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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 On April 20, 2018 the Court directed the Special Master to respond to any of the
11 objections. On May 4, 2018, the Special Master requested that he be allowed to submit his
12 response to objections on May 9 and the Court so ordered. This Report of the Special Master’s
13 initial Response to Objections to his 2016-17 Annual Report (SMAR) is motivated by two
14 considerations: (1) changes made in recommendations and completion plans influenced by
15 objections to his 16-17 Annual Report and the desirability to consolidate these two sets of
16 proposals, and (2) the need to make corrections clarifying the analysis and proposals in the 2016-
17 17 SMAR.

18 This Report does not repeat arguments made in the SMAR unless such repetition is
19 essential to respond to objections or to justify additions to the initial completion plans.

20 In order to facilitate the Court’s assessment of his recommendations and the objections of
21 the parties, this Report is organized around each of the substantive sections of his Annual Report
22 which is how the parties submitted most of their objections.

23 The USP was developed as a consent decree by the parties, a process which took place
24 between January 2012 and January 2013. The Special Master participated in the development of
25 the USP. The USP was approved by the Court in February 2013.
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1 In preparing his Annual Report 2016-17 the Special Master was mindful that Judge Bury
2 met by telephone with the parties and the Special Master in December 2017. At that time, Judge
3 Bury complemented the parties on the work accomplished thus far and indicated that his
4 expectation was that the case will be brought to a fruitful conclusion soon after the 2018-19
5 school year.
6

7 The Court advised that if the Special Master did not recommend in his Report that the
8 District be awarded unitary status for particular elements of the USP, that completion plans for all
9 other elements of the USP should be included in the Annual Report. These completion plans
10 were to be specific with respect to actions the District would be required to take in order to
11 achieve unitary status and that timelines for District action should be specified.
12

13 Understandably, the Fisher and Mendoza plaintiffs are reluctant to acknowledge that the
14 District has done all it can reasonably do to eliminate the vestiges of past discrimination and
15 segregation. And, as one might expect, the District believes that it has met all of the requirements
16 laid out in the USP and urges the Court to grant it full unitary status. Its objections to the Special
17 Master's Report focuses, of course, on those elements of the USP that the Special Master believes
18 requires additional work before the District is awarded unitary status for those actions. The
19 District complains that the plaintiffs and the Special Master are asking not only that the District
20 do what it could practicably do in implementing the elements of the USP but that the Fisher and
21 Mendoza plaintiffs and the Special Master are asking the District to do things that are not set out
22 in the USP.
23

24 In their criticisms of the District and their objections to some of the Special Master's
25 recommendations, the Fisher and Mendoza plaintiffs focus on whether narrowing gaps in student
26 achievement, participation or access have been achieved comparing white students with African
27 American and Latino students. While access is largely determined by policies and practices of
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1 the District, student achievement and participation are heavily influenced by factors over which
2 the District has limited influence. For example, with respect to academic achievement there is
3 abundant research indicating that school-based influences on student test scores seldom accounts
4 for more than 40% of the variance in student achievement. This means that while student
5 outcomes should be examined, whether the District should be released from Court suspension
6 should depend significantly on the extent to which policies and practices essential to improving
7 students' outcomes have been implemented. Moreover, policies aimed at enhancing academic
8 achievement of African-American and Latino students, such as culturally responsive pedagogy,
9 will improve the achievement of white students as well.

11 Mendoza plaintiffs argue throughout their objections that the success of the District
12 should be measured against conditions in the District prior to the adoption of the USP. The
13 Special Master, on the other hand, considers the baseline year to be 2014-15 and in most cases is
14 focused on progress made from that time through the 2017-18 school year. Many changes were
15 needed to implement USP. Particularly difficult actions involved the closing of several schools.
16 A new superintendent was hired early in the implementation process. A great deal of work would
17 have had to occur in the final four months of the 2012-13 school year to affect substantial
18 improvements. During the 13-14 school year, the District would be involved in implementing
19 five dozen provisions of the USP and necessary actions were going on during the 13-14 school
20 year as routines were changed, training took place, and many people were in jobs they had not
21 held before. Those who study organizational change point to difficulties in the initial phases of
22 changes that involve changes in behavior (and many of the requirements in the USP involve
23 behavioral change) describe this as an "implementation dip." Moreover, during the 13-14 school
24 year, the District operated with an interim superintendent as a search to replace Superintendent
25 John Pedicone went forward. In other words, it would be remarkable if substantial change
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1 leading to significant improvement would have occurred during the 13-14 school year. Thus, the
2 four-year period beginning in the 14-15 school year is a more appropriate time to measure the
3 progress the District made in implementing the provisions of the USP.

4 The Fisher plaintiffs agree that assessing progress beginning with the 14-15 school year is
5 appropriate. They also believe that the Court should retain supervision over all provisions of the
6 USP and argue, as they have from the date the USP was approved by the Court, that no specific
7 timeline for the award of unitary status should be specified.

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

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21
22 Consideration of objections by the Plaintiffs and the District has resulted in the Special
23 Master making changes to some of the completion plans he proposed in in his Annual Report.
24 Those amendments are described in this Report. However, the Special Master will prepare a
25 comprehensive listing of each of the completion plans as amended in a separate report to the
26 Court.

1 **Analysis of Objections to the Special Master's Annual Report**

2 **II. 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 in earlier years
11 of the case.

12 Mendoza plaintiffs make a number of objections to granting the District unitary status
13 with respect to all of the strategies to promote integration, except for magnet schools.
14

15 They object in part because they are concerned that students who are categorized as
16 district placement affects integration. The reasons students are placed by the District in different
17 schools has little to do with race. "District placement" refers to students enrolled in a school that
18 is not their neighborhood school because they qualify for, or participate in, certain programs or
19 open enrollment. Direct placement includes the following categories of students:
20

- 21 • Self-Contained GATE Students: students who have accepted placement in a Self-
22 Contained GATE program;
- 23 • University High School Students: students who have accepted placement at UHS;
- 24 • ELL Students: students who require specific ELD services;
- 25 • Non-DL Students at Dual Language Schools: students who live in the boundary of
26 a DL school who opt out of dual-language and are placed at a non-neighborhood
27 school;
- 28 • 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 Exceptional Education program;
- Community Transition Program: students who are participating in a community
transition program; and

- Open Enrollment: students who enroll in a school under Arizona's state open enrollment statute, on a space available basis.

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

In the last two years, seven schools crossed the integration threshold of 70% and the same schools met the integration requirement of plus or minus 15% of other races. Table II-a to the Special Master's Annual Report shows that this move to integration is not an aberration but rather part of the trend in each of the schools. As the Special Master's Report suggests, there are other schools that go back and forth across the integration lines. Tables II-b to II-j illustrate that these nine schools became integrated one year and lost the status the next or vice versa. When all the data are taken into account, it is clear that the best tool for integration is magnet status. Thus, the Special Master's emphasis on ensuring that the District is capable of and committed to magnet schools. There are themes not explored by the District that have been proven successful elsewhere.

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

In establishing the criteria for determining whether a school was integrated, the District and the plaintiffs set the following guidelines and these were approved by the court: (1) no

1 school may have more than 70% of students of a given race, and (2) students of every race
2 represented in the school may not be plus or minus 15% of the students of that race for each of
3 the four grade structures District-wide.

4 The three consultants involved in developing the USP opposed these criteria because they
5 would mean, for example, that a school that was 40% white, 40% Latino and 20% black would
6 not be considered integrated. Almost everyone who studies school desegregation would consider
7 a school with that racial distribution to be integrated though by the definition of integrated in the
8 USP the school would have too few Latinos to be considered integrated. One of the consultants
9 resigned because the parties insisted on the definition of integration in the USP.

11 Annual Reports by the District and the Special Master use the USP definition to calculate
12 the number of TUSD students who attend integrated schools that this understates the number of
13 students in TUSD who have an opportunity to go to school where very have substantial
14 opportunity to learn with and from students of races different from their own.

16 The Special Master has consistently urged the parties to use a different measure of
17 integration but one that retains a 70% rule. The District has used other measures of integration to
18 describe what they call a “highly diverse school.” Using the USP definition of integration,
19 11,700 of TUSD’s students attend an integrated school. If one were to use the USP definition and
20 a definition which, instead of using 15% plus or minus, uses 25% plus or minus, the number of
21 TUSD students attending an integrated school is 24,594 or 54% of the District’s students – *see*
22 Table II-1.

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

4 The Mendoza plaintiffs also object to the Special Master's proposal to grant the District
5 unitary status on the grounds that many of the schools that are newly integrated are magnet
6 schools. But the USP does not create two pools of schools within which integration must be
7 improved. But, the TUSD experience draws attention to the importance of magnet schools for
8 increasing integration.

9 The Mendoza plaintiffs argue that integration can be explained in some schools by
10 demographic changes. The purpose of integration strategies is to promote demographic changes.
11

12 In determining whether to maintain supervision of the District with respect to student
13 assignment, the Court will want to consider whether the completion plans proposed by the
14 Mendoza plaintiffs would lead to greater integration. The Mendoza plaintiffs want to undertake
15 two studies to determine the relative effects of different strategies the District has implemented,
16 taking into account demographic changes. The results of such a study would be problematic
17 because many actions that might affect integration are happening simultaneously, including
18 actions not specifically meant to promote integration such as the implementation of a greater
19 number of ALEs. The Mendoza plaintiffs also want to wait on the provision of unitary status
20 until the Governing Board decides whether to restructure high schools. This restructuring may
21 not occur and, in any event, the potential effects on integration will be identified in the NARA
22 process. Finally, the Mendoza plaintiffs want the District to exclude alternative schools from any
23 analysis. The Special Master did this in his analysis. In any event, these schools now enroll less
24 than .003 of the District's students.
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1 To review: leaving the alternative schools out of the analysis, between 2014-15 and the
2 current year, and the current year the number of racially concentrated schools went from 35 to 30.
3 Number of integrated schools went from 17 to 25. Total enrollment in integrated schools has
4 increased by 2,154 and the number of students in racially concentrated schools dropped by 2,542.
5 Using the more conventional definition of integration, with a 25% plus or minus measure, more
6 than half of the District's students have the benefit of an integrated education. The District should
7 be awarded unitary status for student assignment except for magnet schools.
8

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

17 The District asserts further that it proposed more than a dozen new magnets and elsewhere
18 argues that these proposals were, for the most part, opposed by the plaintiffs and the Special
19 Master. Suffice to say that when the proposals were opposed, the reasons were that the costs
20 were extraordinary and/or, the prospects for successful integration were quite limited. Tully
21 elementary school is cited as an example of the District's commitment to magnet schools.
22 However, Tully was already a magnet school. The theme of the school was changed as a result of
23 a proposal by the Special Master to increase the number of ALE opportunities. The completion
24 plan proposed by the Special Master is aimed at having the District demonstrate the development
25 of a proposal for magnet school that is carefully thought out and has high prospects for
26 integration. While the Special Master does not propose that the District need establish a new
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1 magnet, it should. As the data show, magnet schools have been more successful in improving the
2 number of students in integrated schools than non-magnets.

3 *Recommendation*

4 The District shall be granted unitary status with respect to the provisions of Section II of
5 the USP – Student Assignment, except for magnet schools. (No completion plan is necessary
6 when unitary status is recommended).
7

8 Magnet Schools

9 *Recommendation*

10 Court supervision should be retained with respect to magnet schools so that the District
11 can demonstrate that it has the commitment and capability to identify and implement a new
12 magnet school with the clear potential to increase the opportunities TUSD students have to
13 benefit from an integrated education.
14

15 *Completion Plan: Magnet Schools*

16 A. Existing Magnet Schools

- 17 1. Using data from the 2017-18 school year, the Special Master shall
18 determine by September 2018 whether each magnet school has met the
19 standards for a magnet school currently set by the Court. *See* ECF 1753
20 at 9:3-16.
- 21 2. For each school that does not meet that magnet school standards:
- 22 a. The Special Master may recommend to the Court at any time that
23 the school lose magnet status and/or
- 24 b. The District shall determine whether the magnet school can meet
25 the magnet school status by the end of the 2018-19 academic year
26 using funding, effort and tools reasonably projected to be available
27 during that period.
- 28 3. For those schools not recommended by the Special Master for termination
of magnet status that the District determines will likely be able to meet
magnet school standards by the end of the 2018-19 academic year, the
District shall prepare a magnet plan for that school no later than October 1,
2018, which is designed to enable the school to meet magnet standards.
4. The District will develop a transition plan for any school that loses magnet
status. The transition plan will conform to the same form and standards as

1 the transition plans that the District developed for prior former magnet
2 schools.

3 **B. Potential Magnet Schools or Programs**

- 4 1. By the end of the current school year, the District shall undertake an
assessment of potential magnet schools or programs for TUSD.
- 5 2. The District shall identify the preferred choice(s), explain its reasoning for
6 selecting the option(s) over other viable choices, and decide whether such
an option(s) should be implemented and how this can be accomplished.
- 7 3. This does not mean that the District must establish a new magnet school as
8 a condition of being awarded unitary status.

9 **III. Transportation**

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

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22 The Mendoza plaintiffs want the completion plan for transportation to include an analysis
23 of the effects of express buses on integration and to modify its plans regarding express buses
24 accordingly. There is no need for this analysis. The District operates four express buses serving
25 32 students total. Twenty-six of the students are going to Sabino High School. The District
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1 intends to maintain that express bus because it has some effect on integration. In the other
2 schools, express buses have no meaningful effect on integration.

3 The District has undertaken a number of studies on how best to facilitate integration by
4 providing buses when students choose a school in the district other than their neighborhood
5 school when this achieves integration. These studies often involve surveys but there is reason to
6 believe that these surveys are totally unreliable sources of information. Two years ago, the
7 District conducted a substantial survey about interest in express buses. Hundreds of families
8 indicated an interest in moving from West-side schools to East-side schools and when express
9 buses were provided, there were few riders.

11 *Recommendation*

12 The Special Master sees no reason to withhold unitary status for transportation when the
13 activities involving that transportation are made unitary.

14
15 **IV. Administrators and Certified Staff**

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

21 The Mendoza plaintiffs object to the finding by the Special Master that the number of
22 first-year teachers serving in schools where students are achieving below the district average and
23 in racially concentrated schools as almost 75% in the two most recent years. The Mendoza
24 plaintiffs conclude from data they have reviewed, that the percentage was 77.5 one year and 78.7
25 in the second. The numbers of first-year teachers appointed varies almost daily at the beginning
26 of the school year. The difference in the Special Master's analysis and that of the Mendoza
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1 plaintiffs is irrelevant to the point being made – that the District is appointing a very large number
2 of first-year teachers to schools that the USP intends they should not. While it is true that the
3 USP allows the Superintendent to approve any exceptions to this proposition, it is clear that in
4 developing the USP no one intended that the number of beginning teachers in what some call
5 “hard to teach schools” would be as great as it is. The fact that this happens in Tucson and in
6 many other districts is one of the major reasons why it is so hard to narrow the achievement gap.
7 The Special Master is proposing an additional element to the completion plan related to this issue.
8

9 The Mendoza plaintiffs object that the Special Master urges that this policy with respect to
10 first-year teachers be applied only to schools serving below the District average even though the
11 USP includes racially concentrated schools. There is no educational reason to limit the
12 appointment of beginning teachers to racially constituted schools. There are two reasons for this.
13 First, teachers learn from fellow teachers and in schools where students are achieving above the
14 district average is likely that they will have above average teachers from whom they can learn.
15 Indeed, teachers who teach at above average achieving schools that are racially constituted are
16 likely to experience disruption of any biases they might have about students of color. Moreover,
17 teachers teaching in racially concentrated schools with above average students are less likely to
18 leave that school when the opportunity occasioned by their seniority so allows. This, in turn,
19 would limit the mobility of teachers that underachieving students experience. The Mendoza
20 plaintiffs provide no rationale for not assigning beginning teachers to racially concentrated
21 schools.
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24 In many large districts, teachers are hired through central office human resource
25 departments. In TUSD, teachers are typically appointed by principals in schools to which they
26 apply directly. The consequence of this practice is that many teacher candidates do not typically
27 seek out schools that serve large proportions of low achieving students or schools serving
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1 children who come from low income families. Like exceptional coaches who seek out the best
2 players, effective principals seek to recruit teacher candidates they believe have the greatest
3 promise. The consequence of this is that the District lacks the capacity to place beginning
4 teachers in schools that do not have diverse teaching staffs or to recruit teachers with the greatest
5 promise of effectiveness to schools serving students who are performing below the district
6 average. The Special Master recommends that the District alter its recruitment and placement
7 policies with respect to all teachers, including beginning teachers, so that the central office can act
8 more strategically with respect to the placement of teachers than is now the case. One could
9 anticipate an objection from the District that this could lead to the inability of the District to hire
10 teachers of any background. But many school districts manage this problem and the central
11 office has the capability to utilize incentives and extra support to place teachers in schools where
12 they are needed most.
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15 In his recommendations, the Special Master acknowledges that the District has not been as
16 effective as even it wishes to be in increasing the diversity of administrators and certified
17 personnel, especially teachers, but explains that the ability of the District to recruit – and retain –
18 teachers is related to the teaching shortage nationally and in Arizona. The Fisher plaintiffs assert,
19 without any evidence and in the face of widespread consensus to the contrary, that there is no
20 shortage of teachers. They argue further that the District has failed to institute appropriate
21 recruitment measures but provide no examples of measures that would be or have been shown to
22 be effective.
23

24 It is too late in the hiring process to change the procedures for 2018-19 hires. However,
25 given that there is no other plan to increase diversity or to strategically place candidates with
26 great promise where they are most needed (a very small number of highly proficient teachers are
27 teaching in schools with the lowest academic performance of students), it seems worth
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1 systematically identifying school districts with centralized hiring systems or hybrids to discover
2 how alternatives to the current system might be more successful in recruiting diverse teachers and
3 avoiding the extensive hiring of beginning teachers in schools that serve many struggling
4 students. The USP indicates that the pursuit of diversity in the professional cadre should be
5 handled by human resources department. But in TUSD, the HR department handles basically
6 administrative tasks and there is no central office effort to use available incentives to hire teachers
7 where they are most needed. The Special Master alters the completion plan in the SMAR to add
8 this consideration of options.

10 Plaintiffs have expressed concern about the number of African American administrators,
11 especially non-site administrators. As Table IV-2 of the Special Master's Annual Report
12 indicates, the number of African American non- site administrators dropped from 9 to 5 over the
13 last five years. The number of Latino non-site administrators went from 12 to 11, and white non-
14 site administrators from 28 to 25 reflecting the general cutback in central administrative positions.
15 See Tables IV-1 and IV-2 of the Special Master's Annual Report.

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

3 The Mendoza plaintiffs suggest additions to the completion plan proposed by the Special
4 Master. The first proposal is to study the relative effectiveness of different recruitment strategies.
5 The Special Master believes that the District has been studying the efficacy of different strategies
6 and he will ask the District to prepare a report accordingly. But ordering such a study is
7 unnecessary and only serves to hold up the granting of unitary status for the general hiring
8 process.
9

10 The Mendoza plaintiffs want a completion plan that has the District preparing a report on
11 the process for authorizing the appointment of first year teachers to low performing and racially
12 concentrated schools. As the Special Master points out, the superintendent does not review the
13 appointment of each individual teacher but delegates this responsibility, a practice the Special
14 Master sees as sensible given that the senior staff responsible for overseeing the schools are in a
15 better position than the superintendent to understand the needs of those schools and the fit
16 between the characteristics of the schools and the capabilities of the teachers to be hired. As
17 noted above, the Special Master is proposing that the District undertake a study of alternative
18 strategies for placing beginning teachers more strategically than does the process now used by
19 TUSD. This study shall address the concerns of the Mendoza plaintiffs.
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21

22 *Recommendations*

23 The District shall be granted unitary status for the provisions of Section IV of the USP
24 except for the following:

- 25 1. School-site teacher diversity.
- 26 2. The evaluation and potential strengthening of actions to reduce attrition of certified
27 staff.
- 28

- 1 3. The evaluation and improvement and possible expansion of so-called grow-your-
2 own programs aimed at increasing teacher and administrator diversity.
- 3 4. Reducing the number of beginning teachers being assigned to racially concentrated
4 and low performing schools.

5 A. Site-level Teacher Diversity

- 6 1. The District shall continue to implement the current Teacher Diversity Plan
7 (TDP) through the 18-19 academic year.
- 8 2. No later than August 15, 2018, the District shall evaluate additional
9 incentive program(s) to add to the TDP to increase its impact, determine
10 what incentives, if any, to add for the 18-19 school year, and prepare a
11 report for the Special Master and the plaintiffs identifying the option(s)
12 considered, and explaining the rationale for its decision.

13 B. Attrition

- 14 1. The District's Assessment and Evaluation (A&E) department shall conduct
15 a study, designed in consultation with the Special Master, to identify the
16 reasons underlying teach and administrator attrition over the past three
17 years. The study shall include utilizing the Implementation Committee to
18 conduct intensive interviews of those who have left the District.
- 19 2. Using the results, along with other information (such as survey results), the
20 District shall evaluate strategies to reduce teacher and administrator
21 attrition including support and in-school conditions teachers and
22 administrators need to enhance student academic performance, identify the
23 strategies to be implemented.
- 24 3. The District shall provide a report to the Special Master on the study and
25 strategies to be implemented by July 2018 so that strategies to reduce
26 attrition could be implemented during the 2018-19 school year.

27 C. Grow Your Own Programs

- 28 1. The District shall review what is known about the effectiveness of "Grow
Your Own" programs existing across the country, especially those aimed at
increasing the proportion of African American and Latino professional
educators. This inquiry shall identify options with potential for TUSD,
assess their costs and benefits, and determine what if any modifications to
make to existing programs. This review shall also consist of an assessment
of the District's own recruitment efforts, especially as they relate to Latino
and/or African American staff participation. The District shall prepare a
report for the Special Master describing its review and analysis, and
explaining the basis for its decision regarding existing programs.

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2. This study shall be completed no later than September 2018, so that any promising initiatives could be implemented during the 2018-19 school year.

D. Hiring Certified Staff

The District shall undertake a study of alternative strategies for placing beginning teachers more strategically than does the process now used by TUSD. This study shall address the reasons why the current decentralized process for hiring teachers should be sustained given the effect of the current system on site level diversity and the placement of beginning teachers in schools serving students achieving below the district average. A preliminary report on options shall be submitted to the plaintiffs and the Special Master no later than August 15, 2018.

V. **Quality of Education**

Advanced Learning Experiences (ALE)

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

The Special Master proposes to meet with the Mendoza plaintiffs and the District within the next 10 days to seek clarification of the different assessments of the District's actions. Within 10 days of such meetings, the Special Master will submit a supplement to this Report.

Advanced Learning Experiences

Recommendation: District-wide Goals

The District shall be held accountable to a 15% rule districtwide, except for ELL and students with disabilities, calculated as above for 2018-19 and beyond and that this goal shall

1 apply to each ALE except UHS. The 15% rule shall not be applied to UHS because admission is
2 determined by an examination and prior academic performance.

3 **Advanced Learning Experiences (ALE)**

4 The Fisher plaintiffs appear to be opposing all of the recommendations made by the
5 Special Master with respect to advance learning experiences ALE. They assert that the Special
6 Master questions the ability of African American students, that he inappropriately blames the low
7 performance of African American students on their relatively low socioeconomic condition,¹ and
8 that he recommends the lowering of standards. The Special Master recommended that the
9 eligibility for participation in tested GATE programs be lowered slightly because there is no
10 evidence that the current eligibility standard has been shown to differentiate between students
11 who succeed in GATE programs and those who do not. He urged various ways to increase access
12 to ALE precisely because the performance of African-American and Latino students indicates
13 that they will perform quite well in ALE programs.

14 The Fisher plaintiffs take the rather unique position that the students who are eligible for
15 ALE programs should be required to participate in these programs even if they or their families
16 do not want them to. The Court should not endorse this position. The Fisher plaintiffs also
17 appears to be urging that the completion plan for ALE be amended to require the District to offer
18 courses with lower than specified enrollment criteria in order to ensure that African American
19 students will have access to these learning opportunities. The Court should not endorse this
20 proposal except in those high schools that do not offer CR courses with an African American
21 perspective. *See* section on CRC below.

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¹ Virtually every effort to improve the performance of lower achieving students allocates resources based on measures of socioeconomic status. The Special Master assumes that the Fisher plaintiffs do not propose the ending of federal funding, *e.g.*, Title I, that is based on the family income of students.

1 Fisher plaintiffs correctly point out that a number of African American students who
2 qualify for admission to UHS decide not to attend. They argue that the District should make
3 extensive efforts to determine why that is and to do something about it. All African American
4 students who qualify for UHS are contacted individually and encouraged to attend. Special
5 Master has recommended that the District seek to engage the families of African American
6 students as recruiters for qualified students who are reticent about attending UHS and the District
7 says it is now doing this.
8

9 The Fisher plaintiffs argue that out-of-district students should not be admitted to UHS
10 because this pushes African American students out of UHS. However, all TUSD students who
11 qualify for UHS are offered placement; no out-of-district students push TUSD students out of
12 UHS.
13

14 The Fisher plaintiffs argue that because TUSD students in the seventh grade are tested for
15 admission to UHS, this puts them at a disadvantage in comparison to out-of-district students who
16 are tested in the eighth grade. All students – whether TUSD students, non-TUSD students living
17 within our District, or non-TUSD students living out of TUSD – are tested in the Spring of their
18 7th grade year. The USP requires this: “The District shall administer the appropriate UHS
19 admission test(s) for all 7th grade students.” (USP V.A.5.a.) There is a make-up test in
20 December for 8th grade students new to TUSD or non-TUSD students who did not live in the
21 area at the time of 7th grade testing.
22

23 The District uses these test results to recruit in-district students to UHS.

24 In its objection to the Special Master’s recommendations for ALE, the District says that it
25 has done all that is required to do and therefore should be awarded unitary status for all ALE.
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1 *Recommendation: District-wide Goals*

2 The District shall be held accountable to a 15% rule districtwide, except for ELL and
3 students with disabilities, calculated as above for 2018-19 and beyond and that this goal shall
4 apply to each ALE except UHS. The 15% rule shall not be applied to UHS because admission is
5 determined by an examination and prior academic performance.
6

7 Recommendation for all other ALE programs will be provided as a supplement to this
8 Report to be submitted no later than June 30, 2018.

9 **Culturally Responsive Pedagogy**

10 The Fisher plaintiffs have no objection to the Special Master's recommendations for CRP.
11 The Mendoza plaintiffs agree with the Special Master that the District should not receive unitary
12 status with respect to culturally responsive pedagogy. However, the Mendoza plaintiffs object to
13 the Special Master's recommendations because they focus on teaching instead, they want to
14 uniquely define CRP to include all interactions with students. While experts on culturally
15 responsive pedagogy differ in the specifics of the meaning of CRP, none would define it as "the
16 full range of interactions with students," as do the Mendoza plaintiffs. Moreover, the USP has
17 numerous sections dealing with interactions with students in which the term culturally responsive
18 pedagogy does not appear. These include sections dealing with inclusiveness, restorative justice,
19 PBIS, harassment, disciplinary actions, multicultural curriculum, culturally relevant curriculum,
20 and more. In defining CRP as everything, the Mendoza plaintiffs render it unmeasurable. They
21 then go on to say that CRP should include training for all professionals and paraprofessionals but
22 distinguish between and curriculum, pedagogy and cultural responsiveness. In sum, the Mendoza
23 plaintiffs' objections to the Special Master's approach to improving culturally responsive
24 pedagogy suggests a misunderstanding of what CRP involves.
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1 *Recommendation*

2 As he does in his Annual Report, the Special Master recommends that the District not
3 receive unitary status for culturally responsive pedagogy.

4 *Completion Plan*

- 5
- 6 1. Before the start of the 18-19 school year, the teacher evaluation instrument used by
7 TUSD shall be amended to include culturally responsive pedagogy as an element
8 of teacher proficiency.
 - 9 2. Administrators who evaluate teachers shall be trained to evaluate teacher
10 proficiency in culturally responsive pedagogy. The District shall develop a
11 procedure for validating the capabilities of administrators to undertake such
12 evaluation.
 - 13 3. Teacher training to employ culturally responsive pedagogy shall be an integral part
14 of their training to implement the curriculum (*e.g.*, teaching students to read
15 through culturally responsive instruction).

16 **Culturally Relevant Courses (CRC)**

17 The Fisher plaintiffs do not object to any specific recommendations of the Special Master
18 related to CRC. But they oppose CRC despite evidence that these courses enhance student
19 learning. DOJ, the Mendoza plaintiffs and the District all strongly support offering culturally
20 relevant courses, as does the Special Master.

21 The Mendoza plaintiffs object to the Special Master's recommendation to the Court that
22 CRC be awarded unitary status. They assert that the courses offered were not genuine CRC
23 courses and imply that they lack the focus on the particular ethnicities that defined CRC courses
24 and are more like multicultural courses. The Mendoza plaintiffs also object to providing unitary
25 status for CRC on the grounds that the District may have modified CRC content to avoid scrutiny
26 by the state. Now that the state provisions that effectively outlawed ethnic study courses (the
27 precursors of CRC) have been ruled unconstitutional, the Mendoza plaintiffs want the curriculum
28 reviewed and if appropriate, restored to its former content.

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

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

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

23 Many of the objections by the Mendoza plaintiffs have to do with the failure of the
24 District to implement the multiple provisions of a stipulation agreement negotiated between the
25 Mendoza plaintiffs and the District and approved by the Court.
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1 This stipulation, developed by previous leadership in the District, basically surrenders
2 essential curriculum development to a national panel although the panel was not consulted about
3 playing the roles that the stipulation provides for.

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

9
10 The Mendoza plaintiffs believe that the stipulation is meant to be enforced in perpetuity
11 whereas the District says that that was not its understanding.

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

18
19 *Recommendation*

20 The Special Master withholds his recommendation that the Court provide unitary status
21 for CR courses.

22
23 *Completion Plan*

24 The District should establish two CR courses at Santa Rita High School during the 2018-
25 19 school year. For the next school year that new CR courses can be offered, the District shall
26 offer at least once CR course with an African-American perspective even though the course
27 enrollment is lower than the minimum established for offering elective courses. The Special
28

1 Master proposes that an interim completion plan be endorsed by the Court directing the parties to
2 reevaluate the provisions of the stipulation before its provisions are implemented. The District
3 shall prepare a draft of the revised stipulation agreement no later than July 15, 2018 for review
4 and comment by the plaintiffs and the Special Master. Or, the District could propose that the
5 stipulation plan is no longer needed and submit a realistic plan for evaluation of the CRC
6 initiative going forward. This revised stipulation should also clarify the role of the national panel
7 and the panel shall be consulted accordingly.
8

9 **Multicultural Curriculum**

10 *Recommendation*

11 Unitary status with respect to multicultural education shall be deferred.

12 *Completion Plan*

13 The District shall prepare a report by August 2018:

- 14 1. Describes the progress made in infusing multicultural content throughout the
15 curriculum.
- 16 2. Specifies the processes for review, curriculum modification and relevant
17 professional development, and ensures that, as books and other hard copy or
18 electronic materials are purchased for school-level libraries or as resource
19 materials for LIRC, those materials are selected with multicultural perspectives
20 taken into consideration as a component of the selection process.
- 21 3. Provides a schedule for infusing multicultural content to curriculum domains not
22 yet revised, including reviewing the science curriculum during the current school
23 year.
- 24 4. Describes the frequency with which review of curriculum is recurrently
25 undertaken to determine whether further infusion of multicultural content is
26 warranted.

27 **Graduation, Dropout, Retention and Absenteeism**

28 The Mendoza plaintiffs object to the Special Master's Annual Report with respect to its
failure to address the goals and action plans for ELL students. The Fisher plaintiffs do not
comment on these provisions of the USP.

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

10 *Recommendation*

11 The District should be awarded unitary status for graduation dropout retention and
12 absenteeism for all students except ELLs.
13

14 *Completion Plan*

15 The parties should meet to prepare the elements of an action plan to achieve specific goals
16 for ELLs by July 15, 2018.

17 **Exceptional Education**

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

25 *Recommendation*

26 The District should be awarded unitary status for exceptional (special) education.
27
28

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 could result in *de facto* segregation. The Mendoza
3 plaintiffs, as they do for virtually every recommendation that the District receive unitary status,
4 object and want the District to undertake a major study. When students are assigned to classes
5 because of potential achievement as measured by a cognitive test, this can result in tracking. The
6 way to avoid this is to eliminate gifted and talented programs that require tests for participation.
7 The Special Master assumes that the Mendoza plaintiffs are not seeking the elimination of test-
8 based gifted and talented programs. Therefore, there is no need for such a study and no need for
9 Court action.

Inclusiveness, Intercultural Proficiency, Harassment and Bullying

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

3 In connection to these issues and others related to success in ALEs and academic
4 challenges, the Special Master identified the importance of creating school cultures that are
5 achievement focused and build confidence among students that they can and should achieve at
6 high levels. Mendoza plaintiffs support this idea as does the Court.
7

8 The Special Master met recently with the superintendent and learned that the District has
9 undertaken a strategy for building achievement-oriented school cultures that seek to enhance
10 student interest as well as confidence in achieving at high levels. Steps taken thus far include the
11 expansion of AVID programs with the ultimate goal of having the District be an AVID district,
12 the development among students and teachers of achievement mindsets, building student's
13 persistence or "grit," culturally responsive pedagogy, dealing with "stereotype threat," and
14 expanding CRC. In addition, there is a recognition that is important to work with families so that
15 they can encourage their students to pursue high goals that they might otherwise see as risky. The
16 superintendent recognizes that wishing does not make it so, so as schools add opportunities for
17 professional learning – such as seven period days – it will be possible to carry out the professional
18 development that is necessary to facilitate teacher capabilities and confidence that their students
19 can achieve.
20

21
22 It does not appear that a Court order is now needed to promote the development of these
23 achievement-oriented school cultures. The Special Master has asked the superintendent to
24 prepare the description of the work the District is undertaking to achieve this goal and he has
25 agreed to do so.

26 *Recommendation*

27 The District shall not be granted unitary status for these concerns at this time.
28

1 *Completion Plans*

- 2 1. The District shall provide a report that includes an analysis of the inclusiveness of
3 school environments based on student survey data by race and by school structure
4 over at least three years. Inclusiveness shall include the relative absence of
5 bullying. This study shall be conducted in collaboration with the Special Master
6 prior to the beginning of the 2018-19 school year. The report shall describe the
7 strategies the District has utilized to improve inclusive school environments and
8 identify any additional strategies that the District believes will improve inclusive
9 school environments.
- 10 2. If the data suggests the levels of inclusiveness need to be improved and/or these
11 perceptions vary by race, the District shall (a) identify strategies for increasing
12 inclusiveness, and (b) put in place a plan to implement evidence-based strategies
13 during the 2018-19 school year.

14 **Academic Interventions**

15 The Mendoza plaintiffs want a study of academic interventions going back to 2014-15.
16 The District does not have the data to do a study such as the one proposed by the Mendoza
17 plaintiffs. However, the primary process for ensuring that students receive appropriate academic
18 interventions is the MTSS system. The completion plan for evidence-based decision-making
19 involves a comprehensive study of how the MTSS system is functioning to be conducted
20 collaboratively with the District, the Special Master and the Implementation Committee. *See*
21 Section X below.

22 Summer learning programs have not been conceptualized as interventions but they surely
23 are. One of the reasons why it is so difficult for the District to reduce the achievement gap is that
24 students from low income families and communities lose some of what they have learned during
25 the school year and the summer. Summer learning loss affects low income students significantly
26 more than their better off peers. Of course, such programs will also benefit Latino children. The
27 District supports the development and implementation of additional summer programs but the
28 District has no budget for increasing summer learning programs and says that they will be funded

1 from unspent funds. This approach does not allow the plaintiffs and the Special Master to assess
2 the character these programs being proposed.

3 *Recommendation*

4 The District shall be instructed to incorporate descriptions of summer programs as well
5 the budgets for such programs in its 2019-20 budget.

6 **MASSD and AASSD**

7 *Recommendation*

8 The District should not be awarded unitary status with respect to the activities to be
9 performed by either of the two departments. The Special Master finds no compelling argument to
10 invest well over \$1 million in activities no other school district has employed. However, the
11 District and the Fisher and Mendoza plaintiffs have agreed on the need for these departments.
12 Should the Court agree with the District and the Fisher and Mendoza plaintiffs rather than the
13 Special Master, the following completion plan is proposed.

14 *Completion Plan*

15 It would not be difficult to identify effective strategies for enhancing the achievement and
16 social-emotional development of African American and Latino students. Indeed, the District is
17 already implementing some of the strategies. But, given the history that contextualizes the
18 struggles to define and support effective ways to enhance the quality of education that African
19 American and Latino students in TUSD experience, it would be unwise for the Special Master to
20 develop such a plan. Instead, the District shall:

- 21 1. Continue to meet with the Fisher and Mendoza plaintiffs to identify activities to be
22 performed by staff of the two departments and demonstrate how these activities
23 are integral to the core functions of the District (*e.g.*, enhancing the effectiveness
24 of the MTSS system and enhancing the quality of teaching).
- 25 2. Specify the qualifications that members of the department staffs should have to
26 perform specific functions and describe how staff with these qualifications can be
27 recruited, trained and retained (*e.g.*, current salary levels will not do it).
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3. Convene a small panel of experts (no more than four people) who are knowledgeable about research on effective practices in meeting the needs of African American and Latino students. This panel shall advise the people working on the development of the plan.
4. The District shall submit a revised plan no later than July 31, 2018, for the student success departments or alternative ways of addressing the needs of African American and Latino students who need exceptional help.

Dual Language

Recommendation

The District should not receive unitary status for dual language at this time.

Completion Plan

- 1) Continue advocacy with the state to provide alternatives that will increase ELL eligibility to participate in dual language programs.
- 2) Develop a comprehensive plan for expanding dual language laying out the obstacles and the costs for developing additional sites. This plan should be submitted to the plaintiffs and the Special Master by the end of the current school year.
- 3) Include an assessment of evidence of TWDL program implementation in the principal evaluations for principals at TWDL schools.
- 4) Evaluate the possibility of establishing a full K-8, no-boundary magnet at Roskrige to include projected cost and integration impact analysis.

IV. DISCIPLINE

Recommendation

The Special Master does not recommend that the District be awarded unitary status for discipline.

There are at least three reasons why the District is not yet ready for unitary status with respect to discipline.

The first reason has to do with the reversal of progress with respect to in-school suspensions during the 16-17 school year, the modest improvements of out-of-school suspension,

1 and the persistence of disproportionality in suspensions comparing white and African American
2 students.

3 The second reason is that there is insufficient evidence to be confident that the District has
4 put in place processes and developed the capabilities of key actors that will enable the District to
5 make progress in the future to reduce levels of discipline, especially that which involves
6 suspensions, and further reduce the disproportionality in disciplinary actions involving African
7 American students.
8

9 Data provided to the Plaintiffs and the Special Master by the District reports on the
10 number of individual students who experience disciplinary action but does not provide
11 information on the number of incidents. At no time did the Plaintiffs or the Special Master object
12 to the fact that they had only been provided with “unduplicated” data but it was not always clear
13 what the nature of disciplinary problems were from school to school.
14

15 *Completion Plan.*

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

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

24 The District shall take the following steps no later than the beginning of the 2018-19
25 school year:

- 26 A. Data on student offenses and responses to them shall use measures that were in
27 place in 2013-14 to ensure that trends can be accurately assessed and distinctions
28

1 between types / actions that respond to student misbehavior are clear. The District
2 shall report such discipline data both by number of each type of disciplinary
3 consequence imposed and by number of students receiving each type of
4 disciplinary consequence. Data should include students with multiple infractions
5 to avoid any miscount of the degree of discipline difficulties.
6

7 B. Teachers, principals and others shall have easy access to information about how
8 best to deal with particular offenses as defined by the GSRR. Such information
9 shall be available in real time (*e.g.*, online), and be based on research in other
10 districts and effective practices identified within TUSD. Such information could
11 include name of individual teachers and other professional personnel who have
12 demonstrated relevant expertise and be willing to provide peer support.
13

14 C. The District shall hire or designate an individual “Director of Discipline” whose
15 sole focus is the implementation of discipline-related desegregation efforts. (The
16 Office of the Director of Discipline shall be staffed with full-time personnel
17 sufficient to:

- 18 1. Analyze school level data, including all data the District is required to
19 collect and analyze under USP Section VI.F.2, and bring any issues
20 warranting investigation or remediation to the attention of the chief
21 academic officer of the District.
- 22 2. Review schools' use of exclusionary discipline to ensure that it is fair and
23 equitable and complies with the GSRR, including ensuring that
24 exclusionary discipline is not inappropriately used for low-level incidents
25 involving physical aggression (including “fights” that do not lead to
26 significant injury) and that catch-all offenses such as “disorderly conduct”
27 and “other aggression” are not used to improperly impose exclusionary
28 discipline.
3. Provide technical assistance to school level personnel.

- 1 4. Contribute to the design of professional development that focuses on
2 handling potential disciplinary problems at the classroom level and that
3 recognizes that disciplinary problems are often related to the need for
4 improved instruction.
- 5 5. Assist schools in developing corrective action plans (“CAPs”), review
6 CAPs for consistency and efficacy, monitor the implementation of CAPs
7 monthly, suggest modification or support as needed, and track any
8 improvements resulting from the implementation of CAPs.
- 9 6. Conduct and monitor site-level walkthroughs of PBIS implementation and
10 conduct follow-up in an effort to make PBIS implementation across
11 schools consistent and effective.

12 D. The Coordinator of Discipline shall report to the chief academic officer for the
13 District.

14 E. The process for dealing with hotspots and high visibility problems shall be
15 streamlined. It shall not be necessary to regularly convene meetings of central
16 office staff who have other responsibilities than discipline in order to determine
17 how best to address challenges.

18 F. For any student offered a DAEP placement, the District will include any days
19 suspended prior to the DAEP placement in calculating the length of the DAEP
20 placement offered the student will not exceed the number of days issued for the
21 suspension.

22 **Family Engagement**

23 The District asserts that the Special Master did not recommend unitary status because the
24 District did not adequately train staff to engage in two-way family engagement.² The District

25
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 points out that it does facilitate such training through SAIL. However, SAIL involves multiple
2 topics and a small part of the SAIL and its content related to two-way family engagement is quite
3 limited. Moreover, that is not the only need for improved family engagement strategies. There
4 are no protocols, guidelines or handbooks for District staff describing how best to carry out
5 family engagement. Members of the implementation committee find as they visit schools that
6 family engagement varies considerably in both its depth and breadth. In his Annual Report, the
7 Special Master seeks to remedy this weakness in the District's family engagement efforts.
8

9 The Fisher plaintiffs do not object to the Special Master's recommendations with respect
10 to family engagement.

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

17 The Mendoza objections fall into two categories:

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

23 The District has initiated a more robust approach to gathering data on family engagement
24 for 2018-19. The Mendoza plaintiffs go into some detail about what information should be
25 collected and how.

26 The Special Master believes that the steps related to data on participation that the District
27 will take during 18-19 school year are sufficient and recommends that the District consider the
28 suggestions of Mendoza plaintiff. As noted at the outset of this Report, the Mendoza back-up

1 plan for maintaining Court supervision of the District is apparently to collect additional
2 information. It is desirable to collect additional information when it is clear what the purposes for
3 such information are, how they will be analyzed, and that are reasonable in the costs in time and
4 money are for collecting that information. For the Court to prescribe particular data to be
5 collected and particular modes of data collection is unlikely to lead to the effective use of that
6 data. The District is in a better position than the plaintiffs, the Special Master, or the Court to
7 know what information would be most productive for enhancing family engagement.
8

9 Among the difficulties of gathering information from families relating to their needs and
10 degree of satisfaction with available services are that those who show up to participate, and
11 therefore participate in the surveys are not representative and would most likely be satisfied with
12 the activities in which they engage in the family centers. Moreover, collecting ethnic data is
13 problematic since many families are multiracial and, given the political environment in Arizona,
14 may not participate because of concerns about immigration issues.
15

16 There is substantial research available on how schools can facilitate family engagement.
17 This research is a source of information about directions the District should be taking that is
18 likely to be more productive than taking surveys. Inevitably, surveys will yield limited
19 information and participation. An exception to this may be surveys used to collect information
20 about the interests of a family's students. The Special Master understands that the District
21 intends to conduct such surveys but they should not substitute for teachers' direct interaction with
22 families is feasible.
23

24 The District has recognized the importance of reaching out to available experts and is
25 partnering now with the national organization at Johns Hopkins University that provides services
26 to schools in the development of family engagement strategies.
27
28

1 Given that the District has already enhanced its information gathering related to family
2 engagement since its Annual Report and the District has developed a plan with the help of a
3 nationally prominent expert on family engagement, there is no need for the Court to direct the
4 District to develop a plan for collecting and improving information related to family engagement.
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 include
10 dealing with physical and mental health, housing support and managing finances. These are no
11 doubt important to the families who participate but given that the District staff and financial
12 resources are limited, the contributions that centers make to improving the education of the
13 District children might be greater if District resources were focused more sharply on educational
14 issues.
15

16 It follows that most education-related issues that could productively be addressed by the
17 District occur at the school-level where families have a greater incentive to be involved in the
18 pursuit of strategies to enhance the learning opportunities and outcomes of their own children.
19 And, of course, two-way communication happens at the school-level, not at district centers.
20

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

24 *Recommendation*

25 The District shall be granted unitary status for those family engagement activities
26 administered directly by the Family Engagement Coordinator. The District needs to improve its
27 work on the school level and unitary status related to school level activities shall be deferred.
28

1 While schools should have discretion to develop different activities related to family engagement
2 that are particularly relevant to the populations they serve, the District needs to provide guidance
3 that will facilitate the implementation of family engagement activities that reflect what is known
4 about how such activities can contribute to family support and student learning. These guidelines
5 can also be used by the District leaders monitor school level actions and to support improvement
6 where needed. Further, the District should clarify how the effectiveness of school-level
7 implementation of the family and community engagement guidelines will be monitored and how
8 needed improvements will be supported. The Family Engagement Coordinator does not have
9 supervisory authority with respect to school leaders, so the Coordinator is not in a position to hold
10 school leaders accountable or to direct them to engage in improvements.
11

12 *Completion Plan*

13 The District shall:

- 14 1. Before the start of the 2018-19 school year, develop guidelines for fostering family
15 engagement at the school level. These guidelines shall be shared with the Special
16 Master and the plaintiffs for expedited comment. These guidelines shall enable
17 teachers to (a) learn from families how best to teach and otherwise interact with
18 their children, and (b) participate meaningfully in school plans and activities.³
- 19 2. Continue its current program to facilitate communication with families in the
20 context of family conferences.
- 21 3. Train principals, assistant principals, and school-level personnel to implement the
22 guidelines for fostering family engagement at the school level.
- 23 4. Record family participation by race in ways that describe activities in which
24 families of different races are involved as recommended by its expert consultant.⁴

25 ³ These guidelines have been developed on or been submitted for review.

26 ⁴ The Mendoza plaintiffs urge that the data for family engagement tracking be collected at the
27 school level, there is no feasible way to collect day-to-day in each school and analyze it without
28 technology. If the Court were to agree with the Mendoza position, it will be appropriate to fund the
necessary technology from 910G funds or a combination of 910G and M&O funds.

- 1 5. Ensure that responsibility for overseeing the implementation of school-level
2 strategies for family engagement rests primarily with the principal of each school.
3 Oversight of the principals' efforts in this area shall be District supervisors who
4 are responsible for the District's general oversight of principals.
- 5 6. Enhance those functions of family engagement centers that are related directly to
6 the facilitation of student learning.
- 7 7. The Office of the Family Engagement Coordinator shall include in its functions
8 the training of the family leaders in each school throughout the District.

8 **Extra-Curricular Activities**

9 The Fisher plaintiffs object to the Special Master's recommendations related to
10 extracurricular activities on the grounds that cheerleaders are forced to pay substantial amounts
11 for their uniforms and this precludes some African American students from participating as
12 cheerleaders. But this assertion is not correct. The District provides free uniforms for all
13 cheerleaders, athletes, and band members. These uniforms belong to the school and are returned
14 to the school when the season ends. If a team (such as a cheerleading team) decides they want a
15 different uniform than what is provided by the District, the team, as a whole must fundraise for all
16 uniforms, and no individual member may pay for their uniforms. The Director of Athletics
17 ensures this policy is followed. The only required fee for any student involved in athletics is a
18 \$65 participation fee, and this can be waived.
19

20 *Recommendation*

21 While it appears that the District has pursued the implementation of the USP's provisions
22 with respect to extracurricular activities fairly, unitary status should be deferred until additional
23 information can be made available and the procedures and formats for such information can be
24 specified in some detail.
25
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1 *Completion Plan*

- 2 1. The District shall revise its reporting on extracurricular activities to include all
3 such activities clearly delineating which are funded by parents, the community, the
4 District, or other sources outside the District that are funded by 21st Century or
5 similar grants.
- 6 2. Data shall be reported by grade structure and race of student participants in
7 particular activities.
- 8 3. By September 2018, the District shall conduct the study of participation in its
9 schools with particular attention to racially concentrated schools and those schools
10 at which Anglo student enrollment exceeds 25%. If disparities exist, the District
11 should explain the reasons for these and identify strategies for eliminating them, if
12 practicable.
- 13 4. By August 30, 2018, the District shall have put in place and implemented a
14 process by which principals are responsible for reviewing the extent to which
15 extracurricular activities at their schools are providing opportunities for interracial
16 contact and positive settings of shared interest as mandated by the USP. To the
17 extent such opportunities are determined to be inadequate by the Implementation
18 Committee and the Special Master, principals – with the support of central offices
19 – shall propose strategies for remedying that situation.

20 When the District has completed these tasks, it shall be awarded unitary status for extracurricular
21 activities.

22 **Facilities and Technology**

23 The Fisher plaintiffs believe that the District should not be relieved of Court supervision
24 with respect to facilities and argue that many school facilities are in need of substantial
25 improvement. There is no question that facilities should be improved. But the Special Master
26 and the Implementation Committee found no evidence that there was what might be called a
27 facilities-gap between schools with relatively substantial members of white students and schools
28 there were racially concentrated. In other words, there is no evidence of discrimination by the
29 District with respect to the condition of school facilities.

30 The Fisher plaintiffs assert that the District has misused technology funds but they provide
31 no examples. They assert that technology equipment is not placed where there is greatest need

1 though efforts to improve access to and use of technology's prioritized racially concentrated
2 schools and schools where there are the largest proportion of African American students.

3 The District argues that it has done all it needs to do to satisfy the requirements of the
4 USP with respect to technology. The District has significantly improved student access to
5 computers and other classroom equipment. However, the real payoffs to students with respect to
6 technology have to do with the extent to which technologies are used to enhance complex
7 problem-solving. Student use of technology is dependent on the extent to which their teachers are
8 able to make effective use of technology to enhance student learning. This, in turn, requires
9 teacher training. When the District sought partial unitary status for technology a year ago, the
10 District essentially acknowledged that it had not trained teachers well enough to be granted
11 unitary status for that element of the technology requirements. The District now asserts that its
12 training of teachers is sufficient because there is a teacher technology liaison assigned to each
13 school. These teachers however, do not have release time to provide such training.

14 It also appears that the availability of broadband Wi-Fi access varies throughout the
15 District schools.

16 *Recommendation for Technology*

17 The Special Master recommended that the District receive unitary status with respect to
18 hardware and software technology. However, the District's efforts to prepare teachers to use
19 these resources is inadequate and he explains why this is so in his Annual Report.

20 *Completion Plan for Technology*

21 See Section XI of this Report wherein the District is asked to prepare teachers to make
22 effective use of technology.

1 *Recommendation for Facilities*

2 In his Annual Report, the Special Master observes that the District unilaterally modified
3 the facility condition index (FCI) arguing that the change was inconsequential. The Special
4 Master concludes that it is not up to the District to determine whether a change such as the one
5 the District undertook is consequential. While there does not appear to be a substantive problem
6 here, there is a procedural issue for which the District should be held accountable.
7

8 *Completion Plan for Facilities*

9 The change desired by the District shall be submitted to the Plaintiffs and the Special
10 Master for review and comment as proposed by the Mendoza plaintiffs.

11 The completion plan for technology shall include the following:

- 12 1. The District shall, no later than July 20, propose for review and comment by the
13 Special Master and the Plaintiffs, revision of the TCI/multiyear technology plan to
14 include a wireless Internet conductivity category.
- 15 2. The District shall update the TCI identifying school conditions as they relate to
16 wireless Internet connectivity no later than July 20.
- 17 3. To the extent the revised and updated TCI reveals inadequate Internet speeds in
18 racially concentrated schools and schools serving students who are achieving
19 below the District average they should develop a plan for remedying the situation
20 and submit it to the Plaintiffs and the Special Master for review and comment by
21 July 30. This plan shall include dates for addressing any disparities.
- 22 4. The District shall develop no later than August 1, 2018, a comprehensive plan for
23 training teachers to use technology to facilitate the ability of students to use
24 technology to address more complex academic challenges. This plan shall include
25 a way to assess the proficiency of teachers in this regard.

26 **X. Evidence-based Accountability System and Organizational Learning**

27 As explained in the introduction to this Report, the USP and the Special Master's Annual
28 Report are organized differently with respect to the sections identified with roman numeral X.

The reason for this is that throughout the USP there are provisions that have to do with the
District's capacity to use evidence to enhance decision-making with respect to student learning

1 and accountability. The Special Master explains that the evidence-based accountability system
2 (EBAS) is more than a sophisticated and robust piece of software, it is a framework and a
3 resource for identifying and making accessible data from many sources. Whether the District has
4 effectively implemented this system can only be determined by looking at how well the data are
5 utilized. Is not feasible to examine in detail the extent to which the evidence embodied in EBAS
6 is put to use in many ways (*e.g.*, to guide instruction in classrooms and evaluate programs).
7 Accordingly, the Special Master identified three areas of action in which resources available
8 through EBAS are particularly important and proposes that the Special Master and
9 Implementation Committee examine how well personnel in these areas of action utilize data to
10 guide decision-making.
11

12 The Fisher plaintiffs do not comment on the recommendations made by the Special
13 Master in Section X of his Annual Report.
14

15 The District claims that the development of the EBAS software and training personnel to
16 use it should make gate the recommendations of the Special Master in Section X the SMAR. The
17 District bullishly asserts that it's student information system (*i.e.*, EBAS) "...far exceeds that
18 which is employed in virtually every other school district in the United States." While the
19 District student information system is quite good, there is no way that the District could reach the
20 conclusion that it is a model for the nation.
21

22 In its comments on Section X of the Special Master's Report, the District also asserts that
23 it has fully met the USP's requirements with respect to budget development, the notice and
24 request for approval process and a webpage concerning all USP required elements. The Court is
25 well aware that the budget development process has been a conflictual one. However, the Special
26 Master believes that the process itself is sound. But because many of the recommendations of
27 Special Master would continue to be in place if the Court were to approve them, it seems
28

1 inappropriate to grant the District unitary status with respect to the budget. Should the Court
2 grant the District unitary status in the domains that the Special Master recommends for release
3 from supervision, he assumes that the budget process would apply only to those elements of the
4 USP still under court supervision. While the SMAR does not deal with the NARA process and
5 the webpage, he recommends that supervision of those provisions be sustained until the District is
6 awarded unitary status.
7

8 Mendoza plaintiffs focus attention on requiring the District to train all of the personnel in
9 the District on how best to use the capabilities of EBAS.⁵ However, knowing whether appropriate
10 training took place and what “appropriate” means is relatively unimportant because the District
11 could easily satisfy this requirement of the USP by providing all employees with workshops of an
12 hour or two and/or online information. What is more important and what the completion plan
13 should focus on is whether the capabilities of EBAS are utilized in prescribed ways. Mendoza
14 plaintiffs appear to agree with this position when they reference the functionality of the MTSS
15 (*see* ECF 2101, page 69, lines 20-25). In his Annual Report, the Special Master recommends that
16 the District and the Special Master work together to identify the essential elements of the MTSS
17 so that a rubric is developed for assessing how well staff use the capabilities of the MTSS to
18 ensure that struggling students receive the support they need.
19
20

21 Assessing the extent to which teachers and administrators and other staff use MTSS is an
22 effective way of determining the scope and effectiveness of EBAS.⁶
23

24 ⁵ The Special Master’s Annual Report points out that EBAS has evolved as an information system
25 that has substantial capabilities beyond those conceived in the development of the USP and to make this
26 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, the Special Master
uses EBAS as the term to cover the discussion in this Report.

27 ⁶ The Mendoza plaintiffs want the completion plan to deal with the functionality of the base as
28 specified in Section V,E,3,a. But there is no such section. Nonetheless, Mendoza plaintiffs make it clear
that they believe that the key question here is whether EBAS can be employed to enhance the performance
(Continued...)

1 The Mendoza plaintiffs want assurances that the elements of EBAS defined in Appendix
2 A of the USP are incorporated. The Special Master amends the completion plan for Section X of
3 his Annual Report as follows:

4 “The District shall ensure that the information identified in Appendix A of the USP is
5 included in EBAS and, if it is not, the District shall explain why.”
6

7 The Mendoza plaintiffs want the completion plan for MTSS to demonstrate that MTSS
8 enhances student learning. This, however desirable, is not possible unless the District is prepared
9 to engage in a major research project with treatment and control groups. MTSS is one of multiple
10 strategies employed by the District to improve student learning. Determining the impact of one
11 of these while other strategies are being implemented simultaneously have similar outcomes is
12 not possible. However, there is plenty of research that shows that effectively implemented
13 evidence-based decision-making has positive effects.
14

15 The Mendoza plaintiffs object to the Special Master’s completion plan regarding
16 Professional Learning Community guidelines because they have not had a chance to review these
17 guidelines. These guidelines are widely used throughout the world and are based on research on
18 school improvement. Are the Mendoza plaintiffs suggesting that they would not approve the use
19 of these guidelines that have been in use in TUSD for two years? Or do they imagine that they
20 would modify these guidelines? And, on what basis would such modification be justified?
21

22 The Mendoza plaintiffs point out that the completion plan for PLCs does not include cross
23 school PLCs as provided for in the USP. The Special Master will amend the completion plan to
24 include a provision that, “The District shall explore the usefulness of PLCs involving staff from
25 more than one school.” However, the Special Master includes this provision only because it is a
26

27 – broadly defined – of students, especially those students most in need. That is what the completion plan
28 in the Special Masters 16-17 Annual Report seeks.

1 specific provision of the USP. It is not that PLCs across schools is not a good idea; it is just that
2 this is something that should be the prerogative of the District. The research supporting multi-
3 school PLCs is limited. Creating effective PLCs in each school – in some cases, implementing
4 more than one PLCs in a school (such curriculums PLC in a high school) – is difficult to
5 effectively implement. Adding multi-school PLCs means that something the District is now
6 doing will not get done. Therefore, the Special Master asks the Court to instruct the District to
7 “explore” rather than implement multi-school PLCs.
8

9 The Mendoza plaintiffs want to have a say in how many and what initiatives the District
10 should evaluate. This proposal is triggered by the Special Master’s inclusion in the completion
11 plan with respect to program evaluation the seemingly limiting term “new initiatives.” The
12 Special Master will revise the completion plan for program evaluation using the wording of the
13 USP.
14

15 The Mendoza plaintiffs also oppose the Special Master’s completion plan because it does
16 not mandate the District to remedy outlier findings. The Special Master recommends that the
17 Court not approve this Mendoza proposal. Statistical outliers may be the product of inappropriate
18 data or the statistical analysis itself. The statistical outlier may be large or small and addressing
19 the identified problem may be of lesser priority than some other need for improvement. In any
20 case, the completion plan calls for the District to learn from findings of its program evaluation
21 and to make that information available for purposes of school improvement. This admonition
22 seems adequate.
23

24 *Recommendation*

25 While the development of EBAS and the other components of what is labeled here as OLS
26 deserves recognition, it would be premature to award unitary status to any of the components
27 discussed in this section of the Special Master’s Report.
28

1 In laying out the path to unitary status for EBAS, MTSS, PLC, discipline monitoring ad
2 program evaluation that would facilitate the development of a genuine organizational learning
3 system in which all of the parts function effectively and coherently, it would be most productive
4 to treat the award of unitary status to these five elements as parts of a larger system to facilitate
5 evidence-based decision making and continuous improvement. Such a strategy would encourage
6 the District to focus on how improvements of each of the elements can enhance the effectiveness
7 of others. Individually these elements of the USP are useful; collectively, they will be powerful.

9 *Completion Plan*

10 Unitary status for professional development related to culturally responsive pedagogy,
11 ways of reducing student misbehavior and creating cultures of civility in schools, and enhancing
12 teacher and administrator proficiency in the use of technology should be deferred until a
13 comprehensive research-based plan for how professional learning is provided to teachers and
14 administrators is put in place. This plan would be developed by the District in collaboration with
15 the Special Master before the beginning of the 2018-19 school year. At the end of the 2018-19
16 school year a report would be provided to the plaintiffs along with recommendations as to
17 whether unitary status should be awarded for these domains of professional learning.

- 19 1. The District shall place responsibility for the use and operation of an
20 effective EBAS system in the District's chief academic officer (currently
21 denominated as the Assistant Superintendent for Curriculum and
22 Instruction) who reports directly to the superintendent.
- 23 2. The head of the Department of Assessment & Program Evaluation shall
24 report to the District's chief academic officer.
- 25 3. The District shall engage an expert, approved by the Special Master, to
26 assess the District's overall use of its data and integration into its decision-
27 making processes. Among the factors to be considered are the extent to
28 which the District:
 - a. Identifies evidence that would be available covering the range of
influences on student learning and strategies for improving student
outcomes;

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- b. Organizes the evidence in ways that facilitate decision making (including ways to lower the “search costs” for teachers and support staff) and ensures that viable alternatives for improvement are considered;
- c. Designs frameworks for problem-solving for PLCs linked to data that would be helpful in designing improvement strategies;
- d. Has developed the capacity to link data from different sources in the District (*e.g.*, human resources and student academic achievement); and
- e. The District shall ensure that the information identified in Appendix A of the USP is included in EBAS and, if it is not, the District shall explain why.

The Special Master shall determine whether the District’s use of its data and integration into its decision-making processes providing the District staff and Governing Board members with information needed to facilitate continuous improvement at classroom, school and District levels and allows families and community members to know the progress being made to ensure that all students develop the cognitive, social and emotional capabilities they need to lead productive lives and contribute to the welfare of others. If the OLS is well developed, the Special Master shall recommend that the District be granted unitary status in this area. If not, the Special Master shall recommend specific, feasible steps to achieve unitary status within one year. The District shall be granted unitary status if it implements those steps.

The MTSS Facilitators and Leads shall:

1. Evaluate student data to help identify needed improvement in student achievement, discipline, absenteeism, and other challenges identified by District leaders.
2. Make evidence-based practical suggestions for resolution of problems identified by the data.
3. Provide relevant professional development to Tier 1 teachers (*e.g.*, as an instructional coach) and/or work with site-level administrators to identify other resources for professional learning.
4. Assist professional learning communities in identifying relevant data and potential solutions and resources.
5. Facilitate Tier 2 or 3 support and act as a case manager.

1 The District shall develop, in collaboration with the Special Master, a rubric for assessing
2 the effectiveness of MTSS Facilitators and Leads and performing these responsibilities. These
3 rubrics shall be used to identify needs for further professional learning and ways to improve
4 MTSS.

5
6 A. Professional Learning Communities.

7 The District shall:

- 8 1. Implement the PLC guidelines that have been provided to principals.
- 9 2. Identify the EBAS resources available to support PLC functions, and
10 provide that information to principals and MTSS Facilitators or Leads.
- 11 3. Provide training in the use of EBAS resources available to support PLC
12 functions, to principals, teacher leaders and MTSS Facilitators or Leads.
- 13 4. The District will explore the feasibility and usefulness of multi-school
14 PLCs.

15 The Assessment and Evaluation Department (AED) shall be charged with the following
16 responsibilities, functions and tasks:

- 17 1. Undertake the systematic and systemic evaluation of new initiatives.
- 18 2. Identify for problem areas deserving of attention from District leaders
19 through the systematic analysis of data that is part of the EBAS evidence
20 base.
- 21 3. Regularly identify schools that are positive and negative outliers with
22 respect to success in implementing particular initiatives or achieving
23 particular goals and make the knowledge of effective practices accessible
24 throughout the District. Such an “effective practices” resource library
25 could also identify individuals who could provide support to their
26 colleagues.
- 27 4. Support PLCs by consultation and the identification of research that would
28 help PLCs make effective decisions.

Before the 2018-19 school year, the District shall provide a report detailing how the
department is performing or will perform these responsibilities, functions and tasks, including a
schedule for implementation.

1 **XI. Professional Learning**

2 The Mendoza plaintiffs seek to amend the completion plan for professional learning in
3 three ways: to mandate the training of all staff who would use EBAS; describe how professional
4 learning experiences should be led; and eliminate any ambiguity about the scope of professional
5 learning that the District is obligated to carry out.

6
7 The third of these concerns can be addressed by modifying the professional learning
8 completion plan to say that, “Nothing in this plan shall remove responsibilities for professional
9 development spelled out in the USP.” The second proposal contradicts the provision of the USP
10 which provides that the superintendent may organize the functions and responsibilities in the USP
11 in ways that superintendent deems appropriate. With respect to requiring successful professional
12 learning for EBAS suggests that the Mendoza plaintiffs do not recognize that EBAS affects the
13 implementation of virtually every provision of the USP that involves the delivery of services. In
14 Section X of this Report, the Special Master indicates that he and the Implementation Committee
15 will be monitoring data intensive programs such as MTSS. In the exercise of this responsibility,
16 how professional development is delivered and to whom will be one of the considerations.

17
18 *Recommendation*

19 The District shall not be awarded unitary status for Professional Learning at this time.

20
21 *Completion Plan*

22 The District shall take the following steps:

- 23 1. No later than April 2018, the District shall work with the Special Master to
24 establish rubrics for guiding implementation and conducting evaluation of
25 professional learning;
- 26 2. Prior to the start of the 2018-19 school year, the District will provide a report to
27 the Special Master demonstrating how the District will implement professional
28 development in a manner aligned with Exhibit C in the following areas:
- a. discipline and fostering of civility

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- b. technology facilitated learning
 - c. culturally responsive pedagogy in implementing the curriculum
3. Beginning in school year 2018-19, evaluate professional development conducted by the District using the rubrics developing collaboration with the Special Master;
 4. Designate a single individual with the responsibility to both oversee all professional development in the District and to organize professional development;
 5. Nothing in this plan shall remove responsibilities for professional development spelled out in the USP.

XII. BUDGET

Recommendation

When the District receives unitary status, it will no longer be submitting its budget as it relates to the specific provision of the USP. Until then, the District shall demonstrate that it has followed procedures agreed to by the parties and the Special Master for Provisions of the USP for which it has not yet received unitary status.

Respectfully submitted,

/s/
Willis D. Hawley
Special Master

Dated: June 12, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on, May 12, 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