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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S RESPONSE TO**
2 **OBJECTIONS TO 2016-17 ANNUAL REPORT**

3 **Introduction**

4 On February 27, 2018, the Special Master submitted his Annual Report for 2016-17 to the
5 Court. This Report included recommendations as to whether TUSD should be awarded unitary
6 status for the many provisions of the Unitary Status Plan (USP). On April 11, 2018, the Fisher
7 and Mendoza plaintiffs, and the District, filed their objections to the Special Master’s
8 recommendations. The Department of Justice did not file any objections. In all, 91 objections
9 were filed, 76% of them by the Mendoza plaintiffs.
10

11 On April 20, 2018 the Court directed the Special Master to respond to any of the
12 objections. On May 4, 2018, the Special Master requested that he be allowed to submit his
13 response to objections on May 10 and the Court so ordered. In order to facilitate the Court’s
14 assessment of his recommendations and the objections of the parties, this Report is organized
15 around each of the substantive sections of his Annual Report which is how the parties submitted
16 their objections.
17

18 The USP was developed as a consent decree by the parties, a process which took place
19 between January 2012 and January 2014. The Special Master participated in the development of
20 the USP. The USP was approved by the Court in February 2013.
21

22 In preparing his Annual Report 2016-17 the Special Master was mindful that Judge Bury
23 met by telephone with the parties and the Special Master in December 2017. At that time, Judge
24 Bury complemented the parties on the work accomplished thus far and indicated that his
25 expectation was that the case should be brought to a fruitful conclusion soon after the 2018-19
26 school year.
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1 The Court advised that if the Special Master did not recommend in his Report that the
2 District be awarded unitary status for particular elements of the USP, that completion plans for all
3 other elements of the USP should be included in the Annual Report. These completion plans
4 were to be specific with respect to actions the District would be required to take in order to
5 achieve unitary status and that timelines for District action should be specified.
6

7 Understandably, the Fisher and Mendoza plaintiffs are reluctant to acknowledge that the
8 District has done all it can reasonably do to eliminate the vestiges of past discrimination and
9 segregation and one might expect, the District believes that it has met all of the requirements laid
10 out in the USP and urges the Court to grant it full unitary status. Its objections to the Special
11 Master's Report focuses, of course, on those elements of the USP that the Special Master believes
12 requires additional work before the District is awarded unitary status for those actions. The
13 District complains that the plaintiffs and the Special Master are asking not only that the District
14 do what it could practicably do in implementing the elements of the USP but that the Fisher and
15 Mendoza plaintiffs and the Special Master are asking the District to do things that are not set out
16 in the USP.
17

18 In preparing his recommendations with respect to unitary status, the Special Master asked
19 whether for many of the provisions in the USP specific goals that the District needed to attain are
20 not specified in detail. For example, increasing the diversity of the professional staff of the
21 District.
22

23 In their criticisms of the District and their objections to some of the Special Master's
24 recommendations, the Fisher and Mendoza plaintiffs focus on whether narrowing gaps in student
25 achievement, participation or access have been achieved comparing white students with African
26 American and Latino students. While access is largely determined by policies and practices of
27 the District, student achievement and participation are heavily influenced by factors over which
28

1 the District has limited influence. For example, with respect to academic achievement there is
2 abundant research indicating that school-based influences on student test scores seldom accounts
3 for more than 40% of the variance in student achievement. This means that while student
4 outcomes should be examined, whether the District should be relevant from Court suspension
5 should depend significantly on the extent to which policies and practices essential to improving
6 students' outcomes have been implemented.
7

8 Mendoza plaintiffs argue throughout their objections that the success of the District
9 should be measured against conditions in the District prior to the adoption of the USP. The
10 Special Master, on the other hand, considers the baseline year to be 2014-15 and in most cases is
11 focused on progress made from that time until the 2017-18 school year. Many changes were
12 needed to implement USP. Particularly difficult actions involved the closing of several schools.
13 A new superintendent was hired in the summer of 2013. A great deal of work would have had to
14 occur in the final four months of the school year to affect substantial improvements. During the
15 13-14 school year, the District would be involved in implementing five dozen provisions of the
16 USP and necessary actions were going on during the 13-14 school year as routines were changed,
17 training took place, and many people were in jobs they had not held before. Those who study
18 organizational change point to difficulties in the initial phases of changes that involve changes in
19 behavior (and many of the requirements in the USP involve behavioral change) describe this. Of
20 implementation as an "implementation dip." Moreover, during the 13-14 school year the District
21 operated with an interim superintendent as a search to replace Superintendent John Pedicome
22 went forward. In other words, it would be remarkable if substantial change leading to significant
23 improvement would have occurred during the 13-14 school year. Thus, the four-year period
24 beginning in the 14-15 school year is a more appropriate time to measure the progress the District
25 made in implementing the provisions of the USP.
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1 The Fisher plaintiffs agree that assessing progress beginning with the 14-15 school year is
2 appropriate. They do so because they believe that Court should retain supervision over all
3 provisions of the USP and argue, as they have from the date the USP was approved by the Court,
4 that no specific timeline for the award of unitary status should be specified.

5
6 Throughout the District's defense of its position that it has already done what was
7 required by the USP and therefore should be granted unitary status, the District compares its
8 performance to that of other school districts, including those in Arizona, and to national data. The
9 Special Master believes that while this is informative, it is problematic. TUSD comparing
10 performance of other districts and to the nation as a whole at least has two limitations. First, we
11 do not know how representative the district's cited are of the total school districts have more
12 financial resources that are similar demographically to TUSD. Second, national data is not as
13 current as the data upon which determination of unitary status are being made. In some cases,
14 this may not make a difference, but we cannot know that. For example, during the Obama
15 administration, the Department of Justice and the Office for Civil Rights launched major
16 initiatives to reduce suspensions and disproportionality among races and this impacted schools
17 throughout the United States.

18
19 Consideration of objections by the Plaintiffs and the District has resulted in the Special
20 Master making changes to some of the completion plans he proposed in in his Annual Report.
21 Those amendments are described in this Report. However, the Special Master will prepare a
22 comprehensive listing of each of the completion plans as amended in a separate report to the
23 Court.
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1 **Analysis of Objections to the Special Master's Annual Report 1-4**

2 **Student Assignment**

3 The Special Master recommended that the District be awarded unitary status for student
4 assignment except for magnet schools. The Fisher and Mendoza plaintiffs both do not support
5 giving the District unitary status with respect to student assignment in any way.
6

7 The Fisher plaintiffs do not explain their position except to say that there is no focus on
8 trying to recruit African American students to magnet schools. The Special Master finds no
9 evidence that that assertion is correct. The District believes that it should receive unitary status
10 for student assignment and rest their argument in part on findings by Judge Frey.

11 Mendoza plaintiffs, number of objections to granting the District unitary status with
12 respect to all of the strategies to promote integration, except for magnet schools.
13

14 They object because they are concerned that students who are categorized as district
15 placement affects integration. The reasons students are placed by the District in different schools
16 has nothing to do with race. "District placement" refers to students enrolled in a school that is not
17 their neighborhood school because they qualify for, or participate in, certain programs. Direct
18 placement includes the following categories of students:

- 19
- 20 • Self-Contained GATE Students: students who have accepted placement in a Self-
Contained GATE program;
 - 21 • University High School Students: students who have accepted placement at UHS;
 - 22 • ELL Students: students who require specific ELD services;
 - 23 • Non-DL Students at DL Schools: students who live in the boundary of a DL
school who opt out of dual-language and are placed at a non-neighborhood school;
 - 24 • Exceptional Education Students: exceptional educational students placed at a
school that is not their neighborhood school to meet their needed accommodations
or for participation in a specific ExEd program;
 - 25 • Community Transition Program: students who are participating in a community
transition program; and
 - 26 • Open enrollment: Students who enroll in a school under Arizona's state open
enrollment statute, on a space available basis.
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1 In the last two years, seven schools crossed the integration threshold of 70% and the same
2 schools met the integration requirement of plus or minus 15% of other races. Table II-a shows
3 that this move to integration is not an aberration but rather part of the trend in each of the schools.
4 As the Special Master's Report suggests, there are other schools that go back and forth across the
5 integration lines. Tables II-b to II-j illustrate that these nine schools became integrated one year
6 and lost the status the next or vice versa. When all the data are taken into account, it is clear that
7 the best tool for integration is magnet status. Thus, the Special Master's emphasis on ensuring
8 that the District is capable of and committed to magnet schools. There are themes not explored
9 by the District that have been proven successful elsewhere.

11 These tables also show that there is considerable mobility in the District. And it is
12 relevant to the provision of unitary status that each of the nine schools would be considered
13 integrated in most districts, as would other district schools.

15 If there were a reliable strategy for integrating other schools that are not magnets, the
16 Court might order the District to pursue these strategies. But strategies that involuntarily move
17 families from one school to another invite families to rethink whether they should be enrolling
18 their students in TUSD. Some families will stay in the district but Arizona makes it incredibly
19 easy to find options in charters or neighboring school districts. Moreover, most students who
20 move from school to school pay a price in terms of adjustments that undermined their learning, at
21 least for a short time.

23 The Mendoza plaintiffs also object to the Special Master's proposal to grant the District
24 unitary status on the grounds that many of the schools that are now more integrated are magnet
25 schools. But the USP does not create two pools of schools within which integration must be
26 improved. But, the TUSD experience draws attention to the importance magnet schools an
27 increasing integration.

28

1 The Mendoza plaintiffs argue that integration can be explained in some schools by
2 demographic changes. The purpose of integration strategies is to promote demographic changes.

3 In determining whether to maintain supervision of the District with respect to student
4 assignment, the court will want to consider whether the completion plans proposed by the
5 Mendoza plaintiffs would lead to greater integration. The Mendoza plaintiffs want to undertake
6 two studies to return to determine the relative effects of different strategies the District has
7 implemented taking into account demographic changes. The results of such a study would be
8 problematic because many actions that might affect integration are happening simultaneously,
9 including actions not specifically meant to promote integration such as the implementation of
10 ALEs. Mendoza plaintiffs then say that they believe that the District placement may have
11 affected the integrated status of schools or the District placement could be used foster integration.
12 In this Report, the Special Master explains that District placement occurs primarily to meet
13 particular needs of individual students and is not a tool for integration¹. The Mendoza plaintiffs
14 also want to wait on the provision of unitary status until the Governing Board decides whether to
15 restructure high schools. This restructuring may not occur and, in any event, the potential effects
16 on integration will be identified in the NARA process. Finally, the Mendoza plaintiffs want the
17 District to exclude alternative schools from any analysis. The Special Master did this in his
18 analysis. In any event, these schools now enroll less than .003 of the District's students.

19 To review: leaving the alternative schools out of the analysis, between 2014-15 and him
20 and 14-15 and the current year the number of racially concentrated schools went from 35 to 30.
21 Number of integrated schools went from 17 to 25. Total enrollment in integrated schools
22 increased by 2154 and the number of students in racially concentrated schools dropped by 2542.

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27 ¹ District placement for open enrollment would seem that it might be used to foster integration.
28 However, parents to choose a particular school must be admitted to that school if there is space available.

1 The District should be awarded unitary status for student assignment except for magnet schools.
2 The completion plan to that effect is provided in the Special Master's Annual Report.

3 A very substantial number of students are involved in placement by the District – almost
4 11,000. These students are taking advantage of the state law which allows them to pursue open
5 enrollment in any school as long as there is room. When a school is “over enrolled” the policy
6 for oversubscribed schools comes into play. That policy gives priority to students whose
7 movement to the new school will enhance integration. The District has no ability to move
8 students to a different school to improve integration unless the school the family seeks for their
9 student would be full if they enrolled. Thus, current policies do as much as they can with respect
10 to integration.
11

12 In the SMAR , the Special Master identifies numerous examples of the failure of the
13 District to do all it could to strengthen its magnets schools and attract more diverse student
14 enrollment. The District argues that it deserves to be awarded unitary status for magnet schools
15 and as justification lists a number of things most of which are part of providing a good education
16 in any school. The District identifies Drachman as a magnet school that is now integrated.
17 However, in changing the grade structure to include middle grades, the District actually reduced
18 the extent to which school is integrated because the upper grades are racially concentrated.
19

20 The District asserts further that it proposed more than a dozen new magnets and elsewhere
21 argues that these proposals were, for the most part, opposed by the plaintiffs and the Special
22 Master. Suffice to say that there when the proposals were opposed, the reasons were that the
23 costs were extraordinary and/or, the prospects for successful integration were quite limited. Tully
24 elementary school is cited as an example of the District's commitment to magnet schools.
25

26 However, Tully was already a magnet school. The theme of the school was changed as a result of
27 a proposal by the Special Master to increase the number of ALE opportunities. The completion
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1 plan proposed by the Special Master is aimed at having the District demonstrate the development
2 of a proposal for magnet school that is carefully thought out and has high prospects for
3 integration. While the Special Master does not suggest that the District need establish a new
4 magnet, it should. As the data show, magnet schools have been more successful in improving the
5 number of students in integrated schools than non-magnets.
6

7 **III. Transportation**

8 The Special Master recommends that the District be awarded unitary status for
9 transportation for those provisions for the USP that the Special Master recommended be released
10 from Court supervision. Special Master finds that the District has effectively implemented its
11 obligations with respect to transportation. But it seems appropriate to couple unitary status for
12 transportation to the award of unitary status to those provisions of the USP in which
13 transportation plays an integral role. There is no separate completion plan for transportation. The
14 Fisher plaintiffs have no objection to the Special Master's recommendation. The District
15 however argues that the Court should withdraw supervision with respect to transportation since it
16 has effectively implemented transportation provisions and there is no reason to believe they
17 would not do so for those elements of the USP that Special Master does not recommend for
18 unitary status.
19

20 The Mendoza plaintiffs want the completion plan for transportation to include an analysis
21 of the effects of express buses on integration and to modify its plans regarding express buses
22 accordingly. There is no need for this analysis the district operates for express buses serving 32
23 students total. Twenty-six of the students are going to Sabino High School. The District intends
24 to maintain that express bus because it has some effect on integration. In the other schools,
25 express buses have no meaningful effect on integration.
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1 The District has undertaken a number of studies on how best to facilitate integration by
2 providing buses when students choose a another school in the district than their beaver hood
3 school when this achieves integration. These studies often involve surveys but there is reason to
4 believe that these surveys are totally unreliable sources of information. Two years ago the
5 District conducted a substantial survey about interest in express buses. Hundreds of families
6 indicated an interest in moving from West-side schools to East-side schools and when express
7 buses were provided, there were few riders.

9 Special Master sees no reason to withhold unitary status for transportation when the
10 activities involving that transportation are made unitary.

11 **IV. Administrators and Certified Staff**

12 In the SMAR, the Special Master recommends that the Court award the District unitary
13 status with respect to all but three provisions of Section IV of the USP. In this Report, the Special
14 Master recommends that the District undertake one additional action in an effort to more fully
15 diversify its teaching staff. The District is clearly unsatisfied with the Special Master's
16 recommendation, but it does not explicitly object to those proposals.

18 The Mendoza plaintiffs object to the funding by the Special Master that the number of
19 first-year teachers serving in schools serving below the district average and in racially
20 concentrated schools as almost 75% in the two most recent years. The Mendoza plaintiffs
21 conclude from data they have reviewed, that the percentage was 77.5 one year and 78.7 in the
22 second. The numbers of first-year teachers appointed varies almost daily at the beginning of the
23 school year. The difference in the Special Master's analysis and that of the Mendoza plaintiffs is
24 irrelevant to the point being made – that the District is appointing a very large number of first-
25 year teachers to schools that the USP intends they should not. While it is true that the
26 superintendent can approve any exceptions to this proposition, it is clear that no one intended in
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1 developing the USP that the number of beginning teachers in what some call “hard to teach
2 schools” would be as great as it is. The fact that this happens in Tucson and in many other
3 districts is one of the major reasons why it is so hard to narrow the achievement gap. The Special
4 Master is proposing an additional element to the completion plan.

5
6 Do the plaintiff’s object that the Special Master urges that this policy with respect to first-
7 year teachers be applied only to schools serving below the district average even though the USP
8 includes racially concentrated schools. There is no educational reason to limit the appointment of
9 beginning teachers to racially constituted schools. There are two reasons for this. First teachers
10 learn from fellow teachers and schools where students are achieving above the district average is
11 likely that they will have above average teachers from whom they can learn. Indeed, four
12 teachers to teach at above average achieving schools that are racially constituted is likely to
13 disrupt any biases they might have about students of color. Moreover, teachers and racially
14 , the two schools with above average students are less likely to leave that school when the
15 opportunity occasioned by their seniority so allows. This in turn would limit the mobility of
16 teachers that underachieving students experience. The Mendoza plaintiffs provide no rationale
17 for not assigning beginning teachers to racially constituted schools.

18
19 In most large districts, teachers are hired through central office human resource
20 departments. In TUSD, teachers are typically appointed by principals in schools to which they
21 apply. The consequence of his practice is that many teacher candidates do not typically seek out
22 schools that serve large proportions of low achieving students or schools serving children who
23 come from low income families. Like exceptional coaches who seek out the best players,
24 effective principals seek to recruit teacher candidates they believe have the greatest promise. The
25 consequence of this is the District lacks the capacity to place beginning teachers in schools that
26 do not have diverse teaching staffs or to recruit teachers with the greatest promise of effectiveness
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1 to schools serving students who are performing below the district average. The Special Master
2 recommends that the District alter its recruitment and placement policies with respect to all
3 teachers, including beginning teachers, so that the central office can act more strategically with
4 respect to the placement of teachers than is now the case. One could anticipate objections to this
5 policy that it could lead to the inability of the District to hire teachers of any background. But
6 most school districts manage this problem and the central office has the capability to utilize
7 incentives and extra support to place teachers in schools where they are needed most.
8

9 In his recommendations the Special Master acknowledges that the District has not been as
10 effective as even it wishes to be in increasing the diversity of administrators and certified
11 personnel, especially teachers but explains that the ability of the District to recruit – and retain –
12 teachers because of the teaching shortage nationally and in Arizona. The Fisher plaintiffs assert
13 without any evidence and in the face of widespread consensus to the contrary, that there is no
14 shortage of teachers. They argue further that the District has failed to institute appropriate
15 recruitment measures but provide no examples of measures that would be or have been shown to
16 be effective.
17

18 It is too late in the hiring process to change the procedures. However, given that there is
19 no other plan to increase diversity or to strategically place candidates with great promise where
20 they are most needed (very small number of highly proficient teachers are teaching in schools
21 with the lowest academic performance of students), it seems worth systematically identifying
22 school districts with centralized hiring systems or hybrids to discover how alternatives to the
23 current system might be more successful in recruiting diverse teachers and avoiding the extensive
24 hiring of beginning teachers in schools that serve many struggling students. The USP indicates
25 that the pursuit of diversity in the professional cadre should be handled by human resources
26 department. But in TUSD, the HR department handles basically administrative tasks and there is
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1 no central office effort to use available incentives to hire teachers where they are most needed.

2 The Special Master will alter the completion plan to add this consideration of options.

3 Plaintiffs have expressed concern about the number of African American administrators,
4 especially non-site administrators. As Table IV-2 indicates the number of African American non-
5 site administrators dropped from 9 to 5 over the last five years. The number of Latino non-site
6 administrators went from 12 to 11, and white non-site administrators from 28 to 25 reflecting the
7 general cutback in central administrative positions. *See* Tables IV-1 and IV-2.

9 There are two sources of recruitment for key leadership positions (though not all non-site
10 administrators are in key positions): recruitment from current TUSD leaders and from other
11 districts. Recruiting from other districts is difficult because of the demand for African American
12 administrators throughout the country in communities with larger numbers of African Americans
13 and the related social infrastructure that comes with larger ethnic populations. Therefore, the
14 District will have to rely primarily on recruitment from within. In the last five years, the number
15 of principals and assistant principals from whom key leaders would be chosen in most cases has
16 grown from 8 to 13 African American site-administrators. The number of Latino site-
17 administrators has increased from 50 to 56 and the number of white site-administrators has
18 dropped from 69 to 58. There are now 11 more African American and Latino site administrators
19 and there are 11 fewer white site-administrators.

22 The Mendoza plaintiffs suggest additions to the completion plan proposed by the Special
23 Master. The first proposal is to study the relative effectiveness of different recruitment strategies.
24 The Special Master believes that the District has been studying the efficacy of different strategies
25 and he will ask the District to prepare a report accordingly. But ordering such a study is
26 unnecessary and only serves to hold up the granting of unitary status for the general hiring
27 process.
28

1 The Mendoza plaintiffs want a completion plan that has the District preparing a report on
2 the process for authorizing the appointment of first year teachers to low performing and racially
3 concentrated schools. As the Special Master points out, the superintendent does not review the
4 appointment of each individual teacher but delegates this responsibility, a practice the Special
5 Master sees as sensible given that the senior staff responsible for overseeing the schools are in a
6 better position than the superintendent to understand the needs of those schools and the fit
7 between the characteristics of the schools and the capabilities of the teachers to be hired. The
8 Special Master is proposing that the District undertake a study of alternative strategies for placing
9 beginning teachers more strategically than does the process now used by TUSD. This study shall
10 address the concerns of the Mendoza plaintiffs.
11

12 As the Special Master did in his Annual Report, the he recommends that the Court provide
13 unitary status to the District for the USP sections dealing with staffing except for site level
14 teacher diversity, efforts to reduce attrition and grow your own programs. In the development of
15 a new plan for growing your own, the District shall include strategies for enhancing the number
16 of African American and Latino central office administrators, as well as school site leaders.
17

18 The Mendoza plaintiffs object to providing unitary status for staffing until the question of
19 whether the list of administrators and teachers who were described as “blacklisted” in the media
20 has been examined as potential sources of employees. In November 2017, the District examined
21 the records of all professional staff who have been listed as “not to hire.” Individuals whose
22 record suggests that they may have been wrongly categorized were identified and invited to be a
23 candidate for employment. There were few responses and no hires from this relatively small
24 group of former employees. The District provided a description of its actions in this respect (*See*
25 Exhibit IV.1). The Special Master believes there is no reason to hold up an award of unitary
26 status because some teachers and administrators may have been unfairly identified as on higher
27
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1 herbal.

2 **V. Advanced Learning Experiences (ALE)**

3 The District asserts that it should be granted unitary status for ALE because it has
4 accomplished all of the tasks specified in the USP. The ALE action plan and the ALE
5 supplement to the ALE action plan. The Mendoza plaintiffs have submitted (after filing their
6 initial objections to the Special Masters Annual Report) a detailed list of the failures of the
7 District to implement provisions related to increasing access, participation and outcomes for
8 ALE. The Special Master asked the District to respond to the Mendoza charges of
9 noncompliance and the District responded.
10

11 The Special Master is now confronted with conflicting claims that he has no way to
12 resolve in the short-run. The Special Master proposes to meet with the Mendoza plaintiffs and
13 the District within the next 10 days to seek clarification of the different assessments of the
14 District's actions. Within 10 days of such a meeting, the Special Master will submit a supplement
15 to this Report.
16

17 **Culturally Responsive Pedagogy**

18 The Fisher plaintiffs have no objection to the Special Master's recommendations for CRP.

19 **Culturally Relevant Courses**

20 The Fisher plaintiffs do not object about any specific recommendations of the Special
21 Master. But they oppose CRC. DOJ, the Mendoza plaintiffs and the District all strongly support
22 offering culturally relevant courses, as does the Special Master.
23

24 The Mendoza plaintiffs object to the Special Master's recommendation to the Court that
25 CRC be awarded unitary status. They assert that the courses offered were not genuine CRC
26 courses and imply that they lacked focus on the particular ethnicities that defined CRC courses
27 and are more like multicultural courses. The Mendoza plaintiffs also object to providing unitary
28

1 status four CRC on the grounds that the District may have modified CRC content to avoid
2 scrutiny by the state. Now that the state provisions that effectively outlawed ethnic study courses
3 (the precursors of CRC), the Mendoza plaintiffs want the curriculum reviewed and if appropriate,
4 restored to its former content.

5
6 The Special Master has conferred with the District and is satisfied that the high school
7 courses described in his Annual Report are focused on African American and Latino experiences.
8 Middle grade courses are comprised of two modules one of which focuses on African American
9 perspectives and the other on Latino perspectives. Students taking these courses take both
10 modules. This judgment by the District to organize middle grade courses in this way is an
11 appropriate exercise of its responsibility for curriculum and has the virtue of having students of
12 all races learn about the issues that has shaped the experience of African Americans and Latinos.

13
14 The stipulation with respect to CRC courses developed by the Mendoza plaintiffs and the
15 District call for having CRC courses at all high schools. Currently there are no CRC courses at
16 University High School or Santa Rita. While students at University High School could take CRC
17 courses at Rincon High School, almost all UHS students take core courses that are AP courses.
18 The District is working with the college board to develop at least one CRC / AP course. The
19 Special Master sees no reason why the District should not abide by its agreement to create CRC
20 courses at Santa Rita High School and will amend his completion plan for CRC accordingly.

21
22 The Mendoza plaintiffs assert that the District has developed a number of courses that the
23 District counts as culturally relevant that do not fit the definition of such courses provided for the
24 USP. The courses cited by the Mendoza plaintiffs have not been approved by the Board or
25 offered to students. And they were not counted by the Special Master in his analysis of the
26 substantial progress made (*see* the Special Master's Annual Report).

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1 Many of the objections by the Mendoza plaintiffs have to do with the failure of the
2 District to implement the multiple provisions of a stipulation agreement negotiated between the
3 Mendoza plaintiffs and the District and approved by the Court.

4 This stipulation, developed by previous leadership in the District, basically surrenders
5 essential curriculum development to a national panel though the panel was not consulted about
6 playing the roles stipulation provides for.

7 Citing the stipulation, the Mendoza plaintiffs apparently want the entire curriculum to be
8 evaluated on an annual basis potentially undermining years of work by District staff and teachers
9 who offer these courses. Moreover, the national panel was to play a major role in such
10 assessment, an inappropriate recurrent role for the panel and one for which its members were not
11 consulted.

12 The Mendoza plaintiffs believe that the stipulation is meant to be enforced in perpetuity
13 whereas the District says that that was not its understanding.

14 It seems clear that the stipulation will continue to be a source of conflict between the
15 Mendoza plaintiffs and the District even though it is also clear that the superintendent and senior
16 staff in the District wholeheartedly support CR courses. The Special Master believes that the
17 District has done an extraordinary job in implementing the CRC and deserves unitary status. On
18 the other hand, it is also the case that provisions of the stipulation have not been fully
19 implemented. The Special Master withholds his recommendation that the Court provide unitary
20 status for CR courses.

21 The Special master proposes that an interim completion plan be endorsed by the Court
22 directing the parties to reevaluate the provisions of the stipulation before its provisions are
23 implemented in the short run. The District should prepare a draft of the revised stipulation
24 agreement no later than June 15, 2018 for review and comment by the plaintiffs and the Special
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1 Master. Or, the District could propose that the stipulation plan is no longer needed and submit a
2 realistic plan for evaluation of the CRC initiative going forward. This revised stipulation should
3 also clarify the role of the national panel and consult the panel accordingly.

4 **Graduation, Dropout, Retention and Absenteeism**

5 The Mendoza plaintiffs object to the Special Master's Annual Report with respect to its
6 failure to address the goals and action plans for ELL students.

7
8 Motivated by the Special Master's Report, the parties met to discuss ELL graduation rates.
9 Each year the District has set high goals with respect to graduation, a 50% increase in the number
10 of students or increasing the rate of graduation by 10% for the coming year. If this goal were
11 achieved would be substantially greater than the state level, at least for 16-17 (more recent data
12 are not available). The Mendoza plaintiffs urge that the completion plan be developed to include
13 goals for dropout retention and absenteeism as well as an action plan to achieve those goals. The
14 Special Master agrees that such a provision should be part of a completion plan for ELL
15 graduation, dropout, retention and absenteeism. The parties should meet to discuss the elements
16 of an action plan to achieve specific goals by June 1, 2018.

17
18 **Special education**

19 The Mendoza plaintiffs asked for a detailed report on how the District ensures that
20 students with disabilities receive the appropriate services. Special Master examined relevant data
21 for each of the major disability categories and interviewed staff in the exceptional education
22 department. Special Master found no evidence of discrimination and a careful process that
23 involves two levels of review to ensure that students receive appropriate services and they be
24 returned to conventional instruction as soon as possible.
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In-school Integration

1 The Special Master noted in his Report that gifted and talented programs that required that
2 a test be given to determine eligibility would in fact be an example of de facto segregation. The
3 Mendoza plaintiffs, as they do for virtually every recommendation that the District received
4 unitary status object and want the District to undertake a major study. When students are
5 assigned to classes because of differential achievement or potential achievement as measured by a
6 cognitive test, this will result in tracking. The way to avoid this is to emanate gifted and talented
7 programs that require tests for participation. Special Master assumes that the Mendoza plaintiffs
8 are not seeking the elimination of test-based gifted and talented programs. Therefore, there is no
9 need for such a study and no need for court action.

Inclusiveness, Intercultural Proficiency, Harassment and bullying

12 The Special Master has proposed a completion plan to include a study of existing data
13 from student and teacher surveys to determine whether students feel accepted by others racial
14 acceptance expectations by teachers bullying and related concerns. The District conducts annual
15 surveys with high rates of return that are appropriate to address these issues. The purpose of this
16 is to discover whether there are problems that need to be addressed. The Mendoza plaintiffs
17 believe that the survey is not adequate. In addition, the Mendoza plaintiffs want the District to
18 study whether parents, students and staff can identify the person or unit to make a report of
19 harassment or bullying unlike one whether they perceive that the person or organization has the
20 independence to address the issue complaints they might make. This would be a major effort but
21 important to do if the data suggested that there are problems that need to be dealt with. Thus,
22 before other actions are undertaken as suggested by the Mendoza plaintiffs, it seems wise to
23 determine if there are problems and what the nature of those problems are. For example students
24 of different races perceive their experiences differently and does this make a difference by grade
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1 level or other school characteristics. It is not broke don't fix it.

2 In connection to these issues and others related to success in ALEs and academic
3 challenges, the Special Master identified the importance of creating school cultures that are
4 achievement focused and build confidence among students that they can and should achieve at
5 high levels. Mendoza plaintiffs support this idea as does the Court.

6
7 The Special Master met recently with the superintendent and learned that the District has
8 undertaken a strategy for building achievement oriented school cultures that seek to enhance
9 student interest as well as confidence in achieving at high levels. Steps taken thus far include the
10 expansion of avid programs with the ultimate goal of having the District be an avid district, the
11 development among students and teachers of achievement mindsets, building students persistence
12 or "grit," culturally responsive pedagogy, dealing with "stereotype threat," and expanding CRC.
13 In addition, there is a recognition that is important to work with families so that they can
14 encourage their students to pursue high goals that they might otherwise see as risky. The
15 superintendent recognizes that wishing does not make it so, so as schools add seven days of
16 professional development that is necessary to facilitate teacher capabilities and confidence that
17 their students can achieve.
18

19 It does not appear that a Court order is now needed to promote the development of these
20 achievements oriented to school cultures. The Special Master will ask the superintendent to
21 prepare the description of the work the District is undertaking to achieve this goal.
22

23 **Academic Interventions**

24 The Mendoza plaintiffs want a study of academic interventions going back to 2014-15.
25 The District does not have the data to do such a study such as the one proposed by the Mendoza
26 plaintiffs. However, the primary process for ensuring that students receive appropriate academic
27 interventions is the MTSS system. The completion plan for evidence-based decision-making
28

1 involves a comprehensive study of how the MTSS system is functioning to be conducted
2 collaboratively with the District, Special Master and the Implementation Committee.

3 **VI. Discipline**

4 The Special Master does not recommend that the District be awarded unitary status for
5 discipline. Mendoza plaintiffs object to the Special Master's Report on the grounds that the data
6 he uses is misleading. This may be and there is no way to determine that without intensive
7 discussions between the District, the Plaintiffs and the Special Master. What is certain is that the
8 data provided to the Plaintiffs and the Special Master by the District reports on the number of
9 individual students who experience disciplinary action but does not provide information on the
10 number of incidents. At no time did the Plaintiffs or the Special Master object to the fact that
11 they had only been provided with "unduplicated" data.
12

13
14 It is important that the District provide data in the two forms if one is to understand the
15 actual level of progress made and what the strategy should be to remedy the problems.

16 The completion plan for discipline will have two amendments.

17 First, the Plaintiffs, Special Master and the District will meet by June 15, to clarify how
18 data on student disciplinary actions will be reported. All suspensions that remove students from
19 classroom instruction for more than a day will be treated as exclusionary unless the parties agree
20 differently.
21

22 Second, school-level data will be reported in two ways: (a) individual students being
23 counted only once for each reporting period and for the school year, and (b) by the number of
24 incidents for each reporting period and for the school year.
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1 **Family Engagement**

2 The District asserts that the Special Master did not recommend unitary status because the
3 District did not adequately train staff to engage in two-way family engagement.² The District
4 points out that it does facilitate training through SAIL. However, SAIL involves multiple topics
5 and a small part of the SAIL and on to its process on related to two-way family engagement is
6 quite limited. Moreover, that is not the only need for improved family engagement strategies.
7 There is no protocol, guidelines or handbooks for District staff on how best to carry out family
8 engagement. Members of the implementation committee find as they visit schools that family
9 engagement varies considerably in both its depth and breadth. In his Annual Report, the Special
10 Master seeks to remedy this weakness in the District's family engagement efforts.

11
12 The Fisher plaintiffs do not object to the Special Master's recommendations with respect
13 to family engagement.
14

15 Mendoza plaintiffs identify numerous objections to the Special Master's recommendation
16 that the activities for which the Family Engagement Coordinator is responsible, in particular, the
17 family centers, should be awarded unitary status. The Special Master recommends, however, that
18 the family engagement activities at the school-level should not receive unitary status and this
19 Report seeks to modify the functions of the family engagement coordinator.
20

21 The Mendoza objections fall into two categories:

- 22 1. The information collected by the District regarding family engagement is
23 insufficient to make a judgment that the District has adequately discharged his
24 responsibilities for family engagement
- 25 2. The family engagement centers, while they carry out multiple functions, do not
adequately address educational issues.

26 ² Two-way family engagement means that in addition to assisting families to help their children
27 learn, teachers and administrators should learn from families about their students' interests, needs,
28 limitations, challenges and other experiences that students bring with them to the classroom and influence
how and what they learn.

1 The District has initiated a more robust approach to gathering data on family engagement
2 for 2018-19 and making it accessible electronically so as to facilitate analysis. The Mendoza
3 plaintiffs go into some detail about what information should be collected and how.

4 The Special Master believes that the steps related to data on participation that the District
5 will take during 18-19 school year are sufficient and recommends that the District consider the
6 suggestions of Mendoza plaintiff. As noted at the outset of this Report, the back-up plan for
7 maintaining Court supervision of the District is apparently to collect additional information. It is
8 desirable to collect additional information when it is clear what the purposes for such information
9 are, how they will be analyzed, and that are reasonable in the costs, in time and money are for
10 collecting that information. For the Court to prescribe particular data to be collected and
11 particular modes of data collection is unlikely to lead to the effective use of that data. The
12 District is often in a better position than the plaintiffs, the Special Master, or the Court to know
13 what information would be most productive for enhancing family engagement.

14 Given that the District has already enhanced it's information gathering related to family
15 engagement since its Annual Report, the direction by the Court to the District to develop a plan
16 for collecting and improving information related to family engagement seems sufficient.

17 Among the difficulties of gathering information from families relating to their needs and
18 degree of satisfaction with available services are that those who show up to participate and
19 therefore participate in the surveys are not representative and would most likely be satisfied with
20 the activities in which they engage in the family centers. Moreover, collecting ethnic data is
21 problematic since many families are multiracial and, given the political environment in Arizona,
22 may not participate because of concerns about immigration issues.

23 There is substantial research available on how schools can facilitate family engagement.
24 This research is a source of information about directions the District should be taking that is
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1 likely to be more productive than taking surveys. Inevitably, surveys will yield limited
2 information and participation. The District has recognized the importance of reaching out to
3 available experts and is partnering now with the national organization at Johns Hopkins
4 University that provides services to schools in the development of family engagement strategies.
5

6 The Mendoza plaintiffs are correct in noting that the activities of the family centers have
7 little directly to do with ways of improving student learning. Many of the activities of the family
8 centers, while apparently meeting the needs of some families, are activities commonly carried out
9 in most communities by community organizations other than schools. Such activities deal with
10 physical and mental health, housing support and managing finances. These are no doubt
11 important to the families who participate but given that the District staff and financial resources
12 are limited, the contributions that centers make to improving the education of the District children
13 might be greater if District resources were focused more sharply on educational issues.
14

15 It follows that most education-related issues that could productively be addressed by the
16 District occur at the school-level were families have a greater incentive to be involved in the
17 pursuit of strategies to enhance the learning opportunities outcomes of their own children. And,
18 of course, two-way communication happens at the school-level not at district centers.
19

20 It might be argued that these centers, in providing, social services facilitate the bonding of
21 families and schools. But this is much more likely to happen at the school-level. But building
22 trust and partnering is much more likely to happen at the school-level.

23 Changes to the Special Master's completion plan for family engagement shall include:

- 24 1. The District shall enhance those functions a family engagement centers that are
25 related directly to the facilitation of student learning.
- 26 2. The Office of the Family Engagement Coordinator shall include in its functions
27 the training of the family leaders in each school throughout the District.
28

Extra-Curricula

1 The Fisher plaintiffs object to the Special Master's recommendations related to
2 extracurricular activities on the grounds that cheerleaders are forced to pay substantial amounts
3 for their uniforms and this precludes African American from participating as cheerleaders. But
4 this assertion is not correct. The District provides free uniforms for all cheerleaders (Spirit Line),
5 athletes, and band members. These uniforms belong to the school and are returned to the school
6 when the season ends. If a team (such as a cheerleading team) decides they want a different
7 uniform than what is provided by the District, the team as a whole must fundraise for all
8 uniforms, and no individual member may pay for their uniforms. The Director of Athletics
9 ensures this policy is followed. The only required fee for any student involved in athletics is a
10 \$65 participation fee, and this can be waived.

Facilities and Technology

11 The Fisher plaintiffs believe that the District should not be relieved of Court supervision
12 with respect to facilities arguing that many school facilities are in need of substantial
13 improvement. There is no question that facilities could be improved and should be. But the
14 Special Master and the Implementation Committee found no evidence that there was what might
15 be called a facilities-gap between schools with relatively substantial members of white students
16 and schools there were racially concentrated. In other words, there is no evidence of
17 discrimination by the District with respect to the condition of school facilities.

18 The Fisher plaintiffs assert that the District has misused technology funds but they provide
19 no examples. They assert that technology equipment is not placed where there is greatest need
20 though efforts to improve access to and use of technology's prioritized racially concentrated
21 schools and schools where there are the largest proportion of African American students.

1 The District argues that it has done all it needs to do to satisfy the requirements of the
2 USP with respect to technology. The District has significantly improved student access to
3 computers and other classroom equipment. However, the real payoffs to students with respect to
4 technology have to do with the extent to which technologies are used to enhance problem-solving.
5 Student use of technology is dependent on the extent to which their teachers are able to make
6 effective use of technology to enhance student learning. This, in turn, requires teacher training.
7 When the District sought partial unitary status for technology a year ago, the District essentially
8 acknowledged that it had not trained teachers well enough to be granted unitary status for that
9 element of the technology requirements. The District now asserts that its training of teachers is
10 sufficient because there is a teacher technology liaison assigned to each school. These teachers
11 however, do not have release time to provide such training. The Special Master recommended
12 that the District receive unitary status with respect to hardware and software. However, the
13 District's efforts to prepare teachers to use these resources is inadequate and he explains why this
14 is so in his Annual Report.
15
16

17 In his Annual Report, the Special Master observes that the District unilaterally modified
18 the facility condition index (FCI) arguing that the change was inconsequential. The Special
19 Master concludes that it is not up to the District to determine whether a change such as the one
20 the District undertook is consequential. While there does not appear to be a substantive problem
21 here, the proposed change desired by the District shall be submitted to the Plaintiffs and the
22 Special Master for review and comment as proposed by the Mendoza plaintiffs. This provision is
23 already part of the completion plan submitted by the Special Master.
24

25 It appears that the availability of broadband Wi-Fi access varies throughout the District
26 schools. The completion plan for technology shall include the following:
27
28

- 1 1. The District shall, no later than May 20, propose for review and comment by the
2 Special Master and the Plaintiffs, revision of the TCI/multiyear technology plan to
3 include a wireless Internet conductivity category.
- 4 2. The District shall update the TCI identifying school conditions as they relate to
5 wireless Internet connectivity no later than June 15.
- 6 3. To the extent the revised and updated TCI reveals inadequate Internet speeds then
7 racially concentrated schools and schools serving students who are achieving
8 below the District average they should develop a plan for remedying the situation
9 and submit it to the Plaintiffs and the Special Master for review and comment by
10 June 30. This plan shall include dates for addressing any disparities.

11 **X: Evidence-based accountability System and Organizational Learning**

12 As explained in the introduction to this Report, the USP and the Special Master's Annual
13 Report are organized differently with respect to the sections identified with roman numeral X.
14 The reason for this is that throughout the USP there are provisions that have to do with the
15 District's capacity to use evidence to enhance decision-making with respect to student learning
16 and accountability. The Special Master explains that the evidence-based accountability system
17 (EBAS) is more than a sophisticated and robust technology, it is a framework for identifying and
18 making accessible data from many sources. Whether the District has effectively implemented
19 this system can only be determined by looking at how well the data are utilized. Is not feasible to
20 examine in detail the extent to which the evidence embodied in EBAS is put to use (e.g., to guide
21 instruction in classrooms). Accordingly, the Special Master identified three areas of action in
22 which resources available through EBAS are particularly important and proposes that the Special
23 Master and Implementation Committee examine how well personnel in these areas of action
24 utilize data to guide decision-making.

25 The Fisher plaintiffs do not comment on the recommendations made by the Special
26 Master in Section X of his Annual Report.

27 The District claims that the development of the EBAS software and training personnel to
28 use it should negate the recommendations of the Special Master in Section X of the SMAR. The

1 District bullishly asserts that it's student information system (i.e., EBAS) "...far exceeds that
2 which is employed in virtually every other school district in the United States." While the
3 District student information system is quite good, there is no way that the District could reach the
4 conclusion that it is a model for the nation.

5
6 In its comments on Section X of the Special Master's Report the District also asserts that
7 it has fully met the USP's requirements with respect to budget development, the notice and
8 request for approval process and a webpage concerning all USP required elements. The Court is
9 well aware that the budget development process has been a conflictual one. However, the Special
10 Master believes that the process itself is sound. But because many of the recommendations of
11 Special Master would continue to be in place if the Court were to approve them, it seems
12 inappropriate to grant the District unitary status with respect to the budget. Should the Court
13 grant the District unitary status in the domains that the Special Master recommends for release
14 from supervision, he assumes that the budget process would apply only to those elements of the
15 USP still under court supervision. While the SMAR does not deal with the NARA process and
16 the webpage, he recommends that those provisions be sustained until the District is awarded
17 unitary status.
18

19
20 Mendoza plaintiffs focus attention on requiring the District train all of the personnel in the
21 District on how best to use the capabilities of EBAS.³ However, knowing whether appropriate
22 training took place and what appropriate means is relatively unimportant because the District
23 could easily satisfy this requirement of the USP by providing all employees with workshops of an
24 hour or two and/or online information. What is more important and what the completion plan

25
26 ³ In Special Master's Annual Report points out that EBAS has evolved as a an information system
27 that has substantial capabilities beyond those conceived in the development of the USP and to make this
28 point urges the redefinition of the system as an organizational learning system. However, in order to
facilitate the work of Court and to keep the objections and response to them on track, Special Master uses
EBAS as the term to cover the discussion in this Report.

1 should focus on is whether the capabilities of EBAS are utilized in prescribed ways. Mendoza
2 plaintiffs appear to agree with this position whom they reference the functionality of the MTSS
3 (*see* ECF 2101, page 69, lines 20-25). In his Annual Report, the Special Master recommends that
4 the District and the Special Master work together to identify the essential elements of the MTSS
5 so that a rubric for assessing how well staff use the capabilities of the MTSS to ensure that
6 struggling students receive the support they need.
7

8 Assessing the extent to which teachers and administrators and other staff use MTSS is an
9 effective way of determining the scope and effectiveness of EBAS.⁴

10 The Mendoza plaintiffs want assurances that the elements of EBAS defined in Appendix
11 A of the USP are incorporated. The Special Master amends the completion plan for Section X of
12 his Annual Report as follows: The District shall ensure that the information identified in
13 Appendix A of the USP is included in EBAS and, if it is not, the District shall explain why.
14

15 The Mendoza plaintiffs want the completion plan for MTSS to demonstrate that MTSS
16 enhances student learning. This, however desirable, is not possible unless the District is prepared
17 to engage in a major research project with treatment and control groups. MTSS is one of multiple
18 strategies employed by the District to improve student learning. Determining the impact of one
19 of these while other strategies being implemented simultaneously has what outcomes is not
20 possible. However, there is plenty of research that shows that effectively implemented evidence-
21 based decision-making has positive effects.
22

23 The Mendoza plaintiffs object to the Special Master's completion plan regarding
24 Professional Learning Community guidelines because they have not had a chance to review these
25

26 ⁴ The Mendoza plaintiffs want the completion plan to deal with the functionality of the base as
27 specified in Section V,E,3,a. But there is no such section. Nonetheless, Mendoza plaintiffs make it clear
28 – broadly defined – of students, especially those students most in need. That is what the completion plan
in the Special Masters 16-17 Annual Report seeks.

1 guidelines. These guidelines are widely used throughout the world and are based on research on
2 school improvement. Are they suggesting that they would not approve the use of these guidelines
3 that have been in use in TUSD for two years? Or do they imagine that they would modify these
4 guidelines? And, on what basis would such modification be justified?

5
6 The Mendoza plaintiffs point out that the completion plan for PLCs do not include cross
7 school PLCs as provided for in the USP. The Special Master will amend the completion plan to
8 include a provision that, “the District shall ask explore the usefulness of PLCs involving staff
9 from more than one school. However, the Special Master includes this provision only because it
10 is a specific provision of the USP. It is not that PLCs across schools is not a decent idea; is just
11 that this is something that should be the prerogative of the District. The research supporting
12 multi-school PLCs is limited. Creating effective PLCs in each school – in some cases,
13 implementing more than one PLCs in a school (such curriculums PLC in a high school) – it is
14 difficult to effectively implement. Adding multi-school PLCs means that something the District
15 is now doing will not get done. Therefore, the Special Master asks the Court to instruct the
16 District to “explore” rather than implement multi-school PLCs.
17

18 The Mendoza plaintiffs want to have a say in how many and what initiatives the District
19 should evaluate. This proposal is triggered by the Special Master’s inclusion in the completion
20 plan with respect to program evaluation the seemingly limiting term “new initiatives.” The
21 Special Master will revise the completion plan for program evaluation using the wording of the
22 USP.
23

24 The Mendoza plaintiffs also opposed the Special Master’s completion plan because it does
25 not mandate the District to remedy outlier findings. The Special Master recommends that the
26 Court not approve this Mendoza proposal. Statistical outliers may be the product of inappropriate
27 data or the statistical analysis itself. The statistical outlier may be large or small and addressing
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CERTIFICATE OF SERVICE

I hereby certify that on, May 10, 2018, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master