C, 3, a., ii). Given the significant implications of a “blacklist” for District
13 implementation of USP Section IV, the data showing little progress in the recruitment of
14 African American and Latino teaching and administrative staff (as detailed above), and the
15 fact that the Special Master recommended retaining court supervision over three areas,
16 each of which is directed at improving recruitment of a diverse TUSD staff (*see* SMAR at
17 15:14-17, 19), **Mendoza Plaintiffs object to the SMAR finding that with respect to**
18 **“Districtwide Diversity of Professional Staff,” the District “has done what it was**
19 **asked to do by the USP and relevant action plan.” (SMAR at 15:9.)** They further
20 propose a Completion Plan to address the existence of a “blacklist” that seemingly
21 hampered USP Section IV implementation efforts.

22 Placement of Beginning Teachers

23 USP Section IV, E, 5 requires that the District “make efforts to increase the number
24 of experienced teachers and reduce the number of beginning teachers hired by Racially
25 Concentrated schools or schools in which students are achieving at or below the District

26 ⁷ Mendoza Plaintiffs understand the Special Master’s SMAR recommendations and
27 Completion Plan concerning Section IV of the USP to have been developed with little
28 information concerning the TUSD “blacklist.” While the Special Master indicated that he
requested information from TUSD concerning the “blacklist”, Mendoza Plaintiffs do not
know what the status of or response to those requests are and have not received further
information from the Special Master. (*See* January 17, 2018 Special Master email attached
as Exhibit 6.) It is, however, clear that issues raised by the “blacklist” were not addressed
in the SMAR.

1 average in scores on state tests or other relevant measures of academic performance... .”

2 **The Mendoza Plaintiffs object to the Special Master’s findings that “[f]or both the**
3 **2016-17 and 2017-18 school years, almost three out of four beginning teachers started**
4 **teaching in racially concentrated or lower achieving schools⁸ at the beginning of the**
5 **school year” and that “[t]he District has complied with the letter of this provision**
6 **[Section IV, E, 5] of the USP but not with its intent.”** (SMAR at 18:9-10, 18:14-19:2.)

7 While Mendoza Plaintiffs agree with the Special Master that this is an area as to which the
8 District should not be granted unitary status (SMAR at 18:18-19:2), they object to both of
9 the above-quoted SMAR findings because they are contradicted or unsupported by the
10 record before the Court.

11 The record demonstrates that the number of beginning teachers at racially
12 concentrated or lower achieving schools for each of the 2016-17 and 2017-18 school years
13 (as well as the 2015-16 school year) has not totaled “*almost* three out of four” (or 75%)
14 (SMAR at 18:14-16; emphasis added); rather, it has totaled *over* 75% of all such teacher
15 placements. Indeed the percentages of all beginning teachers assigned to racially
16 concentrated schools or schools performing at or below the District average, and to all
17 other schools are as follows:

18 //
19 //
20 //
21 //
22 //
23 //
24 //

25
26 ⁸ Mendoza Plaintiffs understand the Special Master’s reference to “lower achieving
27 schools” to refer to “schools in which students are achieving at or below the District
28 average in scores on state tests or other relevant measures of academic performance” under
USP Section IV, E, 5.

	2014-15	2015-16	2016-17	2017-18
Percent of 1st Year Teachers assigned to racially concentrated schools or schools performing below district average	“Over 70 percent”	80.3	77.5	78.7
Percent of 1st Year Teachers assigned to all other schools	Under 30%	19.7	22.5	21.3
Source	2014-15 SMAR (Doc. 1890 at 15:6-9)	Appendix IV-29 to 2015-16 DAR (Doc. 1962-1 at 210-213)	Attachment to RFI response 1584 concerning 2016-17 SY (attached as Exhibits 7) ⁹	Attachment to RFI response 1584 concerning 2017-18 SY (attached as Exhibits 8)

Thus, the record demonstrates that the Special Master’s finding concerning placement of beginning teachers at racially concentrated schools or schools performing at or below the District average is inaccurate.

Mendoza Plaintiffs’ Objection and Proposed Changes to the Special Master’s Proposed Completion Plan for USP Section IV

Recruitment of Latino and African American Staff

(1) The District should study the effectiveness of all efforts directed at recruiting African American and Latino teachers and administrators (e.g., outreach to retired former staff and use of applicant pools, approach re letters of intent, marketing efforts, etc.), and report on what changes it can implement in the 2018-19 school year to increase recruitment of such staff, and implement those changes.

(2) The report should specifically address the viability of recruiting former “blacklisted” teachers, the implications of the “blacklist” on District implementation of USP Section IV, and how any negative effects can be corrected,

⁹ Mendoza Plaintiffs note that the District provided them with Exhibits 7 and 8 in excel format, and that they have edited the size of rows and deleted empty columns or columns with duplicative data for the convenience of the Court. They further note that the data in the above table reflects a tallying of information in from Exhibits 7 and 8.

1 and the process by which the District would seek to recruit no longer “blacklisted”
2 former African American and Latino employees, if viable.

3 *Placement of Beginning Teachers*

4 The Mendoza Plaintiffs agree with the Special Master’s proposed Completion Plan
5 with respect to beginning teacher placements detailed in the SMAR (at 20:4-11) but
6 believe it must go further and that, it under USP Section IV, E, 5, it must address
7 placement of beginning teachers at racially concentrated schools.

8 **Mendoza Plaintiffs object to the proposed Completion Plan approach of having**
9 **the District “explore alternative strategies for reducing the number of appointments**
10 **of beginning teachers to lower achieving schools” (SMAR at 20:4-5) because it omits**
11 **a requirement to similarly develop such strategies at racially concentrated schools .**

12 Per USP Section IV, E, 5, the plan for alternative strategies must apply to *both* schools at
13 which students are performing below the District average and to racially concentrated
14 schools.¹⁰

15 Mendoza Plaintiffs further believe that the report the Special Master proposes be
16 developed (SMAR at 2:04-11) should expressly address how the District can deal with
17 difficulties in implementing this USP provision, given what Mendoza Plaintiffs

18 ¹⁰ Mendoza Plaintiffs understand the Special Master not to have focused on the component
19 of the USP requirement concerning racially concentrated schools based on his belief that
20 placement of first-year teachers at “high performing” racially concentrated schools is
21 desired, given that, to the extent such teachers would work with students of a race/ethnicity
22 different from their own, such experience would help break down and contradict
23 stereotypes the teacher may hold. While Mendoza Plaintiffs understand this view, they
24 note that the Court already has declined to adopt such a view in favor of the plain language
25 of the USP in connection with the teacher-mentor budget for the 2017-18 school year.
26 Specifically, in the Court’s Budget Order concerning the 2017-18 school year (Doc. 2086
27 at 6-7) the Court stated that the Mendoza Plaintiffs “object to the exclusion of ‘high-
28 achieving’ racially concentrated schools from the District’s proposed ratios for first and
second year teachers at ‘underperforming or racially concentrated schools.’ The Court
agrees... because the USP expressly requires the District to make efforts to increase the
number of experienced teachers and *reduce the number of beginning teachers hired to
teach in racially concentrated schools or schools in which students are underachieving
academically.* USP Section IV.E.5. [Italicized emphasis added; underlined emphasis in
original.] The requirement to place experienced teachers at racially concentrated schools
is not due to any difficulty associated with teaching minority students... [rather it is about]
improve[ing the] quality of instruction and academic achievement at those schools... to
increase the likelihood that those schools would attract students of other races/ethnicities to
attend those schools and bring them closer to being integrated.”

1 understand to be a site-driven teacher recruitment process, and what practicably can be
 2 done to reduce the proscribed assignments given any anticipated teacher shortages.

3 Further, no TUSD Annual Report has addressed the mechanism by which the
 4 Superintendent makes case-by-case exceptions to the proscribed teacher assignments under
 5 USP Section IV, E, 5 and the District has failed to provide a description of any such
 6 mechanism even in response to Mendoza Plaintiffs' express request for that information
 7 (*see* response to RFI #1585 attached as Exhibit 9 (non-responsive response to RFI asking
 8 whether exceptions occurred and requesting "descri[ption of] the mechanism or process in
 9 place by which such exceptions are made".) Mendoza Plaintiffs therefore believe such a
 10 mechanism may not exist and that the Completion Plan report proposed by the Special
 11 Master therefore also should require the District to set forth the mechanism or process by
 12 which the Superintendent makes case-by-case exceptions to this USP requirement, if such
 13 a mechanism or process in fact exists, and explore what mechanism or changes to any
 14 existing mechanism could practically be put in place to further the purposes of USP
 15 Section IV, E, 5.

16 *"Grow-Your-Own" Programs*

17 As discussed in greater detail in Section V (Quality of Education), below, the
 18 District should develop "grow-your-own" programs (1) to expand the number of qualified
 19 Dual Language teachers in the District by focusing on bilingual paraprofessionals currently
 20 working for the District (and in some cases already involved with the Dual Language
 21 program), and (2) implementing recommendations of the panel of National Experts to
 22 develop a "grow your own" program to recruit CRC teachers in conjunction with the
 23 University of Arizona (to focus in particular on students who took CRC courses while
 24 students in the District).

25 **QUALITY OF EDUCATION – USP SECTION V**

26 Advanced Learning Experiences ("ALEs")¹¹

27 *SMAR Subsections on Overview, Goals, and the Status of the District's Efforts to*
 28 *Increase African American and Latino Student Enrollment in ALE*

¹¹ The Special Master separately addresses dual language courses (at SMAR 58).
 Accordingly, Mendoza Plaintiffs will do so as well.

1 Mendoza Plaintiffs respectfully suggest that the Special Master’s discussion fails to
 2 adequately address the issues highlighted for attention in the Court’s Order relating to ALEs,
 3 Doc. 2084, filed 10/14/17 (“ALE Order”). Thus, the SMAR engages in a relatively lengthy
 4 discussion of recommendations for enrollment goals to be attained in ALEs (except for UHS
 5 and with respect to the participation of ELL students) but fails to reference the Court’s express
 6 statement that it was “adopting” the “‘Not less than’ 15% Rule’ ” (ALE Order at 19:1) not as
 7 a goal but, rather, “as a rule-of-thumb red-flag for when discrimination may exist in a
 8 particular ALE program district-wide.” (*Id.* at 19:1-3.)¹²

9 Mendoza Plaintiffs believe this is an important omission because, it appears, the
 10 Special Master’s focus on “goals” in the SMAR resulted in his failure to address critical
 11 aspects of the Court’s ALE Order, in particular the Court’s reiteration of its earlier statement
 12 that it “will not rely on this simplistic marker [that is, a “not less than” rule] for assessing the
 13 District’s efforts to increase access for African American and Latino students to ALEs”. (*Id.*
 14 at 9:23-10:2.) Noting that there were some ALE programs that were red-flagged as
 15 problematic, the Court also said, “More important is what the ‘Not less than’ 15% Rule,
 16 applied district-wide, does not tell us. First, and foremost, it does not establish unitary status
 17 has been attained for the ALE program, district-wide, or in any specific program. It does not
 18 reflect changes in access to ALE programs for the life of the USP¹³. The 15% Rule does not

19 ¹² Mendoza Plaintiffs suggest that it would be appropriate for this Court to use a 10%
 20 “rule-of-thumb red-flag” for the 2017-18 year given the fact that, in its ALE Action Plan
 21 Supplement (Doc. 1788), the District stated that it “would continue to strive for equity by
 22 increasing representation to within 90% (10% “Rule”) of district enrollment rate for
 African American and Latino students for 2017-18” (*id.* at 8-9) and indicated what that
 enrollment level would be for each ALE based on then-current enrollment numbers. (*Id.* at
 10-15.)

23 ¹³ Notably, the Court also observed that “District-wide progress, or lack thereof, is
 24 reflected by actual percentage participation levels for each subgroup going back to 2012-
 25 13. See example: Table II Self Contained GATE enrollment in Middle School [*sic*; the
 26 reference is to “Elementary”] grades 1-5 for SY 2026-17(Latino) (reflecting actual
 27 participation rates for SY 2015-16 at 43.20%; SY 2014-15 at 46.30%; SY 2013-14 at 45%;
 28 and SY 2013-14 at 45%). There is no explanation by the Special Master or the Parties
 regarding the reductions in participation for the life of the USP.” (*Id.* at 5:24-6:4; footnote
 omitted.) Significantly, given the Court’s express reference to this data, the participation
 rate continued down (to 42.31% in SY 2016-17 and 41.75% in 2017-18 even as relative
 total Latino enrollment and, therefore, the “15% red flag” increased. (*See* SMAR
 Appendix Attaching TUSD Analysis of ALEs at Individual Schools (Doc. 2096-5) at 7 and
 Special Master ALE R&R, Addendum, Table II, Doc. 2014-1, at 4). Yet this downward

1 apply to White students because there is no assertion that discrimination may be occurring for
 2 White students in any ALE program. Parity is not the question either. What is relevant is
 3 whether the District has simply increased access to ALEs for all students or has increased
 4 access to ALEs for minority students. While the former is not prohibited and is expected, it is
 5 the latter which is required under the USP.” (*Id.* at 9:9-22; citations omitted.)

6 In this connection, the Court also noted the Mendoza Plaintiffs’ expressed concern that
 7 while, given the District’s efforts to promote ALEs, ALE participation had increased for all
 8 students, there was a “participation gap between White and minority (African American and
 9 Latino) students [that] actually widen[ed] from SY 2011-12 to SY 2015-16.” (*Id.* at 15:5-8.)
 10 The SMAR does not address the growth in the participation gap. Instead, it recites that
 11 “white students are disproportionately enrolled in most ALE” (SMAR at 27:24) and , rather
 12 than directly address that disproportionality or, more importantly, its relative growth since the
 13 inception of the USP, simply moves on, after remarking that “differences in the enrollment of
 14 white students in ALE is not surprising and would be found in most districts where, as in
 15 Tucson, white families are more affluent and parents have higher rates of ... attainment in
 16 post-secondary education [than] families of other races. The District cannot change the
 socioeconomic status of families in the short run.” (*Id.* at 28:9-12.)¹⁴

17 movement in participation level is not discussed, much less explained, by either the
 18 District or the Special Master.

19
 20 ¹⁴ In this regard, the limited discussion of disproportionality in the SMAR is noteworthy
 21 for what it omits. At 28, the SMAR cites examples of disproportionality between Latino
 22 and white participation in ALEs in the 2017-18 school year but provides no context or
 23 analysis. Thus, it notes that in self-contained GATE in grades 1-5, white students “exceed
 24 the 15% goal by 26 percentage points while the percentage of Latino students in this
 25 program falls short of the 15% goal by ten percentage points.” (*Id.* at 28:2-4.) However, in
 26 2016-17, the disproportionality was somewhat less. In 2016-17, white students also
 27 exceeded “the 15% goal” by 26 percentage points (26.5%) but Latino students fell short by
 28 eight percentage points. (*See*, ALE R&R, Doc. 2041-1, Addendum, Table II, Exhibit 10,
 and TUSD Response to RFI 1441, Exhibit 11.) Similarly, it notes that “in AP, whites
 exceed the 15% goal by 18 percentage points while Latino students fall short of the 15%
 goal by over 4%. (SMAR at 28:4-8). In 2016-17, not only was the disproportionality less
 but the number of Latino students enrolled in AP classes was significantly higher. In
 2016-17, 1633 Latino students were enrolled in AP classes; by contrast, in 2017-18, the
 enrollment number has fallen to 1494. (The numbers for white enrollment are 1182 in
 2016-17 and 1190 in 2017-18 notwithstanding that the drop in overall enrollment (of about
 100 students) was the same for both groups of students.) (*See*, SMAR Addendum,
 Analysis of ALEs at Individual Schools, Doc. 2096-5, at 9; ALE R&R, Doc. 2041-1,

1 **Mendoza Plaintiffs object to the SMAR’s failure to address the growth in the**
 2 **participation gap in ALEs of white as compared to Latino and African American**
 3 **students and the omission from the proposed Completion Plans for ALEs of strategies to**
 4 **address this issue and more broadly support the participation in and successful**
 5 **completion of ALEs by Latino and African American students, including strategies**
 6 **expressly ordered by the Court.**

7 In his ALE R&R, the Special Master wrote: “As important as families are in shaping
 8 students’ dispositions about course taking [and therefore enrollment in ALEs] is the role of the
 9 schools...in developing students’ capabilities and confidence that they have the ability to
 10 benefit from the ALE....Moreover, developing academic self-confidence is not ‘simply’ the
 11 product of interactions between individual educators and their students. It is also the outcome
 12 of a school-wide culture where academic excellence is valued and celebrated....There is
 13 considerable evidence that teachers, administrators and other educators can have a significant
 14 impact on students’ motivation and self-confidence. To be sure, cultures are not easy to
 15 change in the short run, but what some researchers call an ethos of achievement can be
 16 developed and sustained by school administrators, teachers, counselors and families.
 17 Establishing such school cultures when needed should be a high priority for the District that
 18 will not only result in stronger outcomes with respect to ALE but for student outcomes in
 general.” (ALE R&R, Doc. 2041 at 24:11-25:6.)

19 This Court adopted the foregoing findings by the Special Master and in its ALE Order
 20 directed that the “District should focus on developing school-wide cultures where academic
 21 excellence is valued and celebrated....” (ALE Order at 18: 14-15.) **Mendoza Plaintiffs**
 22 **object to the omission of this requirement from the ALE Completion Plan.¹⁵ Further,**

23
 24 Addendum, Table II, Exhibit 10, and TUSD Response to RFI 1441, Exhibit 11 and
 25 Exhibits 1 and 3 (for overall District enrollment numbers.) In 2016-17, while the
 26 proportion of white students enrolled in AP classes exceeded the “15% goal” by about the
 27 same percentage (17.7%) as is the case in 2017-18, Latino students were significantly
 closer to reaching the “15 % goal” (falling short by .5%) than is the case this year. (*See*,
 ALE R&R, Doc. 2041-1 Addendum, Table II, Exhibit 10, and TUSD Response to RFI
 1441, Exhibit 11.)

28 ¹⁵ **As discussed more fully below, Mendoza Plaintiffs also object to the Special
 Master’s atomized approach to the assessment of the ALE section of the USP and his**

1 **Mendoza Plaintiffs believe that the focus on the development of school-wide cultures to**
2 **support ALE participation and successful completion by African American and Latino**
3 **students should be broadened to expressly include the District’s on-going USP**
4 **undertakings relating to the development and implementation of multicultural**
5 **curriculum and culturally responsive pedagogy and expressly include enhancing**
6 **competence in gifted education in the District’s professional development and**
7 **professional learning community activities.**¹⁶

8 Notably, these are all recommendations of Dr. Donna Y. Ford, the expert cited by
9 both the District and the Special Master. (SMAR at 22:24-23:2.) *See, e.g.,* Donna Y. Ford,
10 Tarek C. Grantham, and Gilman W. Whiting, “Culturally and Linguistically Diverse Students
11 in Gifted Education: Recruitment and Retention Issues,” Exceptional Education, Vol. 74, No.
12 3, at 289-306, a copy of which is provided as Exhibit 12.

13 **Mendoza Plaintiffs object to the omission from the ALE completion plan of**
14 **family engagement strategies including but not limited to the recruitment of parents of**
15 **children participating successfully in particular ALEs to solicit and encourage others to**
16 **participate, as recommended by the Special Master in the ALE R&R (at 24:8-10) and as**
17 **expressly mandated in the Court’s ALE Order (at 18:15-17).**

18 Recruitment strategies (but not the peer-to-peer approach ordered by the Court) are
19 included in the ALE Action Plan. However neither those strategies nor any other specific
20 provisions of the Plan are expressly addressed in the SMAR notwithstanding that the ALE
21 Order stated that the Court intended to review the District’s performance “under the USP,
22 Section V, pursuant to a matrix which will track the District’s behavior and processes in
23 respect to implementing the specified ALE access support strategies set forth in the USP, the

24 **failure to have addressed overall district-wide strategies for increasing participation**
25 **in and successful completion of ALEs.**

26 ¹⁶ This therefore is an aspect of the USP to which the Supreme Court’s teaching in
27 *Freeman v. Pitts*, 503 U. S. at 497, applies: “Two or more Green factors may be
28 intertwined or synergistic in their relation, so that a constitutional violation in one area
cannot be eliminated unless the judicial remedy addresses other matters as well.”

1 ALE Action Plan, the Supplement, or any other relevant plan or strategy proposed or agreed
 2 to by the District or ordered by the Court.” (ALE Order at 17:11-14.)¹⁷ **Mendoza Plaintiffs**
 3 **object to the failure of the SMAR to have reviewed the District’s implementation of the**
 4 **specified ALE access support strategies set forth in the ALE Action Plan, the**
 5 **Supplement, and in other plans or strategies proposed or agreed to by the District or**
 6 **ordered by the Court.**

7 When they filed their objections to the Special Master’s ALE R&R, Mendoza
 8 Plaintiffs filed an addendum highlighting areas in the ALE Action Plan and Supplement
 9 relating to the goal of increasing ALE participation which they believed had not been
 10 implemented. For ease of reference, they have followed the same approach here. (*See*
 11 Addendum 1 hereto.)

12 **Mendoza Plaintiffs object to so much of Exhibit V-A (“Analysis of ALEs at**
 13 **Individual Schools”, Doc. 2096-5) as includes the District’s assertions and conclusions**
 14 **rather than the Special Master’s actual findings and move that all verbiage in Exhibit**
 15 **V-A other than what is needed to identify tables and charts relating to ALEs offered in**
 16 **TUSD be stricken as well as all of Exhibit V-A relating to school districts other than**
 17 **TUSD (starting at 10 with “By way of comparison, the Mesa...” and ending at 16 with**
 18 **“It is clear that....”).**

19 Page 27 of the SMAR states that “[m]uch of the data used in this report...is embedded
 20 in Exhibit V-A. Exhibit V-A was provided by the District. Rather than pulling out or
 21 reconstructing data from this source, providing data in this way allows the readers of this
 22 report to place the data in context and to examine related information [the] Special Master
 23 chose not to cite.” (SMAR at 27:12-15.) The problem, however, is that Exhibit V-A does not
 24 just provide raw data. It also includes the District’s arguments and assertions – sometimes in

25 ¹⁷ *See also* ALE Order at 16: 22-25 and n.7: “The many recommendations made by the
 26 Special Master calling for immediate action by the District to increase access to ALE
 27 programs calls into question his finding that the District has implemented all of the steps in
 28 the ALE Action Plan and Supplement. This remains to be determined.” “Even if true,
 there remains the question of whether the District has reviewed these strategies for
 effectiveness and concluded that no further strategies would have any practicable effect on
 increasing access to ALEs.”

1 flat contradiction to statements in the text of the SMAR¹⁸ and in other places creating
2 confusion as to what findings should actually be attributed to the Special Master.

3 Further, at pages 10 to 16 of Exhibit V-A, the District presents information about
4 GATE participation in other school districts to support its argument that ALE participation in
5 Tucson is “equitable”. This data is not cited or discussed by the Special Master in the SMAR.
6 It therefore is irrelevant. Further, under Evidence Code Rule 403 it should be rejected as
7 confusing and a waste of time.¹⁹

8 *ELL Students*

9 The SMAR briefly discusses the participation of ELL students in ALEs and notes
10 some progress, but makes no recommendations. (SMAR at 30:24-31:9.) Nor does it address
11 that portion of the District’s 2016-17 Annual Report (Doc. 2057-1 at V-148-49 and 153) that
12 discussed ELL whole grade push-in services at Mission View Elementary School, the
13 development of a differentiated observation classroom screener (“DOC screener”) to identify
14 ELL and other underrepresented students who would qualify for GATE , the inclusion of
15 ELL and other Latino students so identified as participants in the Mission View GATE
16 program and the apparent use of the DOC screener at five other schools. **Mendoza Plaintiffs**
17 **object to the omission from the SMAR of any recommendations relating to efforts to**

18 ¹⁸ For example, the District in Doc. 2096-5 at 4 asserts “access to ALE services is
19 equitable on a school by school basis at the middle school level.” But, in a lengthy
20 discussion (SMAR at 35:18 – 38:20), the Special Master reaches a different conclusion
21 and recommends *inter alia* that the “District shall develop a practicable plan for increasing
22 participation of middle grade students in ALEs.” (*Id.* at 39:9-10.)

23 ¹⁹ Having asserted their objection, Mendoza Plaintiffs do not seek to burden the Court with
24 discussion about the challenged material. They merely note that no explanation is
25 provided for how the school districts whose data is presented were selected, whether any
26 school districts whose data was reviewed by but omitted by the District presented results
27 that are less supportive of the District’s position than what it included in the Exhibit, why
28 the District refers to these other school districts’ “most recent data” (2096-5 at 10) without
stating the relevant year so as to assist in comparisons or analysis and why it failed to
present truly comparable data derived from the same source for the same year for TUSD.
(Mendoza Plaintiffs visited the referenced web site (<https://ocrdata.ed.gov>) and determined
that the data is for the 2013 school year and that when one compares the data for TUSD on
the web site with the other data the District collected from the site, the difference between
overall Latino enrollment and Latino GATE enrollment is greater for TUSD (61.3% v.
47.2%, or 14%) than for a number of the other school districts presented by TUSD. (*See,*
e.g., Phoenix (1.5%), Long Beach, CA (10.5%), Mesquite ISD, TX (7.4%).)

1 **increase the participation of ELL students in GATE.**

2 Mendoza Plaintiffs' Proposed Completion Plan Relating to the Participation of ELL
3 Students in ALEs

4 The District should be required to continue to monitor the participation of ELL
5 students identified for participation in the GATE program through the use of the DOC
6 screener and report on (1) whether and to what extent the effort at Mission View (and,
7 apparently, five other schools) can be scaled up to reach ELL students attending additional
8 schools; (2) an assessment of the outcomes for students who are provided GATE services
9 based on the DOC screener, and (3) whether the DOC screener can be modified to identify
10 students for participation in other ALE programs in the District (and, if so, it shall put a
11 process in place to do so).

12 *ALE Enrollment in Elementary Grades: GATE*

13 Mendoza Plaintiffs agree with the recommendation that the self-c contained and pull
14 out (which Mendoza Plaintiffs understand the Special Master intends to include “cluster”)
15 GATE programs remain under Court supervision but **object to the recommendation to the**
16 **extent the omission of the SMAR to refer explicitly to resource GATE suggests that the**
17 **Special Master is recommending that the District be accorded unitary status for**
18 **resource GATE.**

19 Mendoza Plaintiffs believe that there should be a comprehensive GATE program
20 particularly where the District’s public education, marketing, and recruitment efforts relating
21 to GATE are concerned as well as with respect to the recruitment and training of teachers, and
22 that no purpose is served by carving out “resources GATE” for unitary status.

23 Mendoza Plaintiffs' Objections and Proposed Changes to the Elementary Grades:
24 GATE Completion Plan

25 Mendoza Plaintiffs believe that the best way to address their objections to the portion
26 of the SMAR relating to GATE at the elementary grade level is in relation to the Special
27 Master’s proposed Completion Plan. Accordingly, they do so below. They also respectfully
28 refer the Court to Addendum 1 for their showing concerning the elements of the ALE Action

1 Plan and Supplement essential to full implementation of the GATE provisions of the USP that
2 the District has yet to carry forward and that therefore must be incorporated into the
3 Completion Plan. Further, as noted above, the Completion Plan must expressly address the
4 peer-to-peer recruitment efforts previously recommended by the Special Master and ordered
5 by this Court.

6 *Testing:* Although the scoring change recommended by the Special Master is not
7 expressly referenced in the SMAR (at 35:5), in a subsequent communication to the parties, the
8 Special Master indicated that a ten point change in the GATE eligibility score “would increase
9 the number of eligible students by 82” and that that seemed “reasonable” to him. (Email
10 dated March 16, 2018, attached as Exhibit 13.) Accordingly, they understand the Special
11 Master to be saying that if the District agrees to reduce the GATE eligibility score by 10
12 points, he believes it should be granted unitary status for self-contained and pull out GATE.

13 **Mendoza Plaintiffs object to that recommendation. As noted above and discussed**
14 **further below, there are a number of other actions the District must take to fully**
15 **implement its USP obligations relating to GATE.**

16 **In addition, Mendoza Plaintiffs object to the specific recommendation about a**
17 **reduction in eligibility scores for the following reasons:** (1) The data of which Mendoza
18 Plaintiffs are aware does not show that an additional 82 students would be eligible for GATE
19 if the eligibility score were reduced by 10 points. Rather, data provided by the Special Master
20 (that he indicated had been prepared by the District) indicates that, based on 2015-16 and
21 2016-17 testing, eligibility would be increased by either 61 or 67 students were the eligibility
22 cut off to be reduced by ten points. (*See*, GATE Eligibility by Race attached as Exhibit 14.)
23 Moreover, there is no indication in the recent statement from the Special Master as to the
24 racial and ethnic breakdown of the referenced 82 students. Absent that data, it cannot be said
25 that a change in eligibility score would benefit African American and Latino students. (2)
26 Mendoza Plaintiffs understand that TUSD administers the Spanish CogAT test for Spanish
27 speakers and a nonverbal Raven assessment for non-Spanish ELLs. (2016-17 DAR, Doc.
28 2057-1, at V-153.) In the past, consideration has been given to using the Naglieri assessment
to expand the number of English language learners who might be eligible for GATE.

1 Mendoza Plaintiffs therefore suggest that the Completion Plan require the District to again
2 consider (and pilot) use of that alternative assessment, particularly given that the number of
3 students who qualified for GATE services, using the assessments the District currently has in
4 place, dropped dramatically between 2015-16 and 2016-17.

5 According to the chart in the District's Revised ALE Analysis, Doc. 2092-1, at 92,
6 the total number of students who qualified for self-contained GATE dropped from 777 to
7 595 from SY 2015-16 to SY 2016-17, including a decrease of just over 100 in the number
8 of qualifying Latino students. The drop in those qualifying for pull out GATE also was
9 significant although not so dramatic. (*Id.*) These drops are greater in number than the total
10 number of potential GATE participants that would be accounted for by a ten point
11 reduction in eligibility score. The Revised ALE Analysis also states that the District "is
12 conducting further analyses to better understand this decrease, and will analyze the
13 acceptance and decline data when placements are completed for SY 17-18." (*Id.*)
14 Accordingly, the Completion Plan also should require TUSD to report the results of these
15 analyses and to propose whatever corrective actions (including changes in assessment
16 tools) may be warranted.²⁰

16 ***Transportation: Mendoza Plaintiffs also object to the findings of the SMAR relating***
17 ***to the impact of available transportation on GATE participation and the absence of any***
18 ***provisions in the Completion Plan relating to improved transportation opportunities.***

19 The District's Revised ALE Analysis notes that one of the reasons most frequently
20 given for why families decide not to send their qualified students to self-contained programs is
21 transportation. (Revised ALE Analysis at 88.) According to the Revised ALE Analysis,
22 representatives of the TUSD GATE and Transportation Departments met to discuss
23 increasing alternative routes to reduce travel time to GATE sites but "[b]udget constraints
24 prevented significant transportation changes." (*Id.*) The Completion Plan should require the
25 District to demonstrate that this issue was satisfactorily addressed during the 2017-18 budget

26 ²⁰ It may be that the District needs to first determine whether the years it is referencing are
27 accurate and whether the fall off in qualified students was between the 2016-17 and 2017-
28 18 years. (*See* SMAR, Exhibit V-A, Doc. 2096-5 at 18.)

1 year or that it will be as the District prepares its 2018-19 budget.

2 ***Cluster Pull Out GATE: Mendoza Plaintiffs also object to the failure of the***
3 **proposed completion plan to specifically address the racial and ethnic enrollment in**
4 **cluster GATE programs and to state only that the District should be required to**
5 **increase the number of cluster GATE programs to at least 10 by the beginning of the**
6 **2019-20 school year. (SMAR at 35:16-17.)**

7 Missing from the recommendation is the Court's express direction that the District
8 "shall ...place [open cluster pull out GATE programs] strategically at schools serving
9 minority students, and especially target them at schools serving substantial numbers of
10 African American students." (ALE Order at 18:24-27.) Equally important, missing from the
11 proposed Completion Plan is a requirement that the District engage in a recruitment and
12 marketing effort to ensure meaningful participation of African American students in these
13 programs²¹. That such a directive is essential is demonstrated by the enrollment in the
14 existing cluster pull out GATE programs.

15 As the Special Master noted (SMAR at 33:7-8), in 2016-17, cluster pull out GATE
16 was available in two predominantly white schools (Fruchthendler and Dunham) and one
17 racially concentrated school (Robins). (Robins did not serve a substantial number of African
18 American students, however; of its 555 students, 401 were Latino; in addition, in 2016-17, 16
19 were African American and 101 were white. (Revised ALE Analysis, Doc. 2092-1, at 329.))
20 According to the data in the Revised ALE Analysis, in that racially concentrated school, the
21 number of African American students in the cluster pull out GATE program was so low that
22 FERPA did not permit the number to be reported; while 22 white students (or 22% of their
23 total school enrollment) were in the program as were 22 Latino students (or 5% of their total
24 school enrollment). (*Id.*) At Dunham, for reasons that are unexplained, only a total of 12
25 students were in the cluster pull out GATE program. Of these, the number of African
26 American students (out of a total school enrollment of 28) again was too low to be reported;

27 ²¹ Because the programs are specifically tailored to be open to students who did not pass
28 the test required for GATE enrollment (SMAR at 33:10-11), marketing and recruitment are important.

1 while four Latino students (out of 85) and an undisclosed number of white students (out of
2 117) also were enrolled. (*Id.* at 181.) By the 2017-18 school year, the total number of
3 students in the program was down to nine, of whom six were white, with the enrollment
4 numbers for both Latino and African American students too low to disclose. (*Id.* at 182.) At
5 Fruchthendler in 2016-17, 88 students participated in the cluster pull out GATE program.
6 This number included 68 white students (out of a total school population of 231 – or 29% of
7 total white student enrollment) as compared to 15 Latino students (out of a total of 102) and a
8 number of African American students so low (out of a total of 24) that the number could not
9 be reported. (*Id.* at 193.) (In 2017-18, the total number of participants is unchanged but the
10 mix is even more heavily skewed to white student participation. (*Id.* at 194.)) Clearly,
11 therefore, if cluster pull out GATE is to be a benefit to the District’s African American and
12 Latino students, the Completion Plan must require more of TUSD than simply the expansion
13 of such programs.

14 ***Teacher Recruitment: Mendoza Plaintiffs object to the portion of the proposed***
15 ***Completion Plan that says “[t]eachers shall be trained to offer GATE programs and, if***
16 ***necessary, the District shall provide appropriate incentives” on the grounds that it is***
17 ***insufficiently robust and inconsistent with this Court’s ALE Order.*** In the ALE Order,
18 the Court noted that the District had resisted the recommendation that it add cluster pull out
19 GATE programs because “it asserts it does not have [a] sufficient number of teachers who are
20 GATE certified.” (ALE Order at 11:28-12:1.) The Court then added: “the Special Master
21 recommends that an incentive program will readily draw teachers to become certified” (*id.* at
22 12:1-3) and then ordered that “the District should create an incentive program that will draw
23 teachers to become GATE certified.” (*Id.* at 18:17-18.) The Completion Plan should be
24 consistent with that Order, requiring both the creation of an incentive program and an
25 accompanying plan to recruit and/or locally train a sufficient cadre of GATE qualified
26 teachers.

27 *ALE Courses Available to Middle School Students*

28 Mendoza Plaintiffs generally agree with the SMAR discussion of ALEs at the middle
school level, the Special Master’s recommendation, and the proposed Completion Plan.

1 They have the following comments with respect to the plan.

2 Mendoza Plaintiffs' Proposed Changes to the Completion Plan for ALEs at the Middle
3 School Level

4 As was the case with respect to the Completion Plan for ALEs at the elementary
5 school level, Mendoza Plaintiffs respectfully refer the Court to Addendum 1 for their showing
6 concerning the elements of the ALE Action Plan and Supplement essential to full
7 implementation of the ALE provisions of the USP that the District has yet to carry forward
8 and that therefore must be incorporated into the Completion Plan. Further, and again as noted
9 above, the Completion Plan must expressly address the peer-to-peer recruitment efforts
10 previously recommended by the Special Master and ordered by this Court.

11 The SMAR references what Mendoza Plaintiffs understand to be as yet unanswered
12 questions about whether and to what extent enrollment in (and successful completion of) pre-
13 AP courses correlates with enrollment in (and successful completion of) AP and other
14 rigorous courses. (SMAR at 37:2-7.) In its Revised ALE Analysis, the District states (at 56)
15 that Pre-AP Honors classes “are a pipeline for eventually taking AP classes in high school.”
16 Given the issues raised by the Special Master and the understanding of both the District and
17 the Mendoza Plaintiffs of the intended role of Pre-AP classes, the Completion Plan should
18 address whether and to what extent the existing Pre-AP classes serve as a pipeline to
19 enrollment and successful completion of AP and other rigorous high school classes and
20 whether and to what extent the Pre-AP classes need to be redesigned to accomplish that goal
21 and/or whether additional student support (inclusive of but not limited to tutoring) is
22 warranted. Further, it appears important to understand whether and to what extent the
23 opportunity to participate in self-contained GATE classes in some schools results in
24 differences in the cohorts of students enrolling in Pre-AP classes and whether in those schools
25 that offer self-contained GATE, there are later differences between the self-contained GATE
26 students and the students who were enrolled in Pre-AP classes in AP enrollment and
27 completion rates. (Mendoza Plaintiffs raise this issue having noted the significant differences
28 in Pre-AP Advanced and Pre-AP Honors enrollment between Magee Middle School, which
does not offer self-contained GATE, and Vail Middle School, which does. (*Compare* Revised

1 ALE Analysis at 253-54 and at 397-98.))

2 *Advanced Placement*

3 **Mendoza Plaintiffs object to the Special Master’s finding that between 2016-17**
4 **and 2017-18 the number of Latino students enrolled in AP “decreased slightly” (SMAR**
5 **41:16-17) and to his related findings concerning the reasons why relatively few African**
6 **American and Latino students enroll in AP classes (SMAR at 41:2-15.)**

7 The number of Latino students enrolled in AP classes dropped from 1633 to 1494
8 between 2016-17 and 2017-18. This represents an 8.5% decline (even as total Latino high
9 school enrollment fell by only 1.3%). By contrast, white enrollment in AP classes
10 *increased* from 1182 in 2016-17 to 1190 in 2017-18 notwithstanding a drop of 3% in
11 total white high school enrollment. (*See*, SMAR Addendum, Analysis of ALEs at
12 Individual Schools, Doc. 2096-5, at 9; ALE R&R, Doc. 2041-1, Addendum, Table II,
13 Exhibit 10, and TUSD Response to RFI 1441, Exhibit 11 and Exhibits 1 and 2 (for
14 overall District enrollment numbers).)

15 Once again, the Special Master has failed to address the participation gap.
16 Further, without expressly discussing the efforts the District must make to counter a
17 growth in that gap, much less reduce it, (and that implicate the middle school ALE
18 Completion Plan), he states that “African American and Latino students participate at
19 somewhat lower rates in ALEs aimed in part at readying students to succeed in AP.”
20 (SMAR at 41:3-5.) Not discussing needed public education, marketing, and peer-to-peer
21 recruitment efforts to increase enrollment in ALEs that ready students to succeed in AP
22 or for APs themselves, he also states that African American and Latino students may fail
23 to enroll in AP courses because “students and their families may feel that AP classes are
24 too demanding.” (*Id.* at 6-8; *see also, id.* at 40:7-18.) Missing also is the observation
25 previously embraced by this Court (and that remains an essential component of an
26 overall ALE Completion Plan): the need for the “District [to] focus on developing
27 school-wide cultures where academic excellence is valued and celebrated to ensure that
28 disparities are not the result [of] differing academic ethos at various schools.” (ALE
Order at 14:10-13, specifically referring to enrollment in AP courses.)

1 **Mendoza Plaintiffs object to the Special Master’s tacit acceptance of the**
2 **District’s decision to offer Dual Credit courses “instead of AP courses.” (SMAR,**
3 **Exhibit V-A at Table V-1, Doc. 2096-6 at 1.)** This decision by the District is not
4 discussed in the SMAR. Mendoza Plaintiffs do not believe that Santa Rita (and its 440
5 students, approximately 150 of whom are African American and Latino (Exhibit 1))
6 should be denied the opportunity to enroll in AP courses.

7 Mendoza Plaintiffs’ Objections and Proposed Changes to the AP Completion Plan

8 Mendoza Plaintiffs agree that the District should not receive unitary status with
9 respect to the provisions of the USP relating to AP classes.

10 As was the case with respect to the Completion Plans for other of the ALEs, Mendoza
11 Plaintiffs respectfully refer the Court to Addendum 1 for their showing concerning the
12 elements of the ALE Action Plan and Supplement essential to full implementation of the ALE
13 provisions of the USP that the District has yet to carry forward and that therefore must be
14 incorporated into the Completion Plan. Further, and again as noted above, the Completion
15 Plan must expressly address the peer-to-peer recruitment efforts previously recommended by
16 the Special Master and ordered by this Court as well as the need to develop school-wide
17 cultures where academic excellence is valued and celebrated.

18 The study proposed by the Special Master should be expanded to include an
19 assessment in the decline in the number of Latino students enrolled in AP classes in 2017-18
20 and the development of an action plan to increase enrollment for the 2018-19 school year.

21 The District should be required to offer AP classes to students enrolled at Santa Rita
22 High School.

23 The District should explore the model for AP tutoring recommended by the Special
24 Master in his discussion of effective tutoring in the IB program. (SMAR at 44:3-6.)

25 Consistent with the ALE Order, the Completion Plan should direct the District to
26 “work with state policy makers to ensure funding continues for AP testing (ALE Order at
27 18:22-23) and take whatever other steps may be warranted to ensure that low income African
28 American and Latino students are not denied the full benefit of having completed AP courses

1 by an inability to pay for AP examinations.

2 *International Baccalaureate (IB)*

3 Subject to their overarching concern that the District has yet to demonstrate the
4 requisite good faith commitment to the totality of the USP to warrant relief from court
5 supervision, the Mendoza Plaintiffs generally agree with the Special Master’s finding that the
6 District has satisfactorily implemented the IB provisions of the USP.

7 Nonetheless, because the District is engaged in a high school reconfiguration and
8 restructuring effort and because Cholla High School remains racially concentrated (85%
9 Latino and African American (Exhibit 1)), Mendoza Plaintiffs believe the District should be
10 directed to further explore how effective marketing and public education of the successful IB
11 program at Cholla might lead to greater enrollment of white students and a decrease in its
12 level of racial concentration.

13 *Dual Credit*

14 Mendoza Plaintiffs generally agree with the Special Master’s findings and
15 recommendation. However, consistent with this Court’s ALE Order (at 18: 20-22), they
16 believe that the Completion Plan must expressly provide that the District “ensure that parents
17 understand the difference between AP and dual-credit courses, especially the limited value of
18 dual credit courses outside Arizona.”

19 *University High School (UHS)*

20 **Mendoza Plaintiffs object to the failure of the Special Master to have set any**
21 **goals or “rule-of-thumb red-flags” relating to the enrollment of African American and**
22 **Latino students at UHS. (SMAR at 47, n.23.)**

23 Although the Court declined to formally approve the District’s ALE Action Plan
24 (Doc. 1895 at 5: 5) it also asked the Special Master to provide a comprehensive review of
25 that plan, including UHS goals. (Doc. 1895, Order dated 1/27/16 at 5:5-9.) On page 15 of
26 the Plan, published on the District’s website (and available as recently as April 6, 2018),
27 TUSD sets out its goals for UHS that include enrollment that is 7% African American and
28

1 38.9% Latino in 2016-17²². (See, TUSD ALE Access and Recruitment Plan, downloaded
2 from the TUSD website and attached as Exhibit 15 at 15.) By contrast, as reported by the
3 Special Master, African American enrollment at UHS in 2017-18 is only 3.4% and Latino
4 enrollment is 35%. (SMAR at 45:11.) **Mendoza Plaintiffs object to the Special Master’s**
5 **failure to have, at the very least, addressed these goals and to have specifically**
6 **considered the extent to which issues relating to the implementation of other aspects**
7 **of the ALE Action Plan may be affecting the “pipeline” for greater African American**
8 **and Latino attendance at UHS.**

8 Mendoza Plaintiffs’ Objections and Proposed Changes to the UHS Completion Plan

9 Mendoza Plaintiffs agree that the District should not receive unitary status with
10 respect to the provisions of the USP relating to UHS.

11 UHS should seek to meet the enrollment goals set forth in the ALE Action Plan.

12 Such goals should be applied to UHS’s in District enrollment.

13 The Special Master’s recommendations relating to “borderline qualified students”
14 and recruitment efforts should be directed to in District students.

15 In addition to reporting on the reasons for relatively high Latino attrition, the
16 District should develop and implement an action plan to increase Latino retention.

17 As referenced more fully below in the discussion of CRC courses, UHS should be
18 required to offer CRC courses (and/or work to develop a College Board approved AP
19 course that fits within the USP definition of CRC).

19 *Dual Language*

20 Mendoza Plaintiffs generally agree with the Special Master’s findings and
21 recommendations concerning the District’s dual language program. However, **they**
22 **object to the Special Master’s finding (SMAR at 32:19-22 and n. 15) that the dual**
23 **language programs and the Two Way Dual Language (“TSDL”) model in particular**
24

25 ²² Mendoza Plaintiffs continue to believe that the goals that the District set for itself are
26 insufficiently ambitious. However, they also believe that at the very least, the District
27 must be held to account in relationship to those goals. Given the Special Master’s
28 discussion in the SMAR (at 47, n.23), it is worth noting that the goals set forth in the ALE
Action Plan are expressly not based on a “15% Rule” but, rather, based on an undertaking
by the District to increase African American enrollment at the rate of 1% a year and Latino
enrollment at the rate of 2% a year. (ALE Action Plan at 15.)

1 **provide limited potential for promoting integration because if a student who is a**
2 **native English speaker is not reasonably good in Spanish by third grade that student**
3 **will have trouble catching up to fellow students.** They do understand that the model is
4 premised on successful and significant recruitment for first grade (and even at the
5 kindergarten and pre-kindergarten levels). However, they believe that just as the District
6 has focused on promoting increased integration for its magnet schools at the entry level
7 grades, the same approach can be adopted for dual language.

8 Mendoza Plaintiffs' Proposed Changes to the Dual Language Completion Plan

9 Mendoza Plaintiffs agree that the District should not receive unitary status with
10 respect to the provisions of the USP relating to its dual language programs.

11 With respect to the recommendation that the District continue advocacy with the
12 State to provide alternatives that will increase ELL eligibility to participate in dual
13 language programs, Mendoza Plaintiffs are informed that the State's requirements
14 concerning Structured English Immersion may be in flux and that there currently are bills
15 in the State legislature that will permit ELLs to participate in dual language programs. The
16 District should therefore advocate for adoption and implementation of these bills (HB2435
17 and HB2281), and commence planning and student recruitment in anticipation of the
18 changes represented by this legislation.

19 The District should take additional actions to address the shortage of dual language
20 teachers. This could include efforts to recruit teachers from Spain and/or Puerto Rico. In
21 addition, the District should develop a "grow your own" program expressly focused on
22 bilingual paraprofessionals currently working for the District (and in some cases already
23 involved with the dual language program).

24 Culturally Responsive Pedagogy (CRP)

25 Mendoza Plaintiffs agree with the Special Master's recommendation that the
26 District should not receive unitary status with respect to the provisions of the USP relating
27 to culturally responsive pedagogy and instruction. They also agree with the
28 recommendation that professional development relating to culturally responsive pedagogy
should be one of the major components of a job-embedded District wide comprehensive
professional development plan as discussed by the Special Master at SMAR 81-84.

1 **However, they object to the Special Master’s recommendations to the extent they are**
2 **limited to professional development for teachers and are limited to “pedagogy”**
3 **rather than the full range of interactions with students.**

4 Mendoza Plaintiffs’ Proposed Changes to CRP Completion Plan

5 Mendoza Plaintiffs anticipate that the recommendations at page 49 of the SMAR
6 will be incorporated in the comprehensive professional development plan discussed
7 starting at SMAR 81.

8 Consistent with the requirements of the USP, the CRP portion of the comprehensive
9 development plan should be a plan for “all administrators and certificated staff [and
10 paraprofessionals] ...with training on how to create supportive and inclusive learning
11 environments for African American and Latino students with an emphasis on curriculum,
12 pedagogy, and cultural responsiveness.” (USP, Section V, E, 5, a.)

13 *Culturally Relevant Courses*

14 **The Mendoza Plaintiffs object to the recommendation that the District be**
15 **awarded unitary status with respect to culturally relevant courses.**

16 The Mendoza Plaintiffs acknowledge the extensive work that the District has done
17 since it entered into the Stipulation Re: Implementation of USP Section V,E,6,a,ii (“the
18 Stipulation”) (Doc. 1761) to develop culturally relevant courses designed to reflect the
19 history, experiences, and culture of African American and Mexican American
20 communities, recruit teachers and students to these courses, and provide professional
21 development and mentoring to support them; however, it is not yet in full compliance with
22 the USP or the Stipulation.

23 Of concern to the Mendoza Plaintiffs are the following:

24 (1) The District has moved from the USP (and Stipulation) mandated definition of
25 culturally relevant courses as courses expressly designed to reflect the history, experiences,
26 and culture of African American and Mexican American communities to a much more
27 diffuse and unfocused use of the term “culturally relevant” to include courses like “CR
28 economics” from a “social justice perspective” and “CR global issues”. Mendoza
Plaintiffs hasten to state that they have no objection to such courses **but** they are not

1 culturally relevant courses under the USP and the Stipulation, and certainly should not be
2 counted as such for reporting purposes under the USP.

3 (2) The District has acknowledged and the Special Master had found (SMAR at
4 50:23) that TUSD has not yet implemented CRC courses in all of its high schools (the
5 exceptions being UHS and Santa Rita). While the current administration has stated that
6 the District will pursue a process to correct that omission, given the express requirement of
7 the USP that such courses were to have been in “all high schools across the District”
8 “commencing in the fall term of the 2013-14 school year” (USP, Section V, E, 6, a, ii), a
9 recommendation for a finding of unitary status is at best premature.

10 (3) The Stipulation contemplates a “relevant evaluation on an **annual basis**...to
11 guide decision making for the continued expansion and potential modifications to
12 curriculum and program design. (Stipulation (Doc. 1761) at 16; emphasis in original.)
13 The Special Master has referenced and Mendoza Plaintiffs are aware of no annual
14 evaluations much less evaluations encompassing the factors set forth in the Stipulation.
(See, *id.*)

15 (4) The Stipulation provides that a panel of National Experts will “develop and vet
16 curriculum materials on an on-going basis.” (Stipulation (Doc. 1761) at 15.) Based on the
17 materials annexed to the District’s 2016-17 DAR (2016-17 DAR, Appendix V-136) and
18 provided in response to Mendoza Plaintiffs’ request for further information relating to the
19 work of the Panel (response to RFI # 1631 and accompanying documents, attached to
20 email dated November 27, 2017, jointly attached Exhibit 16), there is no evidence of
21 which Mendoza Plaintiffs are aware that the Panel is “vetting” curriculum on an “on-going
22 basis.” Of particular concern to the Mendoza Plaintiffs, there is no indication that the
23 Panel has “vetted” the curriculum developed for use in K-8, elementary, and middle
24 schools. Neither is there evidence that the District has followed recommendations of the
25 Panel including that it develop a “grow your own” program in conjunction with the
26 University of Arizona to focus in particular on students who took CRC courses while
27 students in the District. (2016-17 DAR, Appendix V-136 (Doc. 2061-9) at 117 of 172.)
28

Mendoza Plaintiffs' Proposed Completion Plan for CRCs

1
2 (1) The District shall immediately revise all USP reporting relating to CRCs to
3 eliminate from those reports courses that do not fall within the USP definition of CRCs
4 and shall report exclusively on “courses of instruction designed to reflect the history,
5 experiences, and culture of African American and Mexican American communities”.
(USP Section V, E, 6, a, ii.)

6 (2) The District shall revise the titles of all CRC courses in its course lists and all
7 similar material so that the course title is prefaced with either the title “Mexican
8 American” or “African American” (for example, “Mexican American Literature” (with
9 any other needed information). The title will help address the above stated concern.

10 (3) In light of the recent federal court ruling that the State of Arizona may not
11 enforce A.R.S. Section 15-112, the District, assisted by members of the National Panel
12 and/or other experts recommended by the Panel, should review the curriculum for all CRC
13 courses to ensure that the existence of A.R.S. Section 15-112 and the potential threat of
14 State enforcement thereof did not have a chilling effect on what has been included in that
15 curriculum and shall revise the curriculum to the extent warranted. In particular, the
16 District should determine whether the prohibition in A.R.S. Section 15-112 on courses that
17 were deemed to “promote resentment toward a race or class of people” had the effect of
18 limiting inclusion of material that would “instill pride” (Stipulation (Doc. 1761) at 18) or
19 provide Latino and African American students enrolled in those courses with a sense of
20 empowerment. This review and any curriculum revisions warranted after such review
21 should occur in sufficient time to incorporate the curriculum revisions in CRC courses
offered in the 2018-19 school year.

22 (4) The District should promptly take action to expand membership on the National
23 Panel to include practitioner experts who have taught ethnic studies courses at the high
24 school level.

25 (5) The District shall proceed with the steps set forth in the SMAR (at 50: 25-28) to
26 develop a CRC AP course to be offered at UHS by 2019-20. In the interim and for the
27 2018-19 school year, the District shall develop a plan to encourage UHS students to enroll
28 in CRCs that are offered at Rincon High School And, as part of that plan the District shall

1 implement additional initiatives to encourage enrollment by Rincon High School students
2 in those courses as well.

3 (6) The District shall offer one or more CRC courses at Santa Rita high school in
4 the 2018-19 school year.

5 (7) The District shall submit all CRC curriculum that has not been vetted by the
6 National Panel (including any revisions made pursuant to Paragraph 3, above) to that Panel
7 for its review/vetting.

8 (8) By the start of the 2018-19 school year, the District shall develop and implement
9 a “grow your own” program consistent with the recommendation of the National Panel in
10 its April, 2016 report (2016-17 DAR, Appendix V-136 (Doc. 2016-9) at 117 of 172.)

11 (8) By the start of the 2018-19 school year, so that it may be implemented starting
12 in that school year, the District shall complete the development of evaluation instruments
13 for teachers and administrators as referenced in the report of the National Panel dated June
14 30, 2017 (provided in response to RFI 1631, attached to email dated November 27, 2017,
15 Exhibit 16 at 7).

16 *Multicultural Curriculum*

17 Mendoza Plaintiffs agree with the Special Master’s recommendation that the
18 District should not yet be granted unitary status with respect to the portion of the USP
19 relating to multicultural curriculum and propose no changes to the proposed Completion
20 Plan.

21 *Dropout Prevention, Graduation, Retention, and Absenteeism*

22 **Mendoza Plaintiffs object to the recommendation that the District be awarded**
23 **unitary status with respect to the provisions of the USP relating to rates of graduation,**
24 **dropout, retention, and absenteeism (USP Section V, E, 2, a, I (“Dropout Prevention and**
25 **Retention Plan”)) except with respect to English Language Learner (“ELL”) students.**
26 **They believe that the District should remain under Court supervision with respect to the**
27 **entirety of this USP section until TUSD has fully implemented its USP-mandated data**
28 **collection/ evidence-based accountability system (“EBAS”) obligations..**

Many of the components of the USP-mandated dropout prevention and retention plan are integral parts of the District’s overall effort to engage and support its African American

1 and Latino students under the USP. In addition, they are closely related to the initiatives that
2 the District has put in place pursuant to its obligations under USP Sections V, E, 7, b and c and
3 8 b, c, as to which the Special Master has not recommended unitary status. (See SMAR at 57:
4 23- 58:14 (Academic Intervention) and 80:3-18 (MTSS).) Because these efforts are so
5 important, Mendoza Plaintiffs believe that unitary status should not be recommended until the
6 District has fully implemented its obligations under those related sections of the USP and until
7 it has demonstrated that it has on-going processes, procedures, and systems in place to do all
8 of the following:

9 (1) Annually review dropout, retention, and graduation rates, disaggregated by race,
10 ethnicity and ELL status, to identify any negative changes and promptly address them.

11 (2) Identify those students who present a serious risk of dropping out or being
12 retained in grade and providing them with the resources they need to help them stay in
13 school and/or accelerate their learning so as not to be retained, placing particular focus on
14 students in grades 3 and 8.

15 A number of the USP-mandated provisions relating to TUSD's dropout prevention
16 and retention obligations expressly require it to identify students who are at risk of dropping
17 out or who are struggling academically. (USP Sections V, E, 2, i, II and III). Further, the
18 subsection of the USP (USP Section V, E, 3, "Data") that directly follows the section calling
19 for the creation of a dropout prevention and retention plan expressly mandates the
20 development of a data system to permit this to occur. The Special Master has concluded
21 that "more needs to be done... in this domain" and that it would be "premature to award
22 unitary status of any of the components" relating to the District's obligations relating to the
23 EBAS system. (SMAR at 53:19-22 and 78:21-22.)

24 Given that the dropout prevention and retention efforts of the District must be data
25 driven and that more work must be done in this area, as well as the close relationship
26 between those efforts and the District's USP obligations to intervene to assist African
27 American and Latino students who are struggling academically, this is an aspect of the USP
28 to which the Supreme Court's teaching in *Freeman v. Pitts* applies: "Two or more Green
factors may be intertwined or synergistic in their relation, so that a constitutional violation

1 in one area cannot be eliminated unless the judicial remedy addresses other matters as
2 well.” (503 U. S. at 497.)

3 Mendoza Plaintiffs’ Objection and Proposed Changes to the Proposed Completion
4 Plan Relating to Dropout Prevention, Graduation, Retention and Absenteeism as
5 Related to ELL Students

6 **Mendoza Plaintiffs object to the fact that the proposed plan is limited to the**
7 **identification of a practicable graduation rate for ELL students without also**
8 **mandating the creation of an action plan to achieve that rate and without also**
9 **addressing other issues relating to dropout prevention, retention, and absenteeism as**
10 **related to ELL students.**

11 They therefore recommend that the Completion Plan provide that the District review
12 and assess its current efforts directed at increasing the graduation rates and reducing the
13 dropout, retention, and absenteeism rates of its English Language Learners,²³ which shall
14 include recommendations for improvement, and that the plan should be completed so that it
15 can be implemented at the start of the 2018-19 school year. The plan should also include on-
16 going monitoring by an appropriate District administrator so that any needed adjustments to
17 the plan can promptly be initiated and implemented.

18 *Special Education*

19 **Mendoza Plaintiffs object to the Special Master’s finding that the District has**
20 **met the goals listed in the USP with respect to its obligation to “ensure that African**
21 **American and Latino students, including ELL students, are not being inappropriately**
22 **referred, evaluated, or placed in exceptional (special) education classes or programs”**

23 ²³ Mendoza Plaintiffs recognize that the District has put a number of programs and
24 initiatives in place to address the needs of ELL students. (See, DAR Annex (Doc. 2075-5)
25 at 68 *et seq.*) Given statements like the following in the Annex (“The District provided
26 ELL students with the opportunity to take online courses through AGAVE. However,
27 ELL participation in AGAVE did not increase, likely due to language barriers.” (*id.* at
28 68)), Mendoza Plaintiffs believe that an assessment of current approaches is particularly
important. They also believe that it is important to know the results of the District’s use
of Imagine Learning English in 2016-17 (*id.* at 70) and what the outcomes have been of
the various other programs and initiatives described in the DAR Annex, and anticipate that
such information will be provided in the assessment they propose. .

1 (USP, Section V, D) because his discussion fails to address the referral, evaluation, and
2 placement of ELL students (SMAR at 53:23-54:14) and does not address the relative
3 placement in different types of programs (self-contained, resources, etc.)

4 Mendoza Plaintiffs' Proposed Completion Plan Relating to Special Education

5 The Completion Plan discussed above relating to ELL students and dropout
6 prevention, etc. shall also include an assessment of the referral, evaluation, and placement of
7 ELL students in exceptional (special) education classes or programs, including the placement
8 type and the implementation of a remedial plan to the extent warranted based on that
9 assessment.

10 The District should provide the Plaintiffs and the Special Master information on
11 exceptional (special) education program placements, broken down by grade level, race,
12 ethnicity, and ELL status, sufficient to permit a determination as to whether program
13 placement has been equitable.

14 *Inclusive School Environments*

15 Mendoza Plaintiffs agree that unitary status for this aspect of the USP should be
16 deferred; however, they also have a number of objections to the Special Master's findings.

17 *In School Integration*

18 **Mendoza Plaintiffs object to the failure of the SMAR to address USP, Section**
19 **V,E,1 which speaks to actions to be taken by the District to remedy any classroom**
20 **assignment or placement of students that results in the racial or ethnic segregation of**
21 **students.** Notably, in his 2014-15 SMAR, the Special Master wrote: “[i]ntegration within
22 schools is necessary to achieve the maximum benefit from integration across schools, but no
23 information is provided in the DAR about efforts to ensure such integration.” (2014-15
24 SMAR (Doc. 1890) at 9.)²⁴ Further, in a footnote in the current SMAR he writes: “It should
25 be noted that racial composition of self-contained classrooms is sometimes considerably
26 different than the racial composition of the schools within which those classrooms exist.

27 ²⁴ This subject is covered only to a limited extent and only with respect to the placement of
28 special education and ELL students in the 2016-17 DAR and DAR Annex. (See, e.g., DAR
Annex (Doc. 2075-5) at 176, *et seq.*)

1 Thus, such schools are characterized by *de facto* tracking.” (SMAR at 33, n. 16.) However,
2 the SMAR does not further address the issue.

3 The District should not be accorded unitary status with respect to this obligation until
4 it has demonstrated that it has reviewed all of its referral, evaluation, and placement policies
5 and practices, as well as relevant disaggregated enrollment data, and taken appropriate action
6 to remedy any classroom assignment or placement of students that resulted in the racial or
7 ethnic segregation of students. (USP, Section V, F, 1.)

8 *Intercultural Proficiency, Harassment, Bullying*

9 **Mendoza Plaintiffs object to the failure of the SMAR to fully address all of the**
10 **provisions of USP, Section V, F, 2.** The SMAR addresses only a portion of what is covered
11 by this section in its discussion of student surveys that, the Special Master finds, indicate
12 “that there is work to be done with respect to relationships among students of different races.”
13 (SMAR at 54:18-19.) However, it does not explicitly address the portion of the cited
14 subsection that deals with policies and practices to protect all members of the school
15 community from discriminatory harassment and bullying.

16 Mendoza Plaintiffs have accessed the TUSD web site and confirmed that the policies
17 set forth in the USP have been adopted (in Policy JICK, the recodified version of Policy
18 JICFB referenced in the USP). However, given the Special Master’s express finding in his
19 discussion of the provisions of the USP relating to discipline (Section VI) that “staff and
20 students do not feel safe at school, bullying and harassment are not uncommon....”
21 (SMAR at 62:8-10), Mendoza Plaintiffs do not believe that the District can be found to have
22 attained unitary status with respect to any portion of this USP subsection until it demonstrates
23 that the strategies it has adopted and implemented to develop students’ intercultural efficiency
24 include strategies to “protect all members of school communities from discriminatory
25 harassment and bullying.” (USP Section V, F, 2.)

26 Further, the Special Master has noted that decisions to participate in ALEs can be
27 affected by “ ‘stereotype threat’ and students’ sense of his or her own academic confidence
28 and competence” (SMAR at 24:3-4), all of which also are affected by the school environment
and that apparently led in part to his recommendation, adopted by the Court, that the District
should “develop school-wide cultures where academic excellence is valued and celebrated.”

1 (ALE Order at 18:14-15.) Mendoza Plaintiffs therefore suggest that this is another area in
2 which there is a synergistic relationship between provisions of the USP, and that the
3 District's efforts to "build and sustain supportive and inclusive school environments" (USP,
4 Section V, F, 2) should address this goal as well.

5 Mendoza Plaintiffs' Objections and Proposed Changes to the Completion Plan for
6 Inclusive School Environments

7 The Completion Plan should be supplemented to include the following:

8 (1) The District should deliver a report to the Plaintiffs and the Special Master setting
9 forth for the school years 2015-16 through 2017-18 information sufficient for the Plaintiffs
10 and Special Master to determine whether and to what extent it reviewed all of its referral,
11 evaluation, and placement policies and practices, as well as relevant disaggregated enrollment
12 data beyond that which applies to its special education and ELL students, including but not
13 limited to its ALE and career and technical education offerings, and taken appropriate action
14 to remedy any classroom assignment or placement of students that resulted in the racial or
15 ethnic segregation of students. As to the District's special education and ELL students, it
16 shall separately provide disaggregated enrollment data and report on the extent to which
17 policies and practices described in the DAR Annex (Doc. 2075-5 at 176 *et seq.*) have reduced
18 racial or ethnic segregation of these students.

19 (2) As noted above, the report called for in SMAR Recommendation #1 also should
20 include an assessment of the extent to which each school is developing (or perpetuating) a
21 culture that values and celebrates academic excellence, with particular attention to those
22 schools in which relatively few Latino and African American students participate in ALEs.

23 (3) The report called for in SMAR Recommendation #1 should not solely be based on
24 student surveys. It should also include review of claims and investigations of alleged
25 discriminatory harassment and/or bullying at school sites. The report should include a review
26 of Governing Board Policy JICK to ensure that the TUSD staff person(s) responsible for
27 investigating and responding to complaints of discrimination, harassment, and/or bullying
28 have and are perceived by parents, students, and staff as having sufficient independence to
effectively and fully perform this responsibility.

MASSD and AASSD

1
2 **Mendoza Plaintiffs object to the findings relating to a “completion plan” that is**
3 **said to have been developed by them (together with the Fisher Plaintiffs and the**
4 **District) in January 2018. (SMAR at 55:24-56-25.)** They are aware of no such plan.
5 Rather, they are and remain in active engagement with the District to develop a new plan for
6 the MASSD. They do agree with the Special Master’s recommendations that the District
7 should not be awarded unitary status with respect to the USP provisions concerning services
8 to support African American and Latino student achievement. (USP Sections V, E, 7 and 8)
9 and that the District continue to work with each of the two plaintiff groups to develop an
10 appropriate plan.

Academic Interventions

11 Mendoza Plaintiffs understand the discussion in the SMAR at 57:23 to 58:14 to refer
12 to the subsections on academic interventions set forth at USP Section V, E, 7, b and c (with
13 respect to African American students) and USP Section V, E, 8, b and c (with respect to
14 Latino students). Based on that understanding, they agree that a finding of unitary status
15 should be deferred.

16 They have referenced certain of the issues concerning the District’s implementation
17 of the USP relating to students who need extra academic support above in connection the
18 SMAR discussion of dropout prevention, retention, graduation and absenteeism (USP Section
19 V, E, 2, i, I-III). They incorporate those statements herein as well.

Proposed Completion Plan Relating to Academic Interventions

20 **Mendoza Plaintiffs object to the SMAR to the extent that it omits a Completion**
21 **Plan expressly requiring the District to provide the clarifications that the SMAR states**
22 **are needed before there can be a finding of unitary status. (SMAR at 58:3-9.)**

23 In addition to the topics identified in the SMAR, a Completion Plan for academic
24 interventions should (in addition to the matters set forth in SMAR Section X) do the
25 following:

26 Provide data disaggregated by race, ethnicity, and ELL status identifying students
27 who received these interventions during each of the school years from 2014-15 through 2017-
28 18 together with the outcomes of such interventions so that the Special Master and the

1 Plaintiffs can assess whether the interventions are achieving the mandated outcomes for USP
 2 required student and engagement efforts, that is: “to close the achievement gap and eliminate
 3 the racial and ethnic disparities for these students in academic achievement...discipline, access
 4 to Advanced Learning Experiences, and any other areas where disparities and potential for
 5 improvement may [have been] identified as a result of studies required by [the USP].” (USP,
 6 Section V, E,1, a; citations omitted.)

6 **DISCIPLINE – USP SECTION VI**

7 Mendoza Plaintiffs’ Objections Concerning TUSD Suspensions

8 **The Mendoza Plaintiffs object to the findings that “There has been a large**
 9 **reduction in the number of in-school and out of school suspensions between 2013-14**
 10 **and 2016-17. However, the number of in-school suspensions grew by about 28%**
 11 **between 15-16 and 16-17 although the number of out of school suspensions declined**
 12 **slightly from 2322 in 15-16 to 2253 and 16-17” (SMAR at 59:17-21) because they are**
 13 **either based on a misunderstanding or misreading of the discipline data or they**
 14 **reflect the unintended omission of material information undermining those**
 15 **statements (resulting from the manner in which the data was presented).**

16 **Mendoza Plaintiffs also object to the omission from the SMAR of data**
 17 **concerning the short-term suspensions pending hearings that long-term suspended**
 18 **students who opted to participate in DAEP were additionally subjected to (but that**
 19 **those long-term suspended students who opted to serve their long-term suspensions at**
 20 **home were not).** (Mendoza Plaintiffs address the latter objection within the “out-of-
 21 school suspension” subsection below.)

22 As an initial matter, Mendoza Plaintiffs note that the SMAR states that the data
 23 upon which the Special Master bases his findings (Table VI-1 (Doc. 2096-10) (“November
 24 14 Report”)) was provided in response to information requests for data that reflect “use
 25 [of] the definitions of disciplinary action in place in 2013-14,” (SMAR at 59:21-25) which
 26 Mendoza Plaintiffs understand to mean data that reflect, among other things, that referrals
 27 to the DAEP and ISI programs are “exclusionary.”²⁵

28 ²⁵ In this regard, Mendoza Plaintiffs note that the requested data is consistent with the Court’s November 9, 2017 Order (Doc. 2087) in which the Court addressed the parties’

1 *Out-Of-School Suspensions*

2 First, with respect to what the SMAR reports as a “large reduction” in the number
3 of “out-of-school” suspensions (SMAR at 59:17-18), the total “out-of-school” suspensions
4 reflects a combining of *both* short-term and long-term out-of-school suspensions. If one
5 looks only at the long-term out-of-school suspension component, it is clear there has been
6 no change in the rate of such suspensions between the 2013-14 and 2016-17 school years.
7 For each of those years, there were exactly 353 long-term out-of-school suspensions.²⁶
(November 14 Report.)

8 While the 353 figure for the 2016-17 school year (but not 2013-14) includes a
9 combination of long-term out-of-school suspensions that were served at home and those
10 served in DAEP (consistent with this Court’s November 9, 2018 Order that DAEP is
11 “exclusionary discipline” (Order, Doc. 2087 at 7:26-28)), the fact remains that the very
12 same number of students were long-term excluded from their regular classrooms for each
13 of the 2013-14 and 2016-17 school years. (*Id.*) Moreover, Mendoza Plaintiffs note that,
14 while the nature of at-home suspensions may be more “exclusionary” than placement in
15 DAEP (in which some instruction is provided), DAEP referrals have until very recently
16 been more temporally exclusionary²⁷ as short-term suspensions pending hearings were not
17 counted toward “time served” in suspension if the student/parent opted for a DAEP referral
18 but were if the student/parent opted for suspension at-home. Notably, there is nothing in

19 disagreement concerning what constitutes exclusionary discipline as follows: “The District
20 shall retain continuity in reporting on four categories, ‘in-school discipline, in-school
21 suspension, short-term out of school suspension and long-term out of school suspension,’
22 with exclusionary discipline defined as: ‘any disciplinary consequence that removes a
23 student from classroom instruction including, but not limited to, in-school suspension, out-
of-school suspension, placement in an alternative setting or program, and expulsion.’ The
Court finds that DAEP is by definition an ‘exclusionary discipline’...” (Order, Doc. 2087,
at 7:20-26.)

24 ²⁶ For the 2013-14 school year, the relevant row is captioned “Long-Term Suspension * no
25 DAEP in 2013-14” (reflecting that the DAEP program did not exist in 2013-14), and for
the 2016-17 school year, the relevant row is titled “Long-Term Suspension (With DAEP).”

26 ²⁷ On December 21, 2017, following on-going conversations among the parties and Special
27 Master on the matter, the District notified the Plaintiffs and Special Master that it would
start taking into account the amount of time students spent short-term suspended pending a
28 long-term suspension hearing when determining the time that ultimately is served in the
DAEP program. (*See* TUSD’s December 21, 2018 email attached as Exhibit 17.)

1 the SMAR or in the November 14 Report that reflects the fact that students opting to
2 participate in DAEP were, in effect, being administered additional short-term suspensions
3 in connection with their hearings. These significant facts which plainly weigh on an
4 assessment of District progress in implementing the USP are not addressed in the SMAR
5 and do not “mesh” with its assertion concerning “large reductions” of “out-of-school”
6 suspensions between 2013-14 and 2016-17. Thus, **Mendoza Plaintiffs object to the**
7 **SMAR’s exclusion of any data concerning the additional short-term suspensions**
8 **pending hearings that long-term suspended students who subsequently opted to**
9 **participate in DAEP rather than serve their long-term suspensions at home were**
10 **subjected to.**

11 Second, as flows from the fact that there has been no change between 2013-14 and
12 2016-17 in the number of long-term out-of-school suspensions, the reduction in total out-
13 of-school suspensions in the November 14 Report appears to reflect a reduction in short-
14 term out-of-school suspensions. However, as detailed in the section below, such a finding
15 cannot be made based on the November 14 Report as it reflects unduplicated student data,
16 and therefore may well fail to provide a complete picture of District administration of
17 exclusionary discipline.

18 *In –School Suspensions*

19 While the SMAR statements concerning reductions in “in-school suspensions” from
20 2013-14 to 2016-17 (SMAR at 59:17-18) do appear to be reflected in the November 14
21 Report, District RFI responses confirm that that November 14 Report provides
22 unduplicated student counts (at least with respect to ISI) and therefore only a partial
23 picture of the number of “in-school suspensions” –which could potentially mask actual
24 increases in the number of instances of “in-school suspensions.”²⁸

25 In December 2017, the District provided ISI data concerning the 2016-17 school
26 year which noted that the data “reflect[s] unduplicated student counts for each school” and
27 that students’ repeated referrals to ISI are counted more than once only “if they had an ISI

28 ²⁸ Beyond ISI, this concern equally applies to ISS and DAEP referrals (although Mendoza Plaintiffs understand that this manner of reporting has a greater likelihood of skewing reporting as to ISS and ISI).

1 at another school.” (Response to RFI #1653 attached as Exhibit 18.) The data in that
2 report reflects that the total count of unduplicated ISI referrals during the 2016-17 school
3 year was about 1879²⁹ (*see id.*), a figure that is similar to that presented in the November
4 14 Report, that is, that 1831 total students were referred to ISI in the 2016-17 school
5 year.³⁰ The District’s response to a subsequent information request revealed that the total
6 actual number of ISI referrals in 2016-17 was about 2771, reflecting about 940 (or about
7 51%) more ISI referrals than that reflected in the November 14 Report upon which the
8 Special Master based his findings concerning reductions in suspensions. (*See* response to
9 RFI # 1803, attached as Exhibit 19, at 2).

10 While Mendoza Plaintiffs are unclear about the extent to which the November 14
11 Report reflects unduplicated data, the problems raised by such reporting are plain:
12 unduplicated data does not accurately reflect data on total exclusionary discipline and can
13 in theory mask even great increases in exclusionary discipline if there are large numbers of
14 students who received the same exclusionary discipline (*e.g.*, ISI referrals) multiple times
15 during the year. Nothing about receiving, for example, a second ISI referral during the
16 school year makes that second referral any less exclusionary so as to justify ignoring that
17 data.³¹ Thus, the data on which the Special Master bases his findings concerning
18 reductions in suspension is incomplete.

19 ²⁹ Dietz is the only school for which ISI data in the Response re 16-17 ISI is redacted
20 (presumably under FERPA) and therefore the true unduplicated ISI count for 2016-17 is
21 likely slightly higher than 1879.

22 ³⁰ While this discrepancy in what should be identical data is cause for concern, Mendoza
23 Plaintiffs do not address that issue here.

24 ³¹ Moreover, the need for data that is not unduplicated is necessary to further USP
25 purposes. Were, for example, students with repeat referrals to ISI, ISS, or DAEP within
26 the same school year to increase throughout the years since the adoption of the USP, it
27 would suggest significant underlying issues in what were to have been District efforts to
28 reduce the total amount of exclusionary discipline. Indeed, such data could provide
meaningful insight into, for example, the existence of racial/ethnic disparities with respect
to students who are administered exclusionary discipline multiple times throughout the
school year, the effectiveness of PBIS implementation, issues with the District’s efforts to
provide interventions to students who are at-risk of dropping out, and whether any of these
issues reflect problems with specific school sites or trends across TUSD schools.

1 Therefore, the Mendoza Plaintiffs object to the SMAR findings that “There has
 2 been a large reduction in the number of in-school and out of school suspensions
 3 between 2013-14 and 2016-17. However, the number of in-school suspensions grew
 4 by about 28% between 15-16 and 16-17 although the number of out of school
 5 suspensions declined slightly from 2322 in 15-16 to 2253 and 16-17” (SMAR at 59:17-
 21) because it is based on unduplicated student data.

6 Mendoza Plaintiffs also object to the SMAR’s apparent failure to include or
 7 analyze any student suspension data that is not unduplicated.

8 Proposed Changes to Special Master’s Completion Plan for USP, Section VI,
 9 Discipline

10 Mendoza Plaintiffs understand that the Special Master’s Completion Plan reference to
 11 reporting of data using “measures that were in place in 2013-14” (SMAR at 63:12-19, item A)
 12 to have been intended to reflect this Court’s guidance in its November 9, 2017 Order
 13 (concerning exclusionary discipline and DAEP) (*see* Order, Doc. 2087, at 7:20-26) but
 14 believe that that SMAR language may lead to confusion given that DAEP and ISI did not
 15 exist in 2013-14 (*see, e.g.*, November 14 Report). So that there will be no confusion in the
 16 future, and to be consistent with the Court’s November Order and address past inaccurate
 17 District discipline reports that conflict with that Order or that are inaccurate³², Mendoza
 18 Plaintiffs propose that the following language be added to the end of Completion Plan item A
 (SMAR at 63:12-19):

19 The manner in which student discipline data and responses to them is to be
 20 reported shall be as follows:

- 21 i. DAEP referrals shall be reported as out-of-school long-term
 22 suspensions and considered “exclusionary,” and time served in
 23 the DAEP program shall not be coded as a “short-term”

24 ³² *See, e.g.*, Appendix VI-36 to 2015-16 DAR (Doc. 1965-2) (“If a student enrolls in
 25 DAEP and successfully completes the program, the suspension status will be reassigned
 26 from long-term to short term and the student’s time in DAEP will be recoded as a
 27 ‘reassignment to another school’ in TUSD’s student information system. If a student
 28 refuses to enroll in DAEP, s/he is coded as a long term suspension. The student may re-
 enroll in their school after the allotted suspension period.”)

1 suspension. Nor shall discipline data reflect that students referred
2 to DAEP have enrolled in a school different from the one at
3 which the student was enrolled at the time of the disciplinary
4 infraction resulting in the DAEP referral.

- 5 ii. Placement in ISI and ISS shall be considered “exclusionary”
6 discipline

7 Further, to address the issues raised by unduplicated student discipline data and SMAR
8 findings concerning significant and delayed PBIS implementation issues at the site level,
9 including that there is no “regularly scheduled process for monitoring the accuracy of the
10 [PBIS] reports principals provide” (SMAR at 60:19-61:6), Mendoza Plaintiffs propose the
11 following additions to the Special Master’s Completion Plan:

- 12
13 (1) Two versions of the aggregate suspension data required by USP Section VI, G, 1, b,
14 shall be reported: one in which unduplicated student data is reported, and the other
15 which shall report every instance of student discipline in the category even if a
16 single student experiences that disciplinary outcome on more than one occasion
17 during the reporting period.
- 18 (2) The District shall institute a process to regularly assess that teachers have an
19 understanding of District disciplinary practices, the GSRR, PBIS, and restorative
20 practices.
- 21 (3) The District shall regularly review and assess the accuracy of reports by principals
22 relating to the use of PBIS and to ensure that they are using the District’s protocol
23 for evaluating progress with PBIS at the school level.

24 **FAMILY AND COMMUNITY ENGAGEMENT – USP SECTION VII**

25 Mendoza Plaintiffs’ Objections Concerning Family Engagement Centers

26 **The Mendoza Plaintiffs object to the Special Master’s recommendation that
27 the District be granted unitary status with respect to “those family engagement
28**

1 **activities administered directly by the Family Engagement Coordinator.”**³³ (SMAR at
2 69:10-11.) As detailed below, the record (and some portions of the SMAR) demonstrate
3 that the District has failed to adequately implement both the USP’s FEC obligations and
4 data tracking requirements with respect to which the USP places primary responsibility on
5 the Family Engagement Coordinator. The District has further failed to comply with or
6 adequately implement FEC obligations relating to magnet/open enrollment, FEC surveys,
7 and evaluations of effectiveness, and has failed to restructure FECs to serve the purpose
8 they were to have served under the USP. For these reasons, Mendoza Plaintiffs object to
9 the Special Master’s recommendation that the District be granted unitary status as to
10 Family Engagement Coordinator-run activities.

11 As an initial matter, Mendoza Plaintiffs believe that the Special Master may have
12 failed to appreciate problems in the implementation of FEC obligations because those
13 problems are masked by the fact that FECs have many offerings that, while perhaps of
14 some benefit in the way that activities at a neighborhood center might be (*e.g.*, health/diet
15 classes, English classes, Zumba classes, etc.) are unrelated or at best tangentially related to
16 the objectives of the USP, and are not learning centric. Further, the masking of
17 inadequacies is facilitated by the District’s problematic (but improving) family
18 engagement data tracking. Significantly, problems with making FECs effective at
19 engaging families have not been addressed, but could have been, had the District
20 adequately evaluated the effectiveness of FECs as required under USP Section VII, E, 1, d
(and as more explicitly described in the FACE Plan (at 27-28)).

21 ³³ While Mendoza Plaintiffs believe the description of this category of activities is
22 somewhat ambiguous, they understand these activities to largely relate to an initial
23 assessment of family engagement programs and efforts (USP Section VII, C, 1, b) (which
24 already occurred in connection with the development of the Family and Community
25 Engagement Plan (“FACE Plan”)), development and implementation of a plan to track
26 data on family engagement (USP Section VII, C, 1, c) and development and
27 implementation of a plan to increase/reorganize Family Engagement Centers (“FECs”)
28 resources (USP Section VII, C, 1, d), all in connection with the FACE Plan developed
under USP Section VII, C, 1. They further understand the Special Master’s
recommendation concerning unitary status to involve ALL FEC obligations based on past
communications and the language of USP Section VII, C, 1, a.

Mendoza Plaintiffs do not here contend that the District failed to conduct its required
assessment of family engagement programs and efforts, but they do argue that the District
has failed to follow recommendations laid out in that assessment.

Data Tracking Issues

1
2 A vital component of the USP's approach to engage the families of Latino and African
3 American TUSD students involves the tracking of participation in family engagement events
4 and activities for effectiveness evaluation purposes. Indeed, the USP (at Section VII, C, 1, c)
5 requires the Family Engagement Coordinator (who oversees FECs) and the District to make
6 "necessary revisions to [tracking software] to allow [family engagement] data tracking by
7 student."³⁴ Further, the Family Engagement Coordinator is charged, among other
8 responsibilities, with the duty of assessing "the data systems in place to provide information
9 on outreach to and engagement with families and communities." (USP Section VII, C, 1, b)
10 As part of that USP Section VII, C, 1, b assessment, the District (and presumably the Family
11 Engagement Coordinator) developed recommendations concerning family engagement data
12 tracking for the purpose of "assess[ing] the effectiveness of the engagement initiatives for
13 African American and Latino families." (See FACE Plan, downloaded from the TUSD
14 website and attached as Exhibit 20 at 17.)³⁵

15 With respect to these Family Engagement Coordinator and FEC data tracking
16 activities, the SMAR recognizes that although there has been some family tracking at FECs,
17 "continued improvement in tracking and assessment of all family engagement data is needed."
18 (SMAR at 66:12-13.) Further, the SMAR recognizes problematic data tracking efforts where
19 it states that "given the limited data provided by the District, it is hard to know how many
20 families are involved in what kinds of activities... It is particularly important, and particularly
21 difficult, to determine whether these [FECs] are serving the families of students who are
22 struggling and what they are doing to help those families." Complicating data tracking efforts,

23 ³⁴ Mendoza Plaintiffs note that the the USP expressly contemplated such data tracking
24 would occur with respect to FEC activities. (USP Section VII, C, 1, c obligations fall
25 under "District Family Center Plan" subsection.)

26 ³⁵ The language of the TUSD family engagement recommendation is as follows: "In
27 addition to tracking attendance and events, and to ensure reporting and accountability for
28 family engagement activities throughout the District, the District will gather data to assess
differences in behavior, knowledge, and attitudes among parents and school staff.
Measures along the way to interpret progress will include review of the following data on
family engagement (each can be tracked by student): (1) Surveys and feedback (2)
Participation at Educational Opportunities (3) Data from use of TUSDStats by parents.
Data will be collected and analyzed to assess the effectiveness of the engagement
initiatives for the African American and Latino families." (*Id.*(numbering of listed items
added by Mendoza Plaintiffs).)

1 the District continued to track FEC data through manual sign-in sheets in 2016-17 (*see* DAR
2 2016-17 (Doc. 2057-1) at VII-351) notwithstanding that the USP contemplated electronic data
3 tracking (with any needed revisions having been made) by October 2013 (*see* USP Section
4 VII, C, 1, c). Indeed, the SMAR proposed completion plan includes that the District is to
5 “[r]ecord family participation by race at each school in ways that describe specific activities in
6 which families of different races are involved.” (SMAR at 70:11-12.) (While the proposed
7 Completion Plan relates to site-level data tracking, the District also has not tracked the race or
8 other information of FEC activity participants.)

9 The Mendoza Plaintiffs agree with the SMAR statements that knowing how many
10 families are engaging in what activities, and whether FECs are serving families of students
11 who are struggling academically, is of utmost importance (and, they note, the latter was an
12 express focus of the USP mandated review and assessment of FECs under USP Section
13 VII, C, 1, b). They further agree that family engagement data tracking needs
14 improvement, including the ability to track family engagement participation by race³⁶ and
15 by student (as required under USP Section VII, C, 1, c and recommended by the FACE
16 Plan) and with the SMAR data tracking completion plan requirements. However, given
17 the existence of these family engagement data tracking issues which conflict with USP
18 obligations and the FACE Plan, and its direct connections to FECs and the Family
19 Engagement Coordinator, a recommendation for a finding of unitary status is unwarranted
20 and therefore premature.

21 *Family Engagement Participant Surveys and Related Evaluation of Effectiveness*

22 As noted above, the availability of non-USP-related offerings and events at FECs,
23 while desirable, masks inadequacies in USP compliance. This problem carries over to the
24 surveys of FEC participants that the District says it uses to evaluate the effectiveness of

25 ³⁶ The Special Master and Mendoza Plaintiffs have in the past stressed the need to track
26 family engagement activity participant by race. While the 2016-17 DAR states that the
27 District “made efforts to track family engagement data by race” in 2016-17 (DAR 2016-17
28 at VII-351), the blank excel sheet listing participant data to which the District cites as
evidence of such efforts and which it says it used to transfer manual sign-in sheet
information makes no reference to participants’ race. (*See* Appendix VII-32 to 2016-17
DAR (Doc. 2065-2) at 66.) Further, the appendix the District cites as its evaluation of
FECs for the 2016-17 school year makes no reference to or use of data on race of FEC
activity participants (*see* Appendix VII-16 (Doc. 2065-2) at 2).

1 FECs. (See Appendix VII-16 (Doc. 2065-2) at 2.) In this regard, the SMAR notes that
2 TUSD “relies on family surveys to set priorities...” even as it reports low FEC visitor
3 response rates as problematic and resulting in “little consensus” regarding priorities.
4 (SMAR at 66:18-24.)

5 However, there is a far more fundamental issue with regard to these surveys, that is,
6 that they are provided to families at events *unrelated* to the USP (and indeed, seemingly
7 unrelated to students’ education). By way of example, in 2016-17, parent surveys were
8 conducted at only the following eight workshops: (1) Life Skills, (2) Home 101, (3)
9 Diabetes, (4) Tomando Control de tu Salud [in English, “Taking Control of your Health”],
10 (5) Kith and Kin, (6) US Immigration and the USA Constitution Class-Por Un Arizona
11 Unido, and (7) Es Dificil ser Mujer [in English, “It is Difficult to be a Woman.” (See
12 Response to RFI #1682 attached as Exhibit 21 at 4.) While Mendoza Plaintiffs do not
13 doubt that these workshops are valuable to the participants, they plainly are not related to
14 the USP and not directly tied to student education (with the possible exception of the
15 English as a Second Language workshop). Further, the FEC surveys are very limited and
16 are programmatically disconnected from the school(s) attended by the children whose
17 families are surveyed.³⁷ Thus, Mendoza Plaintiffs do not see how the District could
18 reasonably expect to get meaningful survey responses to assess the effectiveness of FECs
19 and adjust related engagement strategies accordingly even were the response rate higher.

20 Related, the District is required to analyze the scope and effectiveness of services
21 provided at FECs and include that analysis as part of its Annual Report. (USP Section VII,
22 E, 1, d.) As detailed above, notwithstanding the USP requirement that the District modify
23 software to track family engagement by student, the District has very limited data
24 concerning FEC visits, and indeed has not been able to track whether and to what extent
25 the Plaintiff classes visit and participate in FEC events or what the nature of those events
26 are. That data would, of course, allow for a much more meaningful review and assessment
27 of the effectiveness of FECs. However, because such data is unavailable, the USP-

28 ³⁷ Beyond asking for what FEC hours/location(s) are most convenient, the FEC
parent/family surveys ask ONLY what families’ top three needs are, and what they would
like to see at FECs (including community resources). (Appendices VII-16 to VII-17 of
2016-17 DAR (Doc. 2065-2).)

1 mandated evaluations of FEC effectiveness exclusively rely on parent surveys, which as
2 noted above, are very limited and highly problematic. (*See, e.g.*, Appendix VII-43 (Doc.
3 2065-3) to 2016-17 DAR, Appendix VII-28 to 2015-16 DAR (Doc. 1966-1).)

4 Moreover, the evaluations that result are extremely limited and provide little, if any,
5 meaningful information that the District can use to make FECs more effective. Notably,
6 significant portions of the evaluations for the surveys for the two separate years 2015-16
7 and 2016-17 school years, including the listed steps the District is taking to address survey
8 response issues, are perfectly identical. (*Compare* Appendix VII-43 to 2016-17 DAR (Doc.
9 2065-3) *with* Appendix VII-28 to 2015-16 DAR (Doc. 1966-1).) Indeed, this Court need
10 only compare FEC evaluations of effectiveness across years to determine that they were
11 extremely limited, nearly identical to the evaluations conducted in prior years, and provide
12 little if any meaningful information to improve FEC effectiveness.

13 *Magnet/Open Enrollment Obligations*

14 The District is required, “through its Family Center(s) [among other strategies,]...
15 to recruit a racially and ethnically diverse student body to its magnet schools and
16 programs” and to use FECs to facilitate submission of open enrollment applications. (USP
17 Section II, E, 2 (under Magnet Programs subsection); Section II, G, 1.) In that regard, the
18 SMAR states that FEC “staff assisted families in accessing transportation for open
19 enrollment by using the School Choice Calculator to determine transportation eligibility to
20 a selected school site.” (SMAR at 65:27-66:1.) However, this statement loses sight of the
21 fact that FECs have not played the role the USP contemplated them to with respect to
22 magnet/open enrollment. By way of example, during the entire 2016-17 school year, there
23 was a total of only 19 “applications and visits related to OE/Magnet applications” across
24 ALL four FECs. (Response to RFI #1678 attached as Exhibit 21 at 3; Appendix VII-25 to
25 2016-17 DAR (Doc. 2065-2).) Moreover, because of existing problems with TUSD’s FEC
26 (and generally all family engagement) data tracking, it is unclear what the racial
27 composition of those individuals is, whether their applications would have contributed to
28 progress in integrating TUSD schools, or how the District could possibly evaluate the
effectiveness of FECs as it relates to its magnet school and integration obligations.

Had the District been able to better track data as required by the USP and better

1 conducted evaluations of effectiveness, it could have identified problematic issues at FECs
2 (like those detailed above) and addressed them to make FECs more effective at engaging
3 families for those purposes mandated by the USP. But it has not. As a result, FECs'
4 operation is not well-aligned with the USP. Given the lack of adequate data and the
5 information set out above, **Mendoza Plaintiffs object to the Special Master's**
6 **recommendation that the District be found to have achieved unitary status with**
7 **respect to "those family engagement activities administered directly by the Family**
8 **Engagement Coordinator."**

8 Mendoza Plaintiffs' Proposed Completion Plan Concerning FEC

9 (1)The District shall, by the beginning of the 2018-19 school year, modify its
10 data tracking software to track the race/ethnicity of visitors to FECs.

11 (2)The District shall, by the beginning of the 2018-19 school year, modify its data
12 tracking software to allow for family engagement data to be tracked by student (as
13 required under USP Section VII, C, 1, c), including family engagement visits to
14 FECs and to engagement events at students' home schools.

15 (3) The District shall conduct FEC participant surveys at USP-related events and
16 events directly related to student education/family educational engagement only.

17 (4)The District shall, at a minimum, hold two workshops annually (one per
18 semester) at each FEC directed at empowering parents to become involved in their
19 children's education and to play a role in the development of the plans and activities
20 at the schools their children attend. Such events should include information on how
21 to access and read TUSDStats data (including, when appropriate, demonstrations
22 using FEC computers), the process for complaining to the District concerning
23 educational issues their children may face, how parents may use school-level family
24 liaisons to advocate for their children, and how to become involved in site-councils.

25 (5) The District shall study the reasons for few FEC visits related to magnet/open
26 enrollment, including whether FEC resources/workshops could be better marketed
27 at FECs and at the site-level. It should further study, report on, and implement
28 strategies to improve use of resources and participation in workshops in time for
open enrollment for the 2019-2020 school year.

1 (6) The District shall, at the end of 2018-19, conduct an evaluation of FEC
 2 effectiveness that takes into account each item listed above, and that provides
 3 recommendations on adjustments to family engagement efforts and strategies in
 4 order to better engage African American and Latino families through FECs.

5 Mendoza Plaintiffs’ Objections Concerning SMAR Finding that it “Seems” the
 6 District Has Abided by the Letter of the Family Engagement Plan

7 **The Mendoza Plaintiffs object to the SMAR finding that the District asserts “that**
 8 **it abides by the letter of the family engagement plan [or FACE Plan]. And, that seems to**
 9 **be true with the exception of the placement of information kiosks at each school”**
 10 **(SMAR at 66:16-18) on the grounds that the record, including the SMAR itself,**
 11 **demonstrates that the District has not “abided by the letter of the” FACE Plan.**

12 The FACE Plan, based upon the assessment mandated by USP Section VII, C, 1, b,
 13 makes multiple recommendations that the FACE Plan indicates the District will implement,
 14 including the tracking of family engagement data by student to “assess the effectiveness of the
 15 engagement initiatives for African American and Latino families (*see* Exhibit 20 at 17), the
 16 use of parent surveys on family engagement efforts (*id.* at 17, 27-28), and annual evaluations
 17 of effectiveness concerning family engagement efforts (*id.* at 17, 21, 28). As detailed in the
 18 section above, the District has failed to adequately implement these mandated efforts.

19 With respect to data tracking *at the site-level*, the FACE Plan contemplates that sites
 20 will track participant data as to “each Family Event and Training” and that TUSD “[s]chools
 21 will submit Family Engagement Activity Report[s] monthly” (FACE Plan at 28) for District-
 22 level analysis. Notwithstanding the finding objected to above about compliance, the SMAR
 23 itself finds that there “is no process for identifying activities underway at the school
 24 level...[and that] a significant number of school principals did not file reports on family
 engagement at their schools” (SMAR at 68:26-691).

25 Further, the FACE Plan lays out family engagement strategies “targeting families of
 26 African American students that are culturally appropriate and linguistically friendly” and
 27 asserts that the “overarching strategy for the District will be to provide training for district
 28 staff on Supportive and Inclusive Learning Environments (SAIL).” (*Id.* at 15-16.) However,

1 in this regard, the SMAR finds that there “is no solid evidence in the DAR about the amount
 2 or effectiveness of SAIL training as it relates to family and community engagement.” (SMAR
 3 at 68:14-15.) Moreover, the Implementation Committee members’ observation through
 4 school visits that “the effectiveness and scope of family and community engagement efforts
 5 vary across schools” (SMAR at 68:22-25) conflicts with the FACE Plan’s recommended
 6 strategies to help “Create District-wide strategies” to address the fact that school-level family
 7 engagement “efforts were not connected to one another as part of a comprehensive scheme.”

8 **Thus, the Mendoza Plaintiffs object to the SMAR statement that “it seems to be
 9 true” that the District “ abides by the letter of the family engagement plan [or FACE
 10 Plan]” “ with the exception of the placement of information kiosks at each school”
 (SMAR at 66:16-18) as the record and SMAR demonstrate otherwise.**

11 Proposed Additions to Special Master’s Completion Plan for USP, Section VII,
 12 Family Engagement

13 Mendoza Plaintiffs agree that there exist variations in the effectiveness and scope of
 14 family and community engagement efforts across schools (SMAR at 68:22-25), as there
 15 indeed are significant differences in the quality and amount of family engagement activities
 16 across TUSD schools,³⁸ including with respect to whether and to what extent schools provide
 17 the District with information on site-level family engagement events. (*See, e.g.*, Appendix
 18 VII-1 to 2016-17 DAR (Doc. 2065-1) (Gale and Booth-Fickett list family engagement
 19 activities consisting almost entirely of social events, newsletters, and parent conferences);
 20 Appendix VII-6 to 2015-16 DAR (Doc. 2065-1) (Craig and Mary Meredith, among others,
 21 hold family engagement events consisting almost entirely of social events); Attachment to
 22 response to RFI#1674, attached as Exhibit 22 (significant number of schools in 2016-17 that,
 23 with respect to family engagement reports to the District, had “No report,” “Missing
 information,” “data entry error,” or “Needs Update.”).)

24 Mendoza Plaintiffs’ proposed completion plan additions reflect the FACE Plan’s
 25 emphasis on family engagement in site-level planning leadership and through meaningful

26
 27 ³⁸ As a general matter, school sites have focused too heavily on the less favored and less
 28 effective “parental involvement” events (*e.g.*, open houses, social events) which the FACE
 Plan recommended the District shift away from (FACE Plan at 19-20).

1 volunteer opportunities, and training families to expand their knowledge and skills to support
 2 their children's learning including by training them on how to access and review their
 3 children's academic progress (*e.g.*, TUSD Stats data). (FACE Plan at 14, 18-19, 25; *see also*
 4 SMAR at 67:12-15 (“[N]one of the meetings or resources to which the District draws attention
 5 as evidence of its commitment to family engagement has anything to do with family
 6 involvement in planning and leadership at the school level”).) Given the Special Master's
 7 finding concerning variation in site-level family engagement efforts, Mendoza Plaintiffs'
 8 proposed additions further would address the possibility that, if provided the Special Master's
 9 proposed Completion Plan guidelines with nothing else, some schools will have a poor and/or
 10 varied sense of the degree to which their existing efforts meet those guidelines, and/or in what
 11 areas their efforts fall short relative to other TUSD schools and what is contemplated by the
 12 guidelines.

13 Mendoza Plaintiffs propose the following *additions* to the Completion Plan for Section
 14 VII:

15 In conjunction with the preparation of the guidelines proposed by the Special Master
 16 and to identify and better address uneven implementation of site-based family engagement
 17 efforts, the District shall

- 18 (1) assess the current status of family engagement within each school's parent
 19 participation structures (site council, PTA, volunteering, Title I parent
 20 groups, etc.) by reviewing participation data by race/ethnicity for each
 21 school and through communications with the school's family liaison. If
 22 participation data by race/ethnicity does not exist, the District shall begin
 23 tracking such participation by race/ethnicity [as part of the tracking
 24 Completion Plan proposal described in the SMAR at 70:11-12]),
- 25 (2) assess what parent training has been conducted at each school to provide
 26 parents/families with tools to support their understanding of their
 27 child's/children's school, classroom, curriculum, report card, TUSDStats
 28 information, policies (school and District), integration, and other areas which
 are tied to their child's/children's' academic school success, and
- (3) assess the level of parent participation (by school, race, and ethnicity) in the

District-level School Community Partnership Council.

Data gathered from assessments 1 and 2 shall be used to identify areas of needed improvement at sites and facilitate implementation of the guidelines for fostering family engagement at the site-level. Data gathered from assessment 3 shall be used to identify and address any issues relating to parent participation at the District level (*e.g.*, low participation rates by a race/ethnic group, low participation from families of students at racially concentrated schools, etc.).

EXTRACURRICULAR ACTIVITIES – USP SECTION VIII

Mendoza Plaintiffs agree with the Special Master’s finding that the District cannot be found to have reached unitary status with respect to the provisions of the USP relating to extracurricular activities until it successfully implements the proposed completion plan.

However, they object to certain of the findings in the discussion portion of this section of the SMAR.

Mendoza Plaintiffs object to the finding that the District appears to be doing extensive work in the development of student leadership and character development (SMAR at 71:3-4) because it omits discussion of the key USP requirement – that such activities “provide opportunities for interracial contact in positive settings of shared interest....” (USP, Section VIII, A, 2.)

Mendoza Plaintiffs object to the findings of “equitable access” (SMAR at 71:7-8), equitable resource allocation (*id.* at 71: 17), and “fair” implementation of the relevant USP provisions (*id.* at 72: 12-13) on the grounds that the findings related to inadequate, incomplete, and inconsistent data (*see, e.g.*, SMAR at 72:4-10) render any such findings at best premature and lacking in adequate evidentiary support.

Mendoza Plaintiffs propose no changes to the proposed completion plan.

FACILITIES – USP SECTION IX

The Special Master recommends that the “District shall recalculate the FCI scores [which it unilaterally altered (SMAR at 73:6-7)] using the criteria prior to that applied in 16-17 school year. Assuming this demonstrates that racial composition is not correlated

1 with schools' FCI score³⁹, [] [t]he District should be granted unitary status with respect to
2 the provisions of the USP related to facilities.” (SMAR at 74:2-4.) **While Mendoza**
3 **Plaintiffs agree that the District should recalculate FCI scores to reflect “criteria**
4 **prior to that applied in 16-17” (SMAR at 74:2-7)⁴⁰, they object to the Special**
5 **Master’s recommendation insofar as it omits a requirement that the FCI data (as**
6 **distinct from the criteria or weight assigned) that the District is to provide should be**
7 **at least as recent as the beginning of the 2017-18 school year.**

8 As far as Mendoza Plaintiffs are aware, the most recent FCI data they have been
9 provided reflecting original agreed-upon weights and components was provided on
10 December 21, 2017 but is dated June 27, 2016. (See attachment to TUSD response to RFI
11 #1702, attached as Exhibit 23.) Given that the SMAR is to report on the entire 2016-17
12 school year and base unitary status recommendations on such data and Mendoza Plaintiffs’
13 understanding that FCI scores are regularly updated throughout the school year (see 2016-
14 17 DAR (Doc. 2057-1 at IX-369), the FCI data upon which a determination of unitary
15 status is to rest must be up-to-date.

16 Subject to their overarching concern that TUSD had yet to demonstrate the requisite
17 good faith commitment to the totality of the USP to warrant relief from court supervision,
18 Mendoza Plaintiffs would recognize that the District has met its USP obligations relating
19 to facilities if up-to-date FCI data (at least as current as the beginning of the 2017-18
20 school year) reflecting original agreed-upon weights and components is provided to the
21 parties and Special Master per the SMAR recommendation (at 74:6-7) and such data
22 reflects that racially concentrated schools, on average, have FCI scores that are
23 approximately equivalent or better than those of non-racially concentrated schools.

24 ³⁹ Mendoza Plaintiffs understand the Special Master’s reference to “racial composition []
25 not [being] correlated with the schools’ FCI scores” to refer to racially concentrated
26 schools (as defined under USP Section II, B, 1) not having lower FCI scores than those of
27 non-racially concentrated schools.

28 ⁴⁰ In fact, this recommendation should not be necessary given that in its Order dated
November 9, 2017, the Court directed the District to “return to the formula for determining
the Facility Condition Index (FCI) for schools that the parties approved prior to SY 2015-
16, and the Special Master shall assess USP compliance accordingly.” (Order, Doc. 2087,
at 8:1-3.)

TECHNOLOGY – USP SECTION IX**USP Technology Obligations Other Than Those Concerning Teacher Technology Training**

The Mendoza Plaintiffs object to the Special Master’s recommendation that the District be granted unitary status with respect to all USP technology obligations (except for those concerning teacher training) (see SMAR at 76:17-21) as premature given the Special Master’s finding that the District “has acknowledged that it needs to update the TCI/Multiyear Technology plan to include a wireless conductivity category (SMAR at 76:8-9) and his statement that once that update occurs, “to the extent the revised and updated TCI reveals that inadequate wireless Internet access disproportionately affects racially concentrated schools, the District will develop and implement a plan to correct such disproportion during the next school year.” (Id. at 76:11-15.) The USP requires that the TCI (to be used in prioritizing technology maintenance and update efforts at racially concentrated schools under Section IX, B, 3) include a component that weighs “availability of wireless and broadband Internet in a school.” (USP Section IX, B, 1.) At the time the Multi-Year Technology Plan was developed, however, the TCI did not include a component relating to access to wireless/broadband internet because “[a]ll campuses have the same level of connectivity to the internet (central internet line). This would be a wash in the TCI [were it to be included] as all schools would get the same score.” (Multi-Year Technology Plan at 11 (Doc. 1778-1).)

Since that time, the District made considerable investments in technology with priority to racially concentrated schools as required by the USP. However, what was not contemplated was the extent to which the introduction of those investments would increase demands on internet access at sites and across TUSD schools generally. (See 2016-17 DAR, Doc. 2057-1, at IX-373.) Significantly, that racially concentrated schools received priority in technology investments as a consequence of which potential inequitable wireless internet access issues were identified suggests that, to the extent internet access disparities exist, they would disproportionately negatively affect racially concentrated schools. Given this circumstance, it is premature to grant unitary status with respect to all

1 USP technology obligations (other than those concerning teacher training). Mendoza
2 Plaintiffs thus believe that, at a minimum, the District must remain under Court
3 supervision with respect to equitable access to wireless internet connectivity pending
4 revisions to the TCI and implementation of a plan to address any identified disparities in
5 such access between racially concentrated and non-racially concentrated schools.

6 Mendoza Plaintiffs' Proposed Completion Plan for USP Section IX Relating to
7 Wireless Internet Connectivity

8 While the Special Master makes reference to the fact that the District “will update
9 TCI data to reflect school conditions related to wireless connectivity...”, the SMAR does
10 not recognize that the TCI and related Multi-Year Technology Plan were developed and
11 agreed upon through USP Section I, D, 1 procedures and that, therefore, revisions to the
12 TCI are subject to Plaintiff review and comment under that same USP section. Thus,
13 **Mendoza Plaintiffs object to the Special Master’s Proposed Completion Plan**
14 **concerning changes to the TCI/Multi-Year Technology Plan because it fails to**
15 **provide for any Plaintiff review and comment process.**

16 Notably, with respect to the FCI, the Special Master makes reference to the District
17 “submit[ting]... revisions to the Facilities Condition Index to the plaintiff’s [*sic*] and
18 Special Master for review” (SMAR at 74:6-7) (which Mendoza Plaintiffs understand to
19 refer to a potential District proposal to change weights accorded to FCI components in the
20 manner the District previously had done unilaterally (*see* 2015-16 SMAR (Doc. 2026) at
21 30:21-23)). Just as revisions to the FCI are subject to plaintiff review and comment, so,
22 too, are revisions to the TCI/Multi-Year Facilities Plan. Because Mendoza Plaintiffs
23 recognize the need to promptly revise the TCI weights and components to identify any
24 disparities in wireless internet connectivity to commence efforts to address such
25 disparities before commencement of the 2018-19 school year, they agree to an expedited
26 review and comment process⁴¹. Therefore:

27 ⁴¹ Given the District’s acknowledgement of the need to revise the TCI and to promptly
28 begin to address the internet connectivity issue, they respectfully suggest that all concerned
should promptly address this issue without waiting for Court action on the SMAR and
proposed completion plans.

- 1 (1) The District should, by April 30, 2018, provide a proposal for Special Master
2 and Plaintiff review and comment that revises the TCI/Multi-Year Technology
3 Plan to include a wireless internet connectivity category which should generally
4 reflect relative internet speeds at TUSD schools. Such review and comment will
5 occur within ten business days.
- 6 (2) The District should update the TCI to reflect school conditions as they relate to
7 wireless internet connectivity or WAP by May 14, 2018.
- 8 (3) To the extent the revised and updated TCI reveals that inadequate internet
9 speeds disproportionately affect racially concentrated schools, the District shall
10 develop a plan to correct such disproportion by June 1, 2018, and include within
11 that plan time frames for addressing the disparities. Plaintiff and Special
12 Master review and comment relating to that plan (and any USP budgetary
13 impacts) will occur within ten business days.

14 **EVIDENCE-BASED ACCOUNTABILITY SYSTEM AND ORGANIZATIONAL**
15 **LEARNING – USP SECTION X (AND OTHER USP PROVISIONS**
16 **REFERENCING DATA COLLECTION AND REVIEW)**

17 The Mendoza Plaintiffs generally agree with the Special Master’s findings and
18 recommendations; however, they have the following comments and objections.

19 Mendoza Plaintiffs’ Objections to EBAS Completion Plan

20 Mendoza Plaintiffs agree that the purposes the Special Master states that EBAS and
21 the Organizational Learning System are to serve are laudable (SMAR at 79: 20-27) and
22 recognize that he may assert that the USP-mandated purposes are implicit in what he
23 proposes, however, **Mendoza Plaintiffs nonetheless object to the recommendation in**
24 **the proposed completion plan relating to what the District must demonstrate to attain**
25 **unitary status in this area to the extent it does not explicitly require compliance with**
26 **the USP: that EBAS function as a “system to review program effectiveness and**
27 **ensure that, to the extent practicable, program changes address racial segregation**
28 **and improving the academic performance and quality of education for African**
American and Latino students, including ELLs.” (USP Section X, A, 1.)

1 Further, Mendoza Plaintiffs object to the Completion Plan to the extent it
2 omits as requirements for attaining unitary status in this area that TUSD
3 demonstrate that it (1) has trained “all administrators, certificated staff, and where
4 appropriate, paraprofessionals...on the EBAS...pursuant to [USP] Section
5 (IV)(J)(3)” (USP, Section X, A, 3), (2) that it has a system in place so that “[a]ll newly-
6 hired District personnel for whom training is warranted ...shall complete the training
7 by the beginning of the fall semester of the academic year subsequent to the academic
8 year during which they were hired” (*id.*), and (3) that it is evaluating teachers and
9 principals based “on their ability to utilize the EBAS as contemplated pursuant to
10 [USP] Section (IV)(H)(1)”. (USP, Section X, A, 4.)

11 Mendoza Plaintiffs also object to the Completion Plan to the extent it fails to
12 require that the EBAS system (1) comply with the specific provisions of USP Section
13 X, A, 2, (2) include the universe of data expressly set forth in the definition of the
14 EBAS system contained in Appendix A (“Definitions”) of the USP at paragraph 16,
15 and (3) have the functionality required by USP Section V, E, 3, a.

16 Mendoza Plaintiffs’ Objections to MTSS Completion Plan

17 It is the understanding of the Mendoza Plaintiffs that the completion plan relating to
18 MTSS is intended to address personnel whose duties include providing (or overseeing
19 those providing) additional supports for African American and Latino students who are
20 struggling academically. (*See* SMAR at 57:23-58-14.) **Mendoza Plaintiffs therefore**
21 **object to the MTSS completion plan to the extent it omits the requirements set forth**
22 **in the SMAR at 58:3-9 that “[b]efore the District is awarded unitary status for its**
23 **efforts to support ... students [who are struggling]...the District should clarify:**
24 **(how) the needs of students are identified, (2) the range of interventions the District**
25 **can employ, and (3) whether those who are responsible for seeing that the needs of**
26 **[these] students are met have the technical and professional capabilities to ensure that**
27 **students get the support they need.”**

28 Mendoza Plaintiffs object to the recommendation concerning the development
of a rubric for assessing the effectiveness of MTSS Facilitators to the extent it omits
to explicitly state that one of the outcomes to be evaluated is whether and to what

1 extent the MTSS Facilitators are improving the academic and educational outcomes
2 for African American and Latino students. (See USP Sections V, E, 7, a and 8, a.)

3 Mendoza Plaintiffs’ Objections to the Professional Learning Communities
4 Completion Plan

5 **Mendoza Plaintiffs object to the recommendation that the District implement**
6 **“the PLC guidelines that have been provided to principals” (SMAR at 80:22) because**
7 **they have never received confirmation as to what those guidelines are.**

8 They have asked whether the “PLC guidelines” refer to the 2015-16 PLC Guide that
9 was provided by the District on June 28, 2016, but have not received confirmation of
10 whether that is so. They also note that the 2015-16 PLC Guide fails to address the
11 requirement of USP Section V, I, 4, (b) to “develop within and across-school networks to
12 encourage teachers with experience and success in using culturally responsive pedagogy to
13 engage students to mentor and coach their peer teachers.” **Therefore, to the extent that**
14 **the 2015-16 PLC Guide is what is being referred to, they object to the noted omission.**

15 Mendoza Plaintiffs’ Objections to the Program Evaluation Completion Plan

16 **Mendoza Plaintiffs object to the recommendation to the extent it addresses**
17 **only the evaluation of “new initiatives.” (SMAR at 81:4.) There are many existing**
18 **programs and initiatives that warrant evaluation, including some referenced in the**
19 **proposed Completion Plans.** The Mendoza Plaintiffs therefore suggest that the District,
20 the Plaintiffs, and the Special Master together identify a practicable number of programs
21 and initiatives key to assessing successful implementation of the USP and that the
22 Assessment and Evaluation Department then undertake an evaluation of those
23 programs/initiatives.

24 **Mendoza Plaintiffs further object to the recommendation to the extent it omits**
25 **to direct that all evaluations of USP programs, like the EBAS system designed to**
26 **facilitate such evaluations, “review program effectiveness and ensure that, to the**
27 **extent practicable, program changes address racial segregation and improving the**
28 **academic performance and quality of education of African American and Latino**
students, including ELLs.” (USP, Section X, A, 1.)

1 Mendoza Plaintiffs additionally object to the omission of the Completion Plan
2 to provide that when “negative outliers” are identified, remedial processes be put in
3 place to correct the identified deficiencies.

4 **PROFESSIONAL LEARNING – USP SECTION II, J (AND OTHER USP**
5 **PROVISIONS CONCERNING PROFESSIONAL DEVELOPMENT AND**
6 **TRAINING)**

7 The Mendoza Plaintiffs agree with the Special Master’s findings and
8 recommendations concerning the manner in which the District delivers professional
9 development. (*See, e.g.*, SMAR at 83:16-25.) They also agree that certain substantive
10 areas require particular attention. However, they believe that one additional area also
11 warrants express attention: the training of District personnel in the use of the EBAS system
12 and its data. **They therefore object to the Completion Plan to the extent that it fails to**
13 **include the EBAS system and its data in the topics to be specifically addressed under**
14 **Item #2. (SMAR at 84:19-22.)⁴²**

15 Mendoza Plaintiffs further object to the Completion Plan to the extent it fails
16 to expressly require that professional development be organized not only by the
17 coordinator of professional development but also “through the director of culturally
18 responsive pedagogy and instruction.” (USP Section IV, J, 3.)

19 Further, while they support particular focus on the areas identified by the
20 Special Master (as well as the EBAS system and its data), they object to any
21 suggestion implicit in the recommendation that the District is somehow relieved of the
22 other professional development and training requirements set out in the USP,
23 including, but not limited to those expressly enumerated in USP Section IV, J.)

24 //

25 //

26 ⁴² Mendoza Plaintiffs note that there is a reference in this section of the proposed
27 Completion Plan to “Exhibit C”; however no such exhibit appears to be appended to the
28 SMAR. They therefore ask that it be provided to the parties and the Court and reserve
their right to object to that exhibit once they have had an opportunity to review it.

CONCLUSION

For the reasons set forth above, this Court should sustain the Mendoza Plaintiffs' objections to the SMAR and direct the Special Master to work with the parties to finalize the Completion Plans to provide the necessary level of detail and consistency among them.

Dated: April 11, 2018

MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on I electronically submitted the foregoing MENDOZA PLAINTIFFS' OBJECTIONS TO THE SPECIAL MASTER'S 2016-17 ANNUAL REPORT [ECF 2096] 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:

P. Bruce Converse
bconverse@steptoe.com

Paul K. Charlton
pcharlton@steptoe.com

Timothy W. Overton
toverton@steptoe.com

Samuel Brown
samuel.brown@tusd1.org

Robert Ross
robert.ross@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

Dated: April 11, 2018

/s/ Juan Rodriguez
Juan Rodriguez