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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 reduce gaps in the participation and outcomes between Anglo students on the one hand and
2 African American and Latino students on the other.

3 Exhibit I immediately below summarizes the claims by the Mendoza plaintiffs that the
4 District had failed to implement provisions of the ALE action plans, the District's response to
5 these claims, and the Special Master's analysis and conclusions about whether action by the court
6 is necessary.
7

8 **Exhibit I – District Response to Mendoza Plaintiffs' ALE Claims in**
9 **Addendum 1 [ECF 2069-1]**

10 **Claim No. 1:** The ALE plan includes a recommendation that the ALE Coordinator “Work with
11 Transportation to provide: transportation to schools with AAC options that students request; after
12 school activity buses for schools that provide enrichment and/or support classes for students who
13 enroll in AACs. The Mendoza Plaintiffs assert that there has been no specific effort between the
14 ALE Department and Transportation to provide transportation to schools with AAC options.”

14 **District Response to Claim No. 1:** This claim is incorrect. The ALE Department has
15 worked directly with the Transportation and other departments to develop transportation
16 to schools with AAC options:

- 16 • Express buses to schools with multiple AAC options (Sabino, Magee);
- 17 • Magnet and GATE buses at secondary schools with AAC options (Dodge, Booth-
18 Fickett, Roberts-Naylor K-8, Palo Verde HS, Tucson High, Santa Rita HS, Doolen
19 MS, Vail MS); and
- 20 • Specialized transportation for 8th grade students to take Algebra 1: Pueblo
21 Gardens to Utterback; Dietz and Roberts-Naylor students to Palo Verde;
22 McCorkle, Rose, Hollinger to Pueblo. There are approximately 40-50
23 participating students this year.

23 The District provides enrichment and support efforts for students in AACs using a
24 different approach than after school classes, and thus there is not currently a need for
25 school activity buses to support after school AAC-support-related activities.

26 Representatives of both the ALE and Transportation Departments serve on the
27 Coordinated Student Assignment Committee. “District staff members from multiple
28 departments work collaboratively to ensure that prospective and enrolled families receive
information regarding the availability of free transportation through multiple outlets,
locations, and the Internet. The District facilitates this and other transportation-related

1 collaboration, primarily through the Coordinated Student Assignment committee, of
2 which the District's Transportation director and staff are core members." 15-16 DAR at
3 111-56 [ECF 1958-1 at 85]

4 ***Special Master's Analysis***

5 This issue has to do with the availability of certified teachers to teach particular high
6 school courses to middle school students. Middle grades teaching is often described as the most
7 difficult in which to teach and teachers certified to teach high school courses often prefer high
8 school teaching. Thus, middle schools and K8 schools are clustered in TUSD and the students in
9 the schools are bussed to the nearest high school to take particular courses for high school credit.
10 This problem is especially problematic regarding Algebra I (a specific example raised by the
11 Mendoza plaintiffs). There is a recurrent shortage of math teachers in high schools (and even
12 more so for middle grades) so middle school students who wish to take Algebra I are most likely
13 bussed to a high school for this purpose.

14 The District's procedure for providing a high school credit for middle school students is
15 reasonable and the Court need take no action regarding this concern of the Mendoza plaintiffs

16 **Claim No. 2:** There appears to be a difference in the relative number of white vs. Latino and
17 African American students who are provided transportation to participate in GATE and attend
18 UHS.

19 **District Response to Claim No. 2:** This claim is incorrect. The District offers
20 transportation to every student enrolled in GATE classes or University High School who
21 lives outside the walk zone for the school at which the student enrolls. The number of
22 students offered transportation for GATE or UHS placement is directly a function of (a)
23 the number who qualify and accept placement, and (b) how far they live from the school.
24 The District examined the race/ethnic composition of those using this transportation and
25 found it proportional to the race/ethnicity of the students who accepted placement.

26 ***Special Master's Analysis***

27 The District's explanation for why the racial makeup of students riding the buses to
28 participate in GATE and UHS is accurate. There is no discrimination or undue burden on African

1 American and Latino students who participate in GATE experiences and UHS. The Court need
2 take no action.

3 **Claim No. 3:** The ALE Plan states that the District will “[s]tudy and possibly implement use of
4 multiple measures, including the use of nontraditional student qualifying criteria and/or
5 noncognitive measures, in addition to verbal and non-verbal cognitive assessments.” In addition,
6 the ALE Plan Supplement states that the District will “[a]nalyze results of GATE Discover Pilot
7 Assessment, a non-cognitive multiple measure, administered 2014-2015 as an alternative to the
8 Raven's Progressive Matrices. Possibly make adjustments to admissions criteria based on pilot
9 results.” (Doc. 1788 at 16.) The Mendoza Plaintiffs are not aware of whether the recommended
10 analysis of the GATE Discover Pilot Assessment occurred.

11 **District Response to Claim No. 3:** The study and possible implementation of multiple
12 measures for determining GATE eligibility was one of five recommendations, not
13 requirements, in the ALE Plan. The District did follow the recommendation, studied the
14 implementation of multiple measures, and reported on those studies in its annual reports.
15 Further, the District did analyze the results of the GATE Discover Pilot Assessment, and
16 reported on that in its annual reports and RFI responses. For the convenience of the
17 reader, we have set out here in full our prior reporting on these issues.

18 **2014-15 DAR**

19 “In addition to modifications made to existing assessments, the District piloted a non-
20 verbal assessment, used the Discovering Intellectual Strengths and Capabilities while
21 Observing Varied Ethnic Responses (DISCOVER), a unique performance-based
22 assessment, to identify diverse students for gifted programs. The pilot targeted students in
23 kindergarten and first grade at thirteen schools with high numbers of Latino and African
24 American students (Appendix V-9, Discover Testing Schedule). Based on assessment
25 results for Discover (Appendix V-10, Discover Pilot Evaluation), the District is
26 considering piloting this assessment again in the 2015-16 school year in order to compile
27 additional data for more comprehensive results.” 14-15 DAR at V-125 and V-126 [ECF
28 1848 at 150-51]

29 **2015-16 DAR**

30 “In spring 2015, the GATE Department piloted the Discovering Intellectual Strengths and
31 Capabilities While Observing Varied Ethnic Responses (DISCOVER) assessment. The
32 purpose of the pilot was to determine if the DISCOVER assessment would be an
33 appropriate multiple measure to identify younger-age students and ELL and other students
34 who may not be identified using the traditional tests utilized by the GATE Department,
35 especially African American and Hispanic students. The department gave the assessment

1 to approximately 400 students in grades K-1st, with a high percentage of Hispanic and
2 African American students assessed.”

3 In November 2015, the District evaluated the outcome of the DISCOVER pilot and the
4 feasibility of conducting a second pilot. After analyzing the effectiveness of the
5 DISCOVER assessment to identify underrepresented students, the District determined that
6 the DISCOVER pilot did not identify a significant number of these students and that
7 utilizing the DISCOVER test district-wide would not be feasible.” 15-16 DAR at V-139
8 [ECF 1958-1 at 168]

9 **2015-16 DAR**

10 “In November 2015, the GATE coordinator and staff from Assessment and Program
11 Evaluation attended the National Association for Gifted Children convention and
12 collected data on other options for an alternate test. In December 2015, the District
13 decided to pilot the NNAT in April/May of 2016. Ten elementary school sites that had
14 a large number of 1st grade African American and Hispanic students were selected to
15 pilot the NNAT: Blenman, Cavett, Erickson, Grijalva, Holladay, Maldonado, Myers-
16 Ganoung, Tully, Vesey, and Wright. First grade students were selected so that the
17 NNAT scores could be compared to their 2015-16 Annual Report 201516 Raven and
18 CogAT scores. The District will analyze data results from the NNAT pilot to help
19 determine if TUSD will use the NNAT for testing in SY 2016-17 or continue to research
20 alternative testing protocols for identifying underrepresented students for GATE
21 programs (Appendix V - 3F13, NNAT IMP Plan).” 15-16 DAR at V-139 and V-140
22 [ECF 1958-1 at 168-69]

23 **2016-17 DAR**

24 “In spring 2015, the GATE Department piloted the Discovering Intellectual Strengths and
25 Capabilities While Observing Varied Ethnic Responses (DISCOVER) assessment. The
26 purpose of the pilot was to determine if the DISCOVER assessment would be an
27 appropriate multiple measure to identify younger-age students and ELL and other students
28 who may not be identified using the traditional tests utilized by the GATE Department,
especially African American and Hispanic students. The department gave the assessment
to approximately 400 students in grades K-1st, with a high percentage of Hispanic and
African American students assessed.

In November 2015, the District evaluated the outcome of the DISCOVER pilot and the
feasibility of conducting a second pilot. After analyzing the effectiveness of the
DISCOVER assessment to identify underrepresented students, the District determined
that the DISCOVER pilot did not identify a significant number of these students and that
utilizing the DISCOVER test district-wide would not be feasible.

1 “The District piloted the Naglieri Non-Verbal Abilities Test (NNAT) in April/May 2016
 2 but determined the NNAT did not increase the identification of African American and
 3 Hispanic students. The District therefore continued using the CogAT and Raven
 4 assessments for SY2017-18 and remains committed to continue researching alternative
 5 testing protocols for identifying underrepresented students for GATE programs.” 16-17
 6 DAR at V-159 [ECF 2057-1 at 190]

7 “The GATE department developed and implemented a classroom observation rubric
 8 to identify students who might benefit from receiving additional GATE services in a pull-
 9 out or self-contained GATE program. A committee of GATE teachers and coordinators
 10 who attended the AAGT conference and participated in trainings on differentiated
 11 classroom observation created the GATE Differentiated Observation Classroom Screener,
 12 or DOCS¹ (Appendix V – 8, GATE DOCS). The committee researched a variety of
 13 models and gathered input from other districts in Arizona that used similar observation
 14 scales to identify underrepresented students who qualify for gifted services. The GATE
 15 DOCS identified eight additional Hispanic students, including four ELL students, and the
 16 department invited them to participate in the GATE pull-out program at Mission View.
 17 These students will be monitored throughout their participation in the GATE program
 18 (Appendix V – 9, MV Screener Pilot).” 16-17 DAR at V-149 [ECF 2057-1 at 179-80]

19 “In January 2017, GATE DOCS was administered in Spanish by a GATE itinerant teacher
 20 to ELL students at Cavett, Maldonado, Roberts-Naylor, Hollinger, and White elementary
 21 and K-8 schools. In addition, a pilot utilizing the ELL screener was used for a targeted
 22 group of ELL students identified by itinerant teachers at Mission View (Appendix V – 9,
 23 MV Screener Pilot). For SY2017-18, the GATE department will continue to research
 24 testing materials to assist in increasing the identification of ELL students for GATE
 25 services.” 16-17 DAR at V-153 [ECF 2057-1 at 184]

26 **RFI Responses**

27 “TUSD researched and implemented the Discover in SY 14-15 and the Naglieri Nonverbal
 28 Ability Test (NNAT) in SY2015-16 assessments, neither of which identified more African
 American and Latino students when compared to the RAVEN. In SY16-17 further research was
 conducted and two pilot programs to add 1) GATE push-in (whole class) lessons for grades

¹ In addition to utilizing the CogAT and Raven assessments mentioned later in this section, the GATE department created a GATE Differentiated Observation Classroom Screener (GATE DOCS) as an additional assessment for identifying ELL students. GATE department staff attended the AAGT Conference in February 2017 to research and participate in trainings that presented options for testing and identifying gifted ELL students. Based on the trainings and information gathered from state and national school districts, the GATE department created and piloted the DOCS at Mission View and five additional elementary schools.

1 kinder and first and 2) a kinder Pre-GATE screener were implemented at schools with high
 2 populations of African American and Latino students. The results of the two pilots will be
 3 completed by end of school year SY2016-17. In SY16-17 two pilot programs to add GATE
 4 push-in (whole class) lessons for grades kinder and first and a kinder assessment screener at
 5 schools with high populations of African American and Latino students were implemented. The
 6 results of the two pilots will be completed by end of school year SY2016-17. One of the GATE
 7 Department priorities is to continue to research assessments and eligibility criteria throughout
 8 the state and nation to determine best practices for identification of African American, Hispanic,
 and ELL students. The GATE Department is considering piloting a rubric observation screener
 for these students who may not qualify but fall within a specified stanine and NCE range.”
 Response to RFIs 1145 and 1146, April 21, 2017.

9 “The DISCOVER pilot was analyzed but it did not identify more students than the Raven.
 10 Results of the pilot were provided in AR SY2014-15. TUSD continues to research and pilot
 11 other gifted assessments and will be making a recommendation at end of SY2016-17.” “TUSD
 12 did not make adjustments based on the DISCOVER pilot. However in SY2016-17 an
 13 adjustment was made to the qualifying criteria for self-contained placement to include the
 Raven stanine and NCE score. This criteria is consistent with the scoring of the CogAT.”
 Response to RFIs 1252-53, April 21, 2017

14 *Special Master’s Analysis*

15 Contrary to the concerns of the Mendoza plaintiffs, the District did explore various ways
 16 of assessing whether different measures of student readiness to participate in testing ELL would
 17 yield a different mix of students in these ALEs. The District reports that the piloting of different
 18 assessments did not yield a significantly different pool of eligible African American and Latino
 19 students. There is no need for Court action.

21 **Claim No. 4:** The Mendoza Plaintiffs claim not to be aware of whether the District followed one
 22 of nine recommendations for self-contained GATE programs in the ALE Plan Supplement to
 23 “[e]xplore admissions criteria including weighting of student race and/or ethnicity for placement
 and/or priority wait list placement.”

24 **District Response to Claim No. 4:** The District has repeatedly and thoroughly explored a
 25 range of different criteria for eligibility for the self-contained GATE program, as set out in
 26 the response to Claim Nos. 1-3 above. The District does not believe that weighting of
 27 student race or ethnicity in self-contained GATE placement is appropriate. However,
 28 starting in 2016-17, and continuing in 2017-18, students on wait-lists for self-contained
 GATE at Kellond or Lineweaver were offered placement at Roberts-Naylor or Wheeler
 based on where the student's placement would improve integration. Through this process,

1 the District was able to offer placement to all students on the waitlist for Kellond and
2 Lineweaver.

3 ***Special Master's Analysis***

4 The Mendoza plaintiffs argue that the District should give extra weight to the test scores
5 of African American and Latino students who apply for self-contained GATE. The District
6 responded by saying that it believes such preferential treatment is not appropriate but goes on to
7 say that African American and Latino students on the wait list at two schools were placed in self-
8 contained programs if this improved integration. This resulted in the admission of more African
9 American and Latino students in self-contained programs.

10 The District shall weight the placement of African American and Latino students in self-
11 contained GATE programs when this increases the integration of the self-contained GATE
12 schools to which students seek admission. If this is not practicable, the District should explain
13 why.
14

15 **Claim No. 5:** The Mendoza Plaintiffs claim that the District has not followed the
16 recommendation in the ALE Supplement to “[e]xplore the possibility of additional [self-contained
17 GATE] sites including a program on the east side of Tucson.”

18 **District Response to Claim No. 5:** The District has “explored the possibility of
19 additional” SCGate sites and has expanded SCGate sites in central Tucson (Roberts-
20 Naylor) and on the eastside (Wheeler). The District has consistently reported on its efforts
21 in its annual reports and in responses to RFIs over the past three years (*see also*, “Gate
22 Expansion,” attached).

23 **2015-16 DAR**

24 “In SY2015-16 the GATE Department implemented several strategies to expand GATE
25 services, including Itinerant Push-In Services in kindergarten and GATE whole-grade
26 testing, as noted above. In addition to these services, the department provided support to
27 implement new GATE programs at Tully Elementary Magnet School, Wheeler
28 Elementary School and Roberts-Naylor K-8 School.” 15-16 DAR at V-142 [ECF 1958-1
at 171]

1 **2016-17 DAR**

2 “In SY2016-17, the GATE department implemented several strategies to expand GATE
3 services, including itinerant push-in services in kindergarten and continued GATE whole-
4 grade testing, as noted above. In addition to these services, the department provided
5 support to implement new GATE programs at Tully, Wheeler, and Roberts-Naylor and
6 began planning with site principals and teacher to expand cluster programs at five
7 additional elementary sites: Cavett, Grijalva, Maldonado, Myers/Ganoung, and Wright in
8 SY201718.” 16-17 DAR at V-162 and V-163 [ECF 2057-1 at 193-94]

9 “Wheeler Elementary School and Roberts-Naylor K-8 School.² The District implemented
10 one 2nd grade self-contained GATE class at Wheeler Elementary and both a pre-GATE
11 kindergarten and a self-contained 2nd grade GATE class at Roberts-Naylor K-8 in
12 SY2016-17. Placement offers were extended to students on waitlists for other self-
13 contained sites. In addition, the District ran an open enrollment lottery that included these
14 students and other students who had previously declined GATE placement. In July 2016,
15 the District provided GATE teachers at these sites with 24 hours of gifted training specific
16 to the classroom environment and gifted strategies, and these teachers received priority
17 enrollment in all District GATE trainings throughout the school year. In SY2017-18,
18 pre-GATE kindergarten and 1st through 3rd grade self-contained GATE classes will be
19 available at both Wheeler and Roberts-Naylor. Students will be placed based on a revised
20 GATE feeder pattern. The District will offer placement to any waitlisted student using a
21 lottery process.” 16-17 DAR at V-163 [ECF 2057-1 at 194]

22 **RFI Responses**

23 “An impact analysis was conducted for Wheeler and Roberts/Naylor GATE self-contained
24 expansion programs prior to expanding the GATE program at these two sites to ensure there would
25 not be a negative impact on the integration at Lineweaver, Kellond and White elementary schools.
26 Ethnic distribution at these GATE schools would not be affected. Please see attached document;
27 GATE Expansion Impact Analysis for Wheeler RN.” Impact Document that was filed as part of
28 Doc. 2028-2 (at page 179). Response to RFI 1030, March 6, 2017, attached.

 “TUSD was expanded self-contained programs at two sites, Wheeler Elementary on the east side
and Roberts Naylor K-8 which is central on the south side of the district.” “TUSD was able to
expand one class at Lineweaver elementary however, do to student or classroom capacity no
other self-contained site could expand or was it necessary to expand services.” Response to RFIs
1250-51, April 21, 2017, attached.

² In addition, the District initiated ELL whole-grade push-in services at Mission View Elementary School.

1 *Special Master's Analysis*

2 The District shows that it has expanded self-contained GATE sites and identifies the list
3 of schools where this expansion occurred. Since the DAR was submitted in fall of 2017, two
4 additional sites have been added. No action by the Court is required.

5 **Claim No. 6:** The Mendoza Plaintiffs assert that the District has not followed recommendations
6 from the ALE Plan.

7 (a) that professional development be provided “to designated staff regarding
8 identification of students for AACs,”

9 (b) that there be discussion of “the open access philosophy with current and prospective
10 AAC teachers [to e]nsure that all AAC teachers in these courses support this policy and support
11 access for all students. Consider adapting the teacher agreement from Advanced Kentucky to use
with administrators and AAC teachers,” and

12 (c) “requiring” middle and high schools to promote TUSD's commitment to open access
13 for the AACs.

14 **District Response to Claim No. 6:** The ALE Director visits schools on a regular basis.
15 As part of his visits, he shares the open access policy with counselors and principals and
16 encourages them to share this information with AAC teachers. The District did consider
17 using the Advanced Kentucky form and decided not to use it (*see* response to RFI 1194,
18 attached, responding, “Yes [TUSD consider[ed] adapting the teacher agreement from
Advanced Kentucky to use with administrators and AAC teachers]. However, the
19 decision was made not to implement the form.”

20 **2014-15 DAR**

21 “The District also focused on Advanced Academic Classes (AAC) recruitment. On
22 August 25th, 2014, the District sent an information letter to all District families with an
23 8th grade student encouraging enrollment in various high school Advanced Academic
24 Courses (AACs) and programs (Appendix V-11, ALE 8thgrade letter 14-15). In addition,
25 the District distributed student-friendly flyers to middle and high school students to
26 encourage them to consider registering for AACs (Appendix V-12, Flyers). One strategy
at the high school level was to provide an AP mentor at each high school site with the dual
27 purpose to recruit and retain students in AP courses. These teacher mentors supported AP
28 students but also worked to increase enrollment by targeting African American and
Hispanic students for enrollment in AP courses.

Previously, in the 2013-14 school year, the District communicated its commitment to open
access for all AACs to all principals (Appendix V-13, Open Access Email to principals).
Open access means that any student who is interested in taking an AAC is able to register

1 without any prerequisites except for reasonable content expectations, especially in math
2 and science courses (*e.g.*, Algebra 1 before Algebra 2). For 2014-15, the District revised
3 its course catalog to eliminate all prerequisites to AAC offerings, including Honors and
4 AP courses, unless it was a math or science content requirement. 14-15 DAR at V-126
5 [ECF 1848 at 151]

6 **2016-17 DAR**

7 “During SY2016-17, the director of Advanced Learning Experiences met with middle and
8 K-8 school counselors to review open access of advanced academic coursework for
9 students in grades 6-8, including middle school classes for high school credit.” 16-17
10 DAR at V-175 [ECF 2057-1 at 206]

11 “As with middle school courses for high school credit, the ALE director met with all
12 middle and K-8 school counselors and principals to review open access of advanced
13 academic coursework for students in grades 6-8 for accelerated mathematics courses. 16-
14 17 DAR at V-176 and V-177 [ECF 2057-1 at 207-208]

15 ***Special Master’s Analysis***

16 The Mendoza plaintiffs assert that the District has not followed recommendations of the
17 ALE plans with respect to professional development. The District responds by saying that the
18 Director of ALE meets with principals to inform them about the relevant provisions of the USP
19 and the ALE plans. The Mendoza plaintiffs want the District or the Special Master to provide
20 evidence that the relevant training takes place and that it is effective.

21 The Special Master believes that there is no reliable way to determine whether the
22 professional development took place or whether it was acted upon. The Mendoza plaintiffs cite
23 the Kentucky plan which the District explored and determined was not feasible. Kentucky
24 teachers were surveyed and asked if they received the training and did well they were supposed to
25 do. In other words, Kentucky incentivized misrepresentation.

26 In this case it is necessary to depend on the District’s assertions that it does what it is
27 supposed to do. There is no need for Court action.

28 **Claim No. 7:** The Mendoza Plaintiffs claim not to be aware of whether the District has
followed one of nearly a dozen recommendation the ALE Plan relating dual credit courses, to

1 “[r]equire all District high schools to actively advertise and recruit students for Dual-Credit
2 courses.”

3 **District Response to Claim No. 7:** The District actively recruits students to Dual Credit
4 classes and has significantly increased the number of Dual Credit classes offered at
5 District high schools from 11 courses in SY 2016-17, to 16 in SY2017-18, to 43 in SY
6 2018-1. (See “Dual Credit Increases,” attached).

6 ***Special Master’s Analysis***

7 Evidence provided here by the District indicates that the District increased the number of
8 dual credit courses over the recent three years by 400%. There is no need for Court action.

9 **Claim No. 8:** The Mendoza Plaintiffs ask about the status of an ALE Policy Manual which was
10 the subject of a recommendation in the ALE Plan.

11 **District Response to Claim No. 8:** The draft ALE Policy Manual is attached.

12 ***Special Master’s Analysis***

13 The ALE manual is posted and hard copies will be distributed. There is no need for Court
14 action.

15 **Claim No. 9:** The Mendoza Plaintiffs assert that the District has not followed
16 recommendations in the ALE Plan relating to expansion of GATE services to
17 kindergarten and first grade students:

18 (1) “Expand Gate services to include all kindergarten students....Provide thirty
19 minute weekly lesson from a gifted endorsed teacher stressing critical thinking,
20 creative thinking, and problem-solving skills” and

21 (2) “Provide services to all students in first grade except those in self-contained
22 GATE; provide forth-five minute weekly lesson from a gifted endorsed teacher
23 stressing critical thinking, creative thinking, and problem-solving skills.”

23 **District Response to Claim No. 9:** The District has implemented this recommendation,
24 and has reported on its efforts in RFI responses and in its annual reports:

25 **RFI Responses from RFIs 1155-60, April 21, 2017 attached.**

26 “Yes- TUSD implemented kindergarten Push-In (whole grade) Itinerant Services. In school year
27 2016-17 TUSD expanded the number of kindergarten classrooms receiving push in (whole class)
28 lessons. Targeted schools had an assigned itinerant teacher to provide these lessons and all
schools had the assigned itinerant teacher providing pull out lessons, provide push in (whole

1 class) kinder lessons if scheduling permitted.” NOTE: In 2017-18 itinerant teachers will be
2 assigned to schedule kinder push in (whole class) lessons at each of their sites.

3 “In school year 2016-17 TUSD expanded the number of kindergarten classrooms receiving push
4 in (whole class) lessons. Targeted schools had an assigned itinerant teacher to provide these
5 lessons and all schools had the assigned itinerant teacher providing pull out lessons, provide push
6 in (whole class) kinder lessons if scheduling permitted.” NOTE: In 2017-18 itinerant teachers
7 will be assigned to schedule kinder push in (whole class) lessons at each of their sites.

8 “In school year 2016-17 TUSD itinerant teachers provided approximately 45 minute weekly push
9 in (whole class) lessons stressing critical thinking, creative thinking, and problem-solving skills,
10 rotating in grade level and classrooms at their assigned schools as schedules permitted.”

11 “Yes, beginning in SY2015-16 push in (whole grade) lessons were provided in kindergarten and
12 first grade classrooms at their assigned schools as schedules permitted. The number of lessons
13 each classroom received increased in SY2016-17 and as schedules permit the number will
14 increase in SY2017-18 from SY2016-17.

15 “Beginning in SY2015-16 push in (whole grade) lessons were provided to first grade classrooms
16 at their assigned schools as schedules permitted. The number of lessons each classroom
17 received increased in SY2016-17 and as schedules permit the number will increase in SY2017-
18 18 from 2016-17.”

15 **2015-16 DAR**

16 “In the 2015-16 school year, the GATE Department provided for the first time whole-class
17 itinerant GATE services for kindergarten and primary grades at targeted schools (Holladay,
18 Carrillo, White, Hollinger, Pueblo Gardens, and Grijalva), with high populations of
19 underrepresented students testing and qualifying for GATE services. When itinerant GATE
20 teachers were not providing pull-out GATE services, they taught 45-minute critical thinking
21 and reasoning lessons using gifted strategies in regular education classrooms. The purpose of
22 these services was to determine if early exposure to gifted instruction opportunities would
23 result in increased numbers of these students testing, qualifying, and enrolling in GATE
24 programs as families became familiar with GATE services. Itinerant GATE teachers also
25 provided opportunities for whole-class instruction at most elementary sites during Wednesday
26 mornings (Appendix V - 32F2, Kinder WC Outreach). 15-16 DAR at V-128 [ECF 1958-1 at
27 157]

24 **2016-17 DAR**

25 “In SY2016-17, the GATE department expanded whole-class itinerant GATE services for
26 kindergarten and primary grades at targeted schools with high populations of underrepresented
27 students (Roberts-Naylor and Hollinger, Maldonado, Mission View, and Wheeler elementary
28 schools). The department assigned itinerant GATE teachers a school, and teachers provided
weekly 45-minute critical thinking and reasoning lessons using gifted strategies in the regular

1 education kindergarten classroom (Appendix V – 6, Enrichment Schedule). The purpose of
 2 these services was twofold: to provide early exposure to gifted instructional strategies for
 3 students and potentially increase the number of students tested.

4 “Additionally, itinerant GATE teachers also provided opportunities for whole- class instruction at
 5 most elementary sites. Teachers taught 30- to 45-minute critical-thinking and reasoning lessons
 6 using gifted strategies in regular education classrooms at their assigned sites. GATE itinerant
 7 teachers modeled gifted teaching strategies for regular education teachers, exposed them to gifted
 8 instruction opportunities, and promoted the benefit of gifted teaching strategies for all students.
 9 This model of exposure and increased familiarity to GATE services was a means of encouraging
 10 underrepresented families to have their students tested for GATE services and enroll in GATE
 11 programs if offered placement. By providing these classes, the number of students receiving
 12 gifted lessons increased.” 16-17 DAR at V-148 [ECF 2057-1 at 179]

13 *Special Master’s Analysis*

14 The District expanded GATE services pursuant to recommendations. There is no need for
 15 Court action.

16 **Claim No. 10:** The Mendoza Plaintiffs assert that the District is not providing a resource GATE
 17 opportunity at each middle and K-8 school. As recommended in the ALE Plan.

18 **District Response to Claim No. 10:** Each TUSD middle and K-8 school offers a
 19 GATE resource class. Due to scheduling at the smaller K-8 schools these services may
 20 only be offered in a pull-out model. Or, a resource class may have formed after the 40
 21 day reporting due to site equalization and/or teacher assignment changes after resource
 22 schedule was determined (thus, some classes don't show up in the 40th day data).
 23 Several smaller K-8s have pull-out rather than resource. However, in 2018-19, several
 24 smaller K-8s will transition to resource rather than pull-out based on the availability of
 25 GATE-certified teachers and school scheduling. The District has implemented this
 26 recommendation and has reported on its related efforts:

27 **2015-16 DAR**

28 “The District provided more students with GATE services due to additional support from
 itinerant GATE teachers and the institution of co-teaching models (Appendix V - 321F1,
 K8 IT Services). To facilitate this change, the GATE Department assisted Roskrige
 Bilingual K-8 Magnet School with a co-teaching resource class, assisted Safford Middle
 School to establish a GATE resource class with current staff, and provided itinerant pull-
 out services to Maxwell K-8 and Pueblo Gardens Elementary schools. After collaboration
 with K-8 principals to improve access to services, the GATE Department provided pull-
 out services once a week with instruction by an itinerant GATE teacher. The GATE
 Department also worked with McCorkle K-8 to establish a co-teaching model for resource
 services. Informal feedback from the site principal and teachers regarding the GATE
 Department's collaboration with the K-8 schools was very positive and principals at the

1 assisted sites requested that these services continue in SY 2016-17. 15-16 DAR at V-128
2 [ECF 1958-1 at 157]

3 **2016-17 DAR**

4 “In SY2016-17, the District extended its services to 6th through 8th grade students at K-8
5 schools by providing additional support from itinerant GATE teachers. Middle school
6 students at Borman, C. E. Rose, Dietz, Drachman and Lawrence had once-a-week
7 instruction by an itinerant GATE teacher (APPENDIX #, K8 MS PULL OUT).” 16-17
8 DAR at V-146 and V-147 [ECF 2057-1 at 177-178]

9 **RFI Response 1161**

10 “Every middle school and K-8 school provided either a GATE resource enrichment or a pull
11 out enrichment class depending on the size and schedule of the school.”

12 ***Special Master’s Analysis***

13 Every middle school and K8 school provides either a GATE resource enrichment or a
14 pullout enrichment class depending on the size and schedule of the school. There is no need for
15 Court action.

16 **Other Objections to the Special Master’s Annual Report by the Mendoza Plaintiffs**

17 The Mendoza plaintiffs raise numerous objections to the Special Master’s Annual Report
18 not because they object to the substance of the proposals but because the Special Master does not
19 provide the level of relevant information the Mendoza plaintiffs feel is desirable. The addition to
20 the Special Master’s completion plans advocated by the Mendoza plaintiffs fall into four
21 categories

- 22 1. Things the District allegedly failed to do – almost all of which the District did.

23 *See* the previous section of this Report.

- 24 2. Things that the District has agreed to do – such as peer to peer family recruitment
25 to self-contained GATE and UHS.

1 recommends that the District assess the viability of an opt out policy at least with respect to ALEs
2 that require test scores for students to be eligible to participate.

3 **Limits**

4 The Fisher and Mendoza plaintiffs expect that all of the effort invested in developing and
5 implementing the USP, and the desegregation plans that went before it, should have yielded
6 substantial gains in narrowing the achievement gap, or at least, the participation gap. But, unless
7 the District were to discriminate against white students and their families – such as improving
8 recruitment – it is almost certain that better educated and wealthier families and their children will
9 benefit from new initiatives disproportionately. This reality leads to a search for explanations.
10 This, in turn, often leads to a search for someone or some conditions to blame.

11
12 There is abundant research that locates the reasons for lower academic achievement in
13 socioeconomic inequality and its correlates. In socioeconomic inequality, the United States leads
14 the developed world. But, it seems beyond our reach to remedy this problem. Schools appear to
15 be an answer that can be influenced by families and communities. However, not only does the
16 United States lead developed nations with respect to inequality, it spends less of its wealth on
17 public schools.
18

19 The combination of inequality and a weak commitment to public education results in
20 schools having a relatively limited effect on student learning. Typically, school related influences
21 account for about 1/3 of student achievement measured by standardized tests. Over the last 15
22 years, the United States sought to eliminate achievement caps between Anglo students on the one
23 hand and African American, Latino and American Indian students on the other. The effect of
24 school improvement efforts on the achievement gap has been modest at best.
25

26 The USP is an ambitious research-based equity-focused school improvement plan. TUSD
27 has been slow to effectively implement the multiple strategies that comprise the USP. But, there
28

1 is reason to be optimistic. Key elements of the school improvement are in place and there is more
2 coherence in the extent to which these elements reinforce one another.

3 School improvement is hard work and at its heart, both literally and figuratively, is
4 competent and caring teachers. Nationally, there is an unprecedented teacher shortage and among
5 the states, Arizona is experiencing this shortage most profoundly.

7 The Special Master has recommended that several elements of the USP be granted unitary
8 status. He has also identified work that has yet to be effectively completed. It seems time for the
9 District to celebrate its success and reaffirm its commitment ensuring that all students reach their
10 full potential.

12 Respectfully submitted,

13 /s/
14 _____
Willis D. Hawley
Special Master

15 Dated: June 29, 2018
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CERTIFICATE OF SERVICE

I hereby certify that on, June 29, 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