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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Roy and Josie Fisher, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.
Maria Mendoza, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.

4:74-cv-0090-DCB
(Lead Case)

4:74-cv-0204 TUC DCB
(Consolidated Case)

RESPONSE TO FISHER AND MENDOZA PLAINTIFF OBJECTIONS
TO THE DISTRICT’S NOTICE AND REQUEST FOR APPROVAL (NARA)
FOR A NO-BOUNDARY ATTENDANCE AREA FOR ROSKRUGE TWO-WAY
DUAL LANGUAGE K-8 MAGNET SCHOOL

1 Roskruge is a TWDL magnet school. The District must build and expand TWDL
2 programs, and improve academic achievement and integration at magnet schools. Thus,
3 the District designed the proposal to build and strengthen TWDL at Roskruge to
4 improve academic achievement, to improve integration, and to mitigate impacts to
5 neighborhood students. After a six-month development process, including evaluating
6 feedback from stakeholders (including a Boundary Committee that voted against the
7 proposal), the Governing Board approved the boundary change for grades 2-5.¹

8 In addition to the Governing Board, the District's nationally renowned dual-
9 language expert, Rosa Molina, supports the proposal.² The Department of Justice does
10 not object to the proposal. The Special Master concurred with the proposal, in part, and
11 suggested two modifications that the District has incorporated into the proposal (a
12 priority attendance area for K-1 neighborhood students, and allowing enrolled students
13 to continue until they graduate or otherwise leave).³

14
15 ¹ The Court affirmed the NARA briefing schedule set out in ECF 1385 (see ECF 2243
16 at 1:13-14). Pursuant to that schedule, Plaintiffs must file objections within 20 days of
17 the NARA filing; TUSD must respond within 20 days. Plaintiffs filed on August 1 and 5;
18 TUSD files today, August 26th, as the 25th was a Sunday. The Special Master now has 30
19 days to file an R&R and there shall be no further briefing. (See ECF 1385 at 2:13-21).

20 ² See Exhibit 1, Rosa Molina Declaration, ¶3. The opinion of the Mendoza
21 Plaintiffs' expert, Dr. Beatrice Arias, is unknown. In April 2019, the District hosted a
22 meeting between Ms. Molina and Dr. Arias to discuss the proposal. After receiving no
23 communication from Dr. Arias, the District sent specific questions to Mendoza counsel
24 to elicit her feedback, including whether she supported the proposal or, if not, why not.
25 *Mendoza counsel refused to pass the questions along to Dr. Arias* (see Exhibit 2, Email
26 Communication between S. Brown and J. Rodriguez). It is clear from the Mendoza
27 Plaintiffs' response that they consulted with Dr. Arias but chose to leave the TUSD, the
28 Special Master, and the Court in the dark as to her opinion about the proposal.
Noticeably, their objection does not reference Dr. Arias's opposition to the proposal.

³ In his 2019 Magnet Report, the Special Master wrote, "The District wants to
eliminate the boundaries for admission to Roskruge. *The Special Master concurs in part*
but believes that there is no reason not to give priority to the admission of students to
grades K-1 from the current neighborhood boundaries. Moreover, students now enrolled
in Roskruge should be allowed to continue until they graduate from the school or
otherwise leave" (ECF 2184 at 4:16-20).

1 **A. The Proposal will Improve Academic Achievement by Building and Strengthening**
2 **Two-Way Dual Language at Roskruge.**

3 “The point of entry into TWDL programs for English speakers is strictly at the
4 kindergarten level or the first semester of first grade to allow students 7-9 years to develop
5 high levels of bilingualism and biliteracy” (Ex. 1, Molina Decl., ¶4). As part of the TWDL
6 Framework, Ms. Molina and the District designed a screener to improve academic and
7 linguistic achievement by screening out students who would otherwise struggle through,
8 and often drop out of, the TWDL program – frustrating efforts to build and expand dual
9 language pursuant to the USP. The screener ensures students in grades 2-5 have the
10 appropriate level of Spanish proficiency to enter a classroom where up to 80% of the
11 instruction is in Spanish. Ms. Molina finds, “[w]hen students are not allowed the time
12 span to become proficient in a second language, many of them struggle to keep up with
13 their peers both linguistically and academically or simply give up. This phenomenon is
14 pronounced at Roskruge because neighborhood students (some of whom are not even
15 interested in dual language) have a right to attend Roskruge in grades 2-5 regardless of
16 their level of Spanish proficiency. These students are known as late enrollees. This
17 modification of the research-based model, enrolling late enrollees, has proven detrimental
18 to the students who entered Roskruge as K-1st graders (for whom the program was
19 designed) and who often have to wait for their peers to catch up and keep up.” (Id. at ¶5).

20 Mendoza Plaintiffs allege the District has failed to implement a screener at any
21 TWDL school. However, the District *has* implemented the screener at its TWDL schools,
22 except at Davis and Roskruge.⁴ Davis and Roskruge are the District’s only *school-wide*
23 *TWDL programs*, operating two TWDL strands at each grade level because the schools
24 lack physical capacity for a third, non-TWDL strand. Thus, at TWDL schools other than
25 Davis and Roskruge, if a student fails to screen into TWDL they can still enroll in a non-
26 TWDL strand at the school. At Davis and Roskruge, students enroll in grades 2-5 either

27 ⁴ Mendoza Plaintiffs wrongfully allege that the District has not decided on a screener,
28 even though the NARA articulates that, “[b]ased on Ms. Molina’s recommendations, the
District...created a screening process...” (ECF 2236 at 3:19-20), and they further
wrongfully allege the District has failed to implement a screener (see ECF 2249 at 8:17).

1 as magnet or neighborhood students. The District can screen applying magnet students,
2 but cannot screen applying neighborhood students as they have a statutory right to attend
3 their neighborhood school. Overall, Davis is unaffected by this point-of-entry issue,⁵
4 Roskruge is not. This is the crux of the issue:

5 TWDL teachers working at the intermediate levels, must not only differentiate
6 instruction by content-area (for example, for a student struggling in math), but must
7 also differentiate instruction for language proficiency (for students not proficient
8 in Spanish) often slowing down their instruction for the new students. Late
9 enrollees often lack skills to engage fully in grade-level work in Spanish and are
10 often frustrated and disengaged because they are working in a second language
11 program not designed for them. This affects the classroom climate for all students
12 and causes some English speaking students to call out to visitors that they “do not
13 know Spanish” expressing their frustration to anyone that will listen (I have
14 witnessed this occurring). The data results documenting achievement in both
15 languages for the students in the TWDL Program are often skewed because of the
16 significant variance of linguistic capabilities for the students that in turn, affects
17 the overall achievement data for all students in the TWDL program.

18 (Ex. 1, Molina Decl. ¶6). The boundary proposal addresses a problem unique to Roskruge.
19 Davis is a smaller school with a smaller boundary and greater student retention; other
20 TWDL elementary schools can place neighborhood students who are not Spanish
21 proficient into a non-TWDL strand. That the District is not seeking to implement this
22 specific boundary solution to schools that do not have this particular point-of-entry
23 problem is not a reason to reject the NARA, as suggested by Mendoza Plaintiffs.

24 The TWDL Framework is just that – a framework. It is designed to “*guide* the
25 development of the district’s 15-year-old TWDL program and *lay the groundwork* for new
26 programs to prepare students for success in a multilingual, multicultural world” (ECF
27 2131-4 at 3, emphasis added). Mendoza Plaintiffs claim to “not understand why the
28 District so rigidly insists on adherence to the TWDL model (and Framework) at Roskruge”

⁵ The vast majority of Davis students start at grades K-1 and remain at Davis through
5th grade, and its boundary is three times smaller than the Roskruge boundary. There are
very few, if any, Davis neighborhood students seeking enrollment in grades 2-5.

1 but not at other TWDL schools (ECF 2249 at 11:7-8). Roskruge is the only school wide
2 K-8 school. Thus, the District will continue to use the Framework as intended, as a guide,
3 to build and strengthen all of its TWDL programs. That the District seeks to strengthen
4 the double-strand at its *only school-wide, K-8 magnet school*, is not evidence of
5 inconsistent application of the Framework; it is evidence of thoughtful, pragmatic, and
6 strategic implementation designed to maximize academic achievement.⁶

7 Mendoza Plaintiffs have suggested a single non-TWDL strand at Roskruge (see
8 ECF 2249 at 12:20-26), after previously arguing against single strands due to the danger
9 of creating program isolation (see Mendoza Budget Objection, ECF 2038 at 25:20-28).
10 The Special Master has recognized TWDL as the “best approach to learning a second
11 language” (ECF 2184 at 3:18). Still, to avoid the possibility that a few students might
12 screen out each year, Mendoza Plaintiffs suggested replacing one of the TWDL strands at
13 Roskruge with a non-TWDL strand.

14 The District respectfully declines the suggestion to abandon the research-based,
15 “best approach to learning a second language” – serving the academic and linguistic needs
16 of 600 Roskruge students – in favor of an unknown hybrid model that may not be research-
17 based in order to prevent a handful of students from screening out of Roskruge each year.
18 Particularly where such modification would result in *less* students enrolled in TWDL.

19 **B. The Proposal will Improve Integration and will not Impede Integration Efforts.**

20 Confusingly, Mendoza Plaintiffs argue both that Roskruge did not make progress
21 integrating as the “result of TUSD’s lack of attention” (ECF 2249 at 7:18) *and* that
22 Roskruge “did experience some improvement moving Roskruge towards integration...”
23 (Id. at 14:5-22).

24 ⁶ Following the Framework, in SY2017-18, the District expanded to two kindergarten
25 and two 1st grade TWDL classes at Bloom Elementary School, *forming two strands*. Of
26 the nine elementary and K-8 TWDL sites, *four had two strands in SY2017-18* (Bloom,
27 Davis, Hollinger, and Roskruge)” (see 2017-18 DAR, ECF 2124-1 at 74). In SY2018-19,
28 *the District added a double strand at McCorkle K-8 school*. Now, in SY2019-20, *the*
District seeks to strengthen the double strand at its only school-wide K-8 TWDL school,
Roskruge K-8 Magnet School.

1 Fisher Plaintiffs argue the proposal will cause Roskruge to “become 100%
2 Hispanic” (ECF 2247 at 4:26). This is virtually impossible. Both Davis (Integrated) and
3 Roskruge (78% Hispanic) feed into Roskruge grades 6-8 through the TWDL pipeline.
4 Roskruge currently enrolls approximately 20% non-Hispanic students in grades K-1. Both
5 the pipeline and entry-level grades are *unaffected by the screener for students in grades*
6 *2-5*. Moreover, most Roskruge K-5 students begin in grades K-1. The screener in grades
7 2-5, though critical to the TWDL program, will have minimal impact on integration.

8 Fisher Plaintiffs also assert the District is “willing to [remove the boundary]
9 regardless of the effect it will have on integration at the school and the displacement of
10 neighborhood students” (Id. at 1:25-26). The District held over a dozen community
11 meetings on this issue precisely because it was concerned about the potential impacts on
12 integration and on neighborhood students. The District then modified the proposal several
13 times in response to stakeholder feedback, including that of the Special Master and
14 Plaintiffs. The original proposal called for a language proficiency review (screener) for
15 grades 2-8; the final proposal only refers a screener for grades 2-5. The District will not
16 implement a screener in grades 6-8 for at least two years until it has a better understanding
17 of the potential impacts to integration at those grade levels.

18 The District incorporated several other conditions into the proposal to address
19 potential displacement of neighborhood students:

- 20 • Grandfathering existing students (including students starting in SY 2019-20)⁷
 - 21 • Creating a special attendance area for Roskruge and Richey for grades K-1
 - 22 • Granting priority to qualified neighborhood students enrolling in grades 2-5
- 23
24

25 ⁷ Fisher Plaintiffs assert the proposal will “displace the Roskruge neighborhood
26 students...[including the Richey] students who were displaced when Richey was closed”
27 (Id. at 3:1-2). This is a red herring: the District closed Richey nine years ago. Any
28 students displaced from Richey to Roskruge nine years ago have already matriculated out
of Roskruge; those enrolled over the last nine years are grandfathered in.

- 1 • Creating a second “home school” for neighborhood students in grades K-5,
2 supported by free transportation
- 3 • Confirming that students who attend Cragin and live in the Mansfeld and Tucson
4 High boundaries can still attend those schools as neighborhood students

5 The original proposal also considered removing the magnet from Roskruge. Ultimately,
6 the District decided to keep the magnet at Roskruge and to continue to hold Roskruge to
7 the high integration standards expected of a magnet school.

8 In the short-term, the proposal creates an *option* for Roskruge and Richey
9 neighborhood students to attend an Integrated home school (Cragin), while retaining their
10 right to attend Roskruge unconditionally if enrolled in entry-level grades K-1. In the long
11 term, the proposal will improve academic achievement, which in turn will increase magnet
12 attractiveness and improve integration. As hypothesized in Plaintiffs’ objections, the
13 proposal will not cause Roskruge to become 100% Hispanic or impede its efforts to
14 *continue* its progress moving towards integration.

15 **1. The proposal creates options for more students to attend an Integrated school**

16 The proposal creates an option for students living in the Roskruge/Richey
17 neighborhoods who are not interested in participating in the Two-Way Dual Language
18 program at a school that is currently Racially Concentrated. The proposal supports these
19 students with free transportation from the Roskruge/Richey neighborhoods to an
20 Integrated school, Cragin, that is uniquely focused on diversity and equity.⁸

21 **2. Improving academic achievement will likely improve integration**

22 According to the Court and the District’s TWDL consultant, improving academic
23 achievement is a fundamental aspect of improving integration. Roskruge is “required to
24 have a competitive academic program...” (Order re Magnet Status, ECF 2205 at 4:27-28)
25 because “high academic standards will draw students to a magnet school” (Order re CMP,
26 ECF 1753 at 10:11).

27 _____
28 ⁸ Cragin implements an Equity Improvement Cycle developed in conjunction with the
Harvard Graduate School of Education and other schools from across the nation.

1 The District’s expert supports the proposal because it addresses what she has
2 identified as a key barrier to academic success at Roskruge, “As both an ALE and Magnet
3 school, Roskruge must offer a competitive and attractive program. Currently, the open
4 points-of-entry at Roskruge interfere with the school’s potential for achieving the type of
5 academic and linguistic results that similar programs in the U.S. are able to achieve. This
6 lack of progress and marketable results interferes with the school’s efforts to attract non-
7 Hispanic students whose presence would further integrate the school.” (Ex. 1, Molina
8 Decl. ¶7). Research has shown that students in TWDL programs often outperform their
9 peers academically. The point-of-entry issue frustrates District efforts to achieve these
10 types of results, frustrating efforts to improve the attractiveness of its magnet and TWDL
11 programs and, thereby, efforts to integrate.

12 Mendoza Plaintiffs mischaracterize the proposal’s stated objective to improve
13 academic achievement over time (in order to improve attractiveness and integration) as a
14 “suggestion...that TUSD will not proactively seek to integrate the school” (ECF 2249 at
15 13:20-25). Nothing about the proposal or the NARA suggests the District will not
16 proactively seek to integrate the school. *The District’s decision to keep the magnet at
17 Roskruge and hold Roskruge to the strict academic and integration standards required by
18 magnet schools is evidence of its commitment to continue to work proactively to integrate
19 the school.*

20 **3. The proposal will not impede efforts to continue progress towards integration.**

21 Plaintiffs object to a proposal designed to improve long-term educational outcomes
22 of TWDL students, and the academic profile of a TWDL magnet, based on unfounded
23 assumptions and misunderstandings, each of which is addressed below.

24 **a. Davis and Roskruge are different schools with different challenges**

25 Mendoza Plaintiffs argue that because the District improved academic achievement
26 and integration at Davis K-5 without removing the boundary, it must be able to do so at
27 Roskruge K-8, as though the schools were similarly situated. The objection ignores that
28 Roskruge is the only magnet school located one mile from a direct competitor with a

1 higher school letter grade that offers the same exact magnet program – Davis.⁹ Roskruge
2 also faces other challenges recognized by the Special Master and this Court:

3 “Roskruge K-8 is a special magnet school with a magnet theme as a dual
4 language program, trying to meet two USP goals: 1) Integration by Magnet
5 Programs and 2) Improving Quality of Education by Dual Language
6 Programs. As the Special Master explains *these two USP goals can be odds*
7 *with each other*. The Special Master reports that the recommended most
8 effective dual language program is Two Way Dual Language (TWDL),
9 which to be academically successful requires Spanish fluency by no later
10 than the second grade. *This complicates efforts to integrate the school*
11 *because it primarily attracts Spanish-speaking Hispanic/Latino students.*”

12 (Id. at 3:3-9, emphasis added). Roskruge is twice the size of Davis (600 vs 300 students),
13 its boundary is three times larger, and it attracts 2-3 times more Spanish-speaking
14 Hispanic/Latino students (482) than Davis (199). Thus, integration challenges for the
15 TWDL program at Davis are more pronounced at Roskruge. Plaintiffs’ suggestion that
16 Roskruge can become Integrated without eliminating its boundary because Davis did –
17 disregarding substantive differences between the schools – is without merit. Further, the
18 primary purpose of the proposal is to address a point-of-entry issue that affects Roskruge
19 differently than Davis.¹⁰

20 ⁹ Davis is one of seven schools near, and in direct competition with, Roskruge for
21 non-Hispanic students. Seven TUSD magnet schools serving students in grades K-8 sit
22 *within a two-mile radius* from the District’s central offices (Borton, Carrillo, Davis, and
23 Holladay ES; Drachman and Roskruge K-8; and Mansfeld MS). The District has moved
24 five of these schools from Racially Concentrated to Integrated (Borton was Integrated;
25 Roskruge was, and is, not). All seven schools recruit from the same limited pool of non-
26 Hispanic students in grades K-8.

27 ¹⁰ See NARA footnote 7, ECF 2236 at 4, noting, “[p]oint-of-entry is a non-issue at
28 [Davis] for two reasons. First, retention is high at Davis: most students start in K-1 and
tend to stay through 5th grade. There are very few opportunities for students to enter after
first grade. Second, the Roskruge boundary is three times the size of the Davis boundary,
creating greater potential for neighborhood students to seek entry in grades 2-5.

1 **b. The District has promoted the goal of, and advanced, integration at**
 2 **Roskruge**

3 Mendoza Plaintiffs acknowledge the District has advanced integration at Roskruge
 4 by providing a chart showing the District has reduced racial concentration at Roskruge by
 5 almost eight percentage points from 2012-13 to 2017-18 (see ECF 2249 at 14:10-20).
 6 Other magnet schools have made similar eight to ten percentage-point progress towards
 7 integration *and are celebrated* for becoming Integrated schools over the same period. The
 8 difference is that Roskruge started in 2012-13 at **85% Hispanic**; the other schools started
 9 at 76% or lower. At any of these other schools, an eight-percentage-point reduction in
 10 racial concentration would have (and did) result in an Integrated school.

11

Magnet School	Percentage of Hispanic Students		Reduction in Racial Concentration
	2012-13	2017-18	
Tully ES	72%	62%	10%
Drachman K8	76%	67%	9%
Roskruge K8	85%	77%	8%
Bonillas ES	76%	68%	8%

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17 Still, Mendoza Plaintiffs argue that the District has not sufficiently “promoted the goal of
 18 advancing integration” based on two parent opinions and a single statement by a newly
 19 elected governing board member¹¹ (see Id. at 8:15 – 9:3). These three statements do not
 20 weigh against the actual *data and evidence* that the District has advanced integration at
 21 Roskruge. It should be a credit to the District to have made such noticeable gains
 22 advancing integration at Roskruge given the challenges outlined in section (a) above. The
 23 District – having decided to retain the magnet at Roskruge – is committed to continue its
 24 efforts to integrate Roskruge.

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¹¹ The Board Member’s 2019 statement referred to her application to Roskruge in September 2017 *after the school year had already started*, and many months after all available seats had been filled through the lottery process. A school may turn away a student who would help integrate if there are no available seats.

1 **c. Increased access for TWDL 5th graders will not impede integration efforts**

2 The USP requires the District to “build and expand” its dual language programs.
3 As part of its efforts, it seeks to expand access to TWDL programs by revising placement
4 priorities to give existing fifth graders more options to continue in their TWDL pathway
5 – a key component of the TWDL Plan and Framework.

6 Mendoza Plaintiffs assert that increasing access to mostly-Hispanic students in
7 order to expand the TWDL program “is likely to have a negative impact on integration”
8 (Id. at 15:1-5) because, allegedly, the proposal “will involve bringing in what are likely to
9 be greater concentrations of Latinos than that which currently exists at Roskruge” (Id. at
10 15:22-26). The proposal will do no such thing; it merely changes placement priorities.

11 The District’s Admissions Process for Oversubscribed Schools, incorporated into
12 regulation JFB-R4 (aka “placement process”) relies on a projection of available seats for
13 the subsequent year, and places students in a manner that considers race and ethnicity to
14 improve integration (see Exhibit 3, Policy Regulation JFB-R4).¹² Currently, TWDL
15 students in 5th grade have three 6th grade options: Roskruge, Pistor, and Hollinger. Both
16 the Roskruge and Hollinger programs are oversubscribed at 6th grade, limiting students’
17 options and causing many to end their TWDL experience if they cannot get into Roskruge
18 or Hollinger. Hispanic students coming from one of the TWDL K-5 schools and applying
19 to Roskruge or Hollinger have a slim chance of getting in through the lottery process as it
20 is entirely up to chance and there are a limited number of “Hispanic seats.”

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23 ¹² For example, the District could project 100 available 6th grade Roskruge seats.
24 Pursuant to the placement process, available seats are allocated by race/ethnicity to
25 improve integration. Thus, 60 of the 100 seats could be allocated for Hispanic students
26 (“Hispanic seats”), and the rest for non-Hispanic students. According to the Basic
27 Assignment Rules, 5th graders from Roskruge (rule #1) or Davis (rule #2) could continue
28 to 6th grade as pipeline students (resulting in 30 Hispanic 5th graders claiming half of the
60 available “Hispanic seats”). Next, the District could place five Hispanic students who
are siblings or children of employees (rule #3) into the next five “Hispanic seats.” Lastly,
the lottery is used to randomly place Hispanic students into the final 25 “Hispanic seats.”

1 The District's proposal may result in one or two additional schools added to the
2 Roskruge pipeline, along with Davis, so that 5th graders in TWDL pipeline schools will
3 have a better chance of continuing along their TWDL pathway. The District would place
4 these students into 6th grade as pipeline students to claim some of the "Hispanic seats"
5 *prior to the lottery*, rather than having them compete with dozens of other Hispanic
6 students for a limited number of available "Hispanic seats" *through the lottery*.

7 In effect, more TWDL pipeline students would move up in priority and would have
8 a greater chance of continuing in their TWDL pathway. These students *would simply*
9 *take seats that might otherwise go to Hispanic students who were not coming from a*
10 *TWDL program* – they would not be adding "greater concentrations of Latinos," as
11 suggested by the Mendoza objection.

12 **C. The Proposal mitigates impacts to Roskruge and Richey Students.**

13 Notably missing from both sets of objections, is any acknowledgement that the
14 primary purpose of the proposal is to address the point-of-entry issue that creates barriers
15 to students' academic success, negatively affect students' social and emotional well-being,
16 and skews achievement results for the program (See NARA, ECF 2236 at 3-4). Also
17 missing from the objections are any references to the modifications made by the District
18 to mitigate impacts to existing Roskruge and Richey-area students, including but not
19 limited to the following:

- 20 • An option for students not interested in TWDL to attend Integrated Cragin ES
- 21 • A special attendance area; effectively giving parents two neighborhood schools for
22 grades K-1 (Cragin or Roskruge) – a benefit offered to no other TUSD boundary
- 23 • Free transportation to Cragin *or* Roskruge – a benefit offered nowhere else in the
24 District
- 25 • All existing students are grandfathered in and will not be displaced

26 The data show the proposal may affect a few *future* students each year from the Roskruge
27 and Richey neighborhoods, those who may not qualify to enter in grades 2-5. However,
28 the vast majority of these families apply in grades K-1 and will not be affected.

1 **D. Hughes Elementary Cannot Absorb the Roskruge and Richey Boundaries**

2 Both Plaintiffs argue that the District ignored the Boundary Committee's
3 recommendation to select Hughes as the second home school for Roskruge and Richey
4 students. Both Plaintiffs ask the Court to substitute the judgment of District staff, its
5 Superintendent, and its Governing Board, for the desires of two-thirds of the Boundary
6 Committee and order the District to identify Hughes ES rather than Cragin ES.

7 Mendoza Plaintiffs argue the Boundary Committee's "designation of Hughes as
8 the 'first choice' reflected that it is the preferable option for Roskruge/Richey
9 neighborhood students" (ECF 2249 at 17:5-9). The Boundary Committee was made up
10 of a few Roskruge/Richey representatives and over a dozen representatives from different
11 schools. Thus, the committee's recommendation *in no way "reflects"* the preferences of
12 Roskruge/Richey students (and, as stated previously, the District must make the right
13 choice, not the popular choice). Mendoza Plaintiffs also argue, incorrectly, that "Hughes
14 [is] the closest school to the Roskruge students who would be affected" by the proposal
15 (Id. at 17:12-14). In fact, two-thirds of Roskruge K-5 neighborhood students come from
16 the Richey area, not the Roskruge area that shares an attendance boundary border with
17 Hughes. Both Roskruge and Cragin are both approximately 10-15 minutes away from the
18 Richey neighborhood; Hughes is *not* the closest school to the students who would be most
19 affected by the proposal. Finally, Mendoza Plaintiffs assert, incorrectly, that the District
20 claims Hughes does not have capacity for ten additional students. The NARA never
21 makes such a claim. The reality is that of *49 elementary schools*, Davis ES has the smallest
22 capacity, *and Hughes has the next smallest*. Adding the Roskruge and Richey boundaries
23 to the existing Hughes boundary would create one of the largest, most densely populated
24 elementary school boundaries for a school with the second-smallest capacity of all 49
25 elementary schools. Hughes cannot absorb the Roskruge and Richey boundaries without
26 major adjustments to its enrollment patterns; Cragin has more than enough space *and* the
27 added benefit of being *the only school in TUSD* that is ultra-focused on equity and
28 inclusion through its partnership with the Harvard Graduate School of Education.

1 **E. The District’s Duly Elected Governing Board Approved the Proposal.**

2 Mendoza Plaintiffs cite a letter, allegedly from parents (some of the names on the
3 letter are not from Roskruge parents), that they claim shows a lack of support for the
4 *boundary proposal* (See Mendoza Ex. B, ECF 2249-2).¹³ Mendoza Plaintiffs suggest
5 through the letter that there was massive parental opposition to the *boundary* proposal.
6 Moreover, even if there were (there was not), the District is not charged with making
7 popular decisions, it is charged with making the right educational decision for students.

8 The Court has recognized that the District may need to make unpopular decisions,
9 especially concerning magnet schools. That the Governing Board’s decision was not
10 popular with some boundary committee members is not a reason to reverse the Board’s
11 decision. Removing a magnet program or changing a boundary is always unpopular.

12 The Governing Board voted to adopt the proposal *after* considering the boundary
13 committee recommendation to reject the proposal. The advisory committee supports the
14 proposal, as does the Superintendent, the Special Master, the District’s TWDL expert
15 Rosa Molina, the Language Acquisition Department charged with operating the TWDL
16 program, Roskruge administration, Roskruge teachers, many Roskruge parents, and a
17 third of the boundary committee members.

18 District policy requires the boundary committee to make a recommendation – it
19 does not require the Governing Board to accept that recommendation. Still, the Fisher
20 and Mendoza Plaintiffs argue that because two-thirds of the boundary committee
21 rejected the proposal, the Court should overrule the Governing Board’s vote. The
22

23 ¹³ The following is noted at the top of the letter: “**RE: Roskruge Parents’**
24 **Request to RETAIN Roskruge K-8 Magnet Bilingual School as a MAGNET school**”
25 (Id. at 2). The letter begins by stating, “As parents of students attending Roskruge K-8
26 Bilingual Magnet School, this is to inform you of our very strong opposition to any Board
27 action to remove the magnet status from Roskruge K-8 Bilingual Magnet School
28 (Roskruge) and to request that the Board RETAIN the school’s classification as a magnet
school.” (Id. at 2). The letter’s content focuses almost exclusively on the proposal to
remove the magnet. Then, at the very last line and almost as an afterthought, adds a
request to “also RETAIN its current designated neighborhood” (Id. at 4).

1 District respectfully submits that the Court should give the proper weight to the
2 boundary committee's vote, but should not give said vote more weight than the vote of
3 the duly elected TUSD Governing Board.

4 **Conclusion**

5 The District's response outlines how the proposal will improve academic
6 achievement and strengthen the TWDL program at Roskruge, improve integration,
7 mitigate impacts to Richey and Roskruge neighborhood students, and provide the best
8 alternative option: a second "home school" that is Integrated and hyper-focused on
9 equity and inclusion at Cragin ES.

10 The District respectfully requests the Court adopt its Notice and Request for
11 Approval to change the boundary for *future students in grades 2-5*. The request includes
12 a special attendance zone for Roskruge and Richey neighborhood students enrolling in
13 kindergarten or first grade, and includes several conditions including but not limited to
14 free transportation for Richey and Roskruge students to Cragin and to Roskruge, and
15 grandfathering existing students so that no student is displaced.

16
17 Respectfully submitted on August 26, 2019.

18 **TUCSON UNIFIED SCHOOL DISTRICT LEGAL DEPARTMENT**

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CERTIFICATE OF SERVICE

I hereby certify that on the _26_th day of August 2019, I electronically transmitted the attached foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ Samuel E. Brown