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13 UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

<p>15 Roy and Josie Fisher, et al.,</p> <p style="text-align: right;">16 Plaintiffs,</p> <p style="text-align: center;">17 vs.</p> <p>18 Tucson Unified School District No. 1, et al.,</p> <p style="text-align: right;">19 Defendants.</p>	<p>No. 4:74-cv-00090-DCB (Lead Case)</p>
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<p>20 Maria Mendoza, et al.</p> <p style="text-align: right;">21 Plaintiffs,</p> <p style="text-align: center;">22 vs.</p> <p>23 Tucson Unified School District No. 1, et al.,</p> <p style="text-align: right;">24 Defendants.</p>	<p>No. CV 74-204 TUC DCB (Consolidated Case)</p>
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26 **DISTRICT REPLY TO OBJECTIONS TO ITS**  
27 **NOTICE AND REPORT OF COMPLIANCE:**  
28 **ELL ACTION PLAN**

1 In compliance with the Court’s September 6, 2018 Order granting partial unitary  
2 status (ECF 2123 at 140, 151), the District prepared and filed a notice and report of  
3 compliance with the Court’s directive to prepare an ELL Action Plan for graduation and  
4 for dropout prevention. [ECF 2153.] The Mendoza Plaintiffs filed a supplementary  
5 response to TUSD’s notice of compliance, asking that the District be required to set  
6 higher goals, provide more assessments, and detail why it wants to continue using  
7 strategies it has used in the past. [ECF 2169.]

8 Although the Mendoza Plaintiffs acknowledge that “the District is reporting  
9 increasing graduation rates for its Latino ELL and R-ELL students and recent  
10 improvements in the dropout rate,” and that this “very well may suggest that major  
11 changes were not required in the services and strategies the District already had in  
12 place,” they nevertheless argue even more is required before the Court should reconsider  
13 unitary status, as the Court indicated it would do in its September 6 partial unitary status  
14 Order. [*Id.*]

15 The District strongly disagrees that any more information is necessary, and it  
16 views the Mendoza Plaintiffs’ filing as another attempt to move the goal posts to extend  
17 Court supervision indefinitely. Nevertheless, the District provides herein additional  
18 background and explanation regarding the strategies in, and effectiveness of, its ELL  
19 Action Plan, submitting that it has gone above and beyond compliance with the USP and  
20 Court Orders and is entitled to a declaration of unitary status for USP § V.E.1.b.i.

21 **A. Development and Success of Strategies for ELL Graduation and**  
22 **Dropout Prevention.**

23 The District finalized the Dropout Prevention and Graduation Plan (DPG) in  
24 2015. That plan included significant consideration of ELL students, including goals and  
25 strategies developed in collaboration with the Mendoza Plaintiff’s ELL consultant (Dr.  
26 Beatrice Arias). Finalized in March 2015, that plan included a dozen strategies  
27 specifically designed to support ELL students:

- 28 • MTSS intervention for ELL/Reclassified-ELL students (ECF 1849-6 at 114, #1);

- 1 • Targeted support for African American and Latino ELL students (*Id.* at 115, #2);
- 2 • Transportation support (*Id.* at 114, #5); summer bridge programs (*Id.* at 116, #1);
- 3 • Credit recovery priority for ELL/R-ELL students (*Id.* at 118, #5);
- 4 • Increasing ELL participation in AGAVE credit recovery courses (*Id.* at 118, #6);
- 5 • Improved Tier I instruction for ELL students (*Id.* at 118, #8);
- 6 • ELD I & II classes (*Id.* at 118, #11);
- 7 • MTSS math & literature intervention classes (*Id.* at 119, #12);
- 8 • Sheltered content classes for HS (*Id.* at 119, #13);
- 9 • Sheltered content classes for middle school (*Id.* at 120, #6);
- 10 • Summer school (*Id.* at 120, #7); and
- 11 • Imagine Learning (*Id.* at 123, #4).

12 The 2018 ELL Action Plan (ECF 2153-1) builds on the success of these strategies, as  
 13 reflected by the data charts contained therein, including:

- 14 • TUSD’s ELL graduation rate (67.6%) is **higher** than the state average (52.1%);
- 15 • TUSD’s African-American and Latino ELL graduation rates (56.7% and 60.5%,  
 16 respectively) are **higher** than the state average for all ELLs (52.1%);
- 17 • TUSD’s African American and Latino R-ELL graduation rates are **higher** than  
 18 the rates of African American and Latino students that the Court recognized as  
 19 being “relatively high” (ECF 2123 at 104:26);
- 20 • TUSD’s ELL dropout rate (0.6%) is **lower** than the state average (1.8%); and
- 21 • TUSD’s African American and Latino ELL dropout rates are **lower** than the  
 22 African American and Latino student dropout rates that the Court recognized as  
 23 being “exceptionally low” (ECF 2123 at 104:27-28).

24 Clearly, the goals and strategies implemented over the last three school years  
 25 have been very successful, substantiating the District’s continued utilization of the ELL-  
 26 focused goals from the DPG Plan in the ELL Action Plan.

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**B. TUSD's ELL Goals are Appropriately Ambitious.**

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Mendoza Plaintiffs object that the ELL Action Plan goals are “insufficiently ambitious.” In 2017-18, the District graduated more than 50% of its African American and Hispanic ELLs in what was the third straight year of year-over-year gains. The District set the “at least 50%” ELL graduation goal as a challenging yet realistic target to maintain these successful gains. That the plan includes continued and strengthened implementation of ELL/R-ELL graduation support strategies is evidence of the District’s commitment to continue to graduate ELL/R-ELL students at high rates and reduce the likelihood of them dropping out of school. The District’s approach has been to set goals that are measurable, achievable, and relevant to existing data—not goals that merely sound “ambitious.” As stated in the 2015-16 DAR, “the DPG review team will examine the results and adjust the goals accordingly for the 2016-17 school year **to be aggressive where needed but not so aggressive as to be unattainable.**” [ECF 1958-1 at 22, emphasis added.] The DPG review team continues to review and revise goals based on prior performance.

A 2015 Stanford University Study, “Schools to Learn From: How Six High Schools Graduate English Language Learners College and Career Ready,” profiled six high schools demonstrating what it called “extraordinary academic outcomes for ELLs.” One of schools the study celebrated was New World High School in New York, which had similar racial demographics to TUSD (9% African American; 66% Latino). That school boasted a 4-year ELL graduation rate of 53% in 2013-14, which dropped to 43% in 2015-16 and 35% in 2016-17. **See Exhibit A, New World HS Data.** TUSD has had similar success, and is planning and working to sustain such success year over year.

As detailed in the ELL Action Plan, TUSD’s ELL graduation rate was 21% and 35% for African American and Latino ELL students, respectively, in SY 2015-16. Those numbers increased to 33.3% and 42.5%, respectively, in SY 2016-17. The numbers again increased to 56.7% and 60.5%, respectively, in SY 2017-18, making TUSD’s ELL graduation rates higher than the ELL graduation rate for the State of

1 Arizona. Although the District hopes to continue the substantial improvements in  
2 graduation and dropout rates, the District's goals are set based on all available  
3 experience and evidence, and are intended to be realistic and attainable. To maintain  
4 graduation and dropout rates that are significantly better than other districts and  
5 exemplary in many ways is sufficiently ambitious. The Mendoza Plaintiffs' contrary  
6 arguments should be rejected.

7 **C. TUSD Regularly Assesses the Efficacy of its ELL/R-ELL Strategies.**

8 Mendoza Plaintiffs object to an imagined failure of the District to have assessed  
9 the efficacy of ELL and R-ELL graduation support services and strategies. The Court  
10 need look no further than the District's annual reporting on this specific subject.<sup>1</sup> As  
11 recently reported in the District's annual report, based on ongoing assessments of plan  
12 effectiveness, the District now incorporates R-ELL graduation data, sets R-ELL  
13 graduation goals, and has expanded its approach to Sheltered Content Classes for 2018-  
14 19. [ECF 2153-1 at 2, 8.]

15 The ELL Action plan specifically includes provisions for continued progress  
16 monitoring, including "making adjustments as needed based on data, goals, and  
17 information." [ECF 2153-1 at 3.] In this vein, the plan specifically notes the District  
18 will continue to "consider other additional strategies to enhance support for ELLs and  
19 R-ELLs," to reconfirm the District's commitment to a continuous cycle of assessment,  
20 adjustment, and improvement. [*Id.* at 4.]

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22 <sup>1</sup> From the 2016-17 DAR: "In SY2016-17, District staff ... met on an ongoing  
23 basis to monitor progress and review the annual goals. The plan's goals include  
24 increasing graduation rates, reducing dropout rates...for...**African American and  
25 Hispanic ELL students.**" (16-17 DAR, Doc 2057-1 at 242); "In SY2015-16, the  
26 District implemented a DPG team to ... monitor the successful implementation of the  
27 DPG plan. **Members of the team included staff from the Language Acquisition  
28 [department]. The team met three times during SY2016-17 and reviewed the  
progress and implementation of the plan.**" (16-17 DAR, Doc 2057-1 at 246). From  
the 2017-18 DAR: "The District has monitored R-ELL graduation rates for many years.  
For this report, based on discussions with the Special Master and Plaintiffs, **the District  
included graduation rates for Reclassified ELLs.**" [*Id.* at 86.]

1           **D. The ELL Action Plan Supplements Existing Plans that Specifically**  
2           **Address and Overlap with the ELL Action Plan regarding Family**  
3           **Engagement for African American and Latino ELL Students.**

4           The DPG plan addresses six major issues: high school strategies, middle school  
5 strategies, elementary school strategies, positive alternatives to suspension, professional  
6 development, and family engagement. As discussed above, the DPG plan was targeted  
7 both at ELL and non-ELL students. Consequently, the District already has a specific  
8 plan for engaging the families of ELL and R-ELL students in ways that increase  
9 graduation rates and decrease dropout rates. The Mendoza Plaintiffs believe the ELL  
10 Action Plan should include its own family engagement section, even though the  
11 District's DPG plan, and other plans, already provide such information. [*See, e.g.,*  
12 MASSD Operations Plan, ECF 2152-2; Family and Community Engagement Plan, ECF  
13 1852-1.]

14           In addition to the family engagement strategies in the DPG plan, the District also  
15 has Family Engagement Guidelines and Student Support Services, among other family-  
16 targeted plans and services, which are aimed at engaging families (including families of  
17 ELL students) in ways that contribute to ELL students' academic success. Requiring a  
18 sub-section in the ELL Action Plan specifically for family engagement is not necessary,  
19 nor is its inclusion supported by the data—there is no evidence or data that the District's  
20 family engagement efforts for supporting ELL students is lacking.

21           The Special Master and the Court directed the District to develop a plan for ELL  
22 students. The District has done so, and the *evidence* supports a conclusion that the  
23 District's current strategies for graduating ELL students are remarkably successful and  
24 do not require major reworking or overhaul.

25           Accordingly, the District respectfully submits that it has complied with the  
26 Court's order to develop and file an ELL Action Plan for dropout prevention and that it  
27 should be awarded unitary status regarding USP § V.E.1.b.i.  
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RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

**STEPTOE & JOHNSON LLP**

By /s/ P. Bruce Converse  
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**TUCSON UNIFIED SCHOOL DISTRICT  
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**CERTIFICATE OF SERVICE**

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The foregoing document was filed with the Court electronically through the CM/ECF system this 22nd day of January, 2019, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ Diane Linn  
Employee of Steptoe & Johnson LLP