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11 Attorneys for Mendoza Plaintiffs

12
 13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,
 16 Plaintiffs,
 17 v.
 18 United States of America,
 19 Plaintiff-Intervenors,
 20 v.
 21 Anita Lohr, et al.,
 22 Defendants,
 23 Sidney L. Sutton, et al.,
 24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
 TO TUSD NOTICE OF FILING OF 3-
 YEAR PLUS INTEGRATION PLAN AND
 OUTREACH AND RECRUITMENT
 ADDENDUM (DOC. 2270) AND
 OBJECTION TO THE DISTRICT'S
 REQUEST THAT IT BE AWARDED
 PARTIAL UNITARY STATUS WITH
 RESPECT TO SECTION II OF THE USP**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.
8

9
10 Pursuant to this Court’s Orders of September 6, 2018 (“9/6/18 Order”) (Doc. 2123),
11 July 26, 2019 (Doc. 2243), and September 6, 2019 (Doc. 2271), Mendoza Plaintiffs submit
12 this Response to TUSD’s Notice of Filing of 3-Year Plus Integration Plan (“3-Year PIP”)
13 and the District’s accompanying request that it be awarded unitary status with respect to
14 Section II of the USP. Because the Outreach and Recruitment Addendum that is part of
15 the filing includes both the magnet school program and ALEs, Mendoza Plaintiffs are
16 submitting their response addressing that document in a separate, standalone filing, so that
17 the Court may consider it after having reviewed both the Mendoza Plaintiffs’ response to
18 the 3-Year PIP and their response to the District’s Notice of Filing of ALE Policy Manual
19 (Doc. 2267).
20
21

22 **Argument**

23 ***The New Magnet Plan is Deficient and Should be Rejected by the Court***

24 **Academic Standards are Too Low and Poorly Articulated**

25
26 In its 9/6/18 Order the Court ordered the District to “review the existing [academic]
27 criteria and standards and propose modifications to address the inadequacy of the A & B
28

1 AzMerit grades and to be used in the future to determine magnet status.” (*Id.* at 26:3-5.)
2 Mendoza Plaintiffs believe that what the District now proposes requires too little of its
3 magnet schools. Further, the new standards are so vaguely worded as to be virtually
4 meaningless in certain respects and fail to comport with this Court’s admonition that there
5 be “[c]lear criteria and standards for magnet schools and programs.” (*Id.* at 25:17-18.)
6

7 In its Order (at 23:10-15), the Court set out the academic standards established by
8 the Comprehensive Magnet Plan (“CMP”): “Assessment data ...will be analyzed
9 according to five goals. Magnet schools **must**:

- 10 1. Be an A or B school as defined by the state school letter grade system.
- 11 2. Score higher than the state median in reading and math on the state
- 12 assessment.
- 13 3. Show academic growth of all students higher than the state median
- 14 growth in reading and math.
- 15 4. Secure the growth of the bottom 25% of the students of the school at a
- 16 rate higher than the state median growth.
- 17 5. Reduce achievement gaps between ethnic groups so that achievement
- 18 gaps between these groups are less than those in schools with similar
- 19 demographics and socio-economic factors and that are not magnet
- 20 schools in the district. The gap shall be defined as the difference between
- 21 performance in math and reading/literary of the highest ethnic group
- 22 compared to other ethnic groups within the school.”

23 (CMP, Doc. 1898, at 10; emphasis added.) Under the heading “Student Achievement”, the
24 recently filed CMP says the following: “The academic student achievement goal for all
25 magnet schools and programs shall be to **meet at least three of the following six goals**:

- 26 • State Letter Grade. A or B school as defined by the state school letter
- 27 grade system. The Magnet department takes into consideration a C or
- 28 D school that is making significant progress towards the next-highest
- letter grade (e.g. a C+ or D+ school).
- L25 Growth. Secure the growth of the bottom 25% of the students at
- the school at a rate higher than the state median growth.
- Gaps, Compared to District Cohorts. Whether state test scores for
- African American and Latino students in a particular school exceed

1 the average test scores of African American and Latino students in
2 TUSD schools with similar grade structures.

- 3 • Gaps, Compared to White Students. The size of the achievement gap
4 in mathematics and English/Language Arts (ELA) comparing test
5 scores of white students to those of African American and Latino
6 students.
- 7 • Narrowing or Eliminating Gaps. The extent to which the school has
8 narrowed or eliminated achievement gaps.
- 9 • Improving Performance. Improvement in proficiency rates for African
10 American and Latino students.

11 (TUSD Comprehensive Magnet Plan, August 2019 (“2019 CMP”), Doc. 2270-2, at 5.)

12 Mendoza Plaintiffs believe that the new definition of “success” is insufficiently ambitious
13 and that it will not inspire school leaders to strive for true excellence inclusive of a
14 meaningful closing of any existing achievement gaps between white students and African
15 American and Latino students. In theory, as Mendoza Plaintiffs read the 2019 CMP, a
16 school that has moved from D to D+ status whose students in the bottom 25% of the
17 students at the school have improved on the AzMerit at a *rate* greater than the state median
18 growth, regardless of the amount of that change or their absolute scores, and in which the
19 proficiency rates for African American and Latino students have “improved,” again
20 regardless of the degree of improvement or these students’ absolute scores, would have
21 achieved its goals. Mendoza Plaintiffs respectfully suggest that magnet schools, indeed all
22 TUSD schools, should be held to higher standards. (Here they are less focused on what a
23 magnet school must do to maintain its magnet school status than with the overall and, they
24 believe, overarching, need for all schools to strive to have their students attain true
25 proficiency and academic success, that is, to have “ ‘develop[ed] school-wide cultures
26 where academic excellence is valued and celebrated.’” (9/6/18 Order, Doc. 2123, at 77:2-
27 3, quoting 10/24/17 Order, Doc. 2084, at 18.)

1 Further, as Mendoza Plaintiffs read the new standards, it would be possible for a
2 magnet school to be deemed to have achieved its academic goals if it met two other of the
3 six goals and the proficiency rates of its African American and Latino students improved
4 by some small amount (goal #6) even if the gap between the proficiency rates of those
5 students and the proficiency rates of the school's white students had increased.
6

7 Additionally, goal #4¹ is not a goal at all. Rather, it is a statement that the size of an
8 achievement gap between white students and students who are African American or Latino
9 will be noted. To the extent this "goal" is intended to suggest that there is some acceptable
10 gap between the test scores of white students and the test scores of African American and
11 Latino students, no such "acceptable" gap is articulated and no standard for determining
12 how large a gap is to be tolerated (or celebrated as the meeting of a "goal") is provided.
13 (Nor is any rationale or justification for accepting gaps of any magnitude offered.)
14

15
16 The District has Failed to Demonstrate that it has the Commitment
17 and Capability to Engage in a Process of Continuous Magnet School
18 Improvement

19 In its 9/6/18 Order, the Court stated that "[i]n assessing whether unitary status has
20 been attained in the context of the District's [CMP], it is important to look at whether the
21 District has the commitment and capability to engage in a process of continuous
22 improvement with respect to magnets now in place...." (*Id.* at 18:16-19.) The record
23 before this Court does not evidence such required commitment and capability.

24 What the District has offered is a CMP that begins by stating the magnet school
25 plans ("MSP"s) "are one of the primary tools for magnet program implementation" (2019
26

27 ¹ "Gaps, Compared to White Students. The size of the achievement gap in mathematics
28 and English/Language Arts (ELA) comparing test scores of white students to those of
African American and Latino students" (Doc. 22270-2 at 5.)

1 CMP at 6) and then goes on to say that there are two key milestones: initial development
2 during the mid-year and “end-of-year adjustment and categorization.” (*Id.*) It then sets out
3 a process that it says it follows as part of its magnet school support cycle and describes
4 how it monitors and supports magnet schools with differing levels of academic and
5 integration success. (*Id.* at 6 -12.) No MSPs are provided to demonstrate the actual
6 implementation of this process. Instead, the District drops a footnote in its Notice of
7 Filing to say: “Academic improvement and integration for magnet schools are addressed in
8 individual magnet school plans.” (Doc. 2270 at 2, n.1.)
9

10 *Academics*

11
12 Mendoza Plaintiffs have only the 2019-20 MSPs provided in March 2019 as part of
13 the budget review process. For convenience, since the Holladay MSP was referenced in
14 the Mendoza Plaintiffs’ objections to the 2019-20 USP Budget and in the Court’s
15 subsequent Order (9/10/19 Order, Doc. 2272, at 4:9-6:7), Mendoza Plaintiffs again use the
16 Holladay MSP as an exemplar (and attach a copy hereto as Exhibit A). As can be seen
17 from page 5 of the MSP, its academic results in 2019 are “XXX” and its goal for 2020
18 remains “TBD.” Therefore there is no way to determine whether Holladay’s “TBD”
19 goals have been set based on its 2019 AzMerit results (or what those were) or whether it
20 went through the “categorization” into one of three levels specified in the 2019 CMP to
21 determine the level of monitoring and support its academic program would receive this
22 school year.
23
24

25 Of particular note, regardless of whether such missing goals were set and the school
26 was “categorized”, is that the MSP fails to capture and report data essential to application
27 of even the deficient goals set in the 2019 CMP. Absent are data breaking out the
28

1 performance of students in the bottom 25% of the students at Holladay or the test results of
2 the school's white students to enable an assessment of "gaps, compared to white students"
3 or the "narrowing or eliminating of gaps."²

4 In its recent Budget Order, the Court treated the Mendoza Plaintiffs' objection to
5 the magnet school budgets as a substantive program challenge and ordered the District to
6 provide additional information to permit the Plaintiffs and the Special Master to
7 understand if budget allocations for the last three years have compromised program
8 integrity. (Doc. 2272 at 6:4-6.) Mendoza Plaintiffs respectfully suggest both that
9 information that currently is omitted from the MSPs is essential to such a determination
10 and that this Court should defer all consideration of the District's pending request for an
11 award of partial unitary status with respect to its magnet schools and magnet school plans
12 at least until the ordered process of review has been satisfactorily concluded.

13 *Walk-Through Protocol*

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17 In its Order, the Court notes that to assess the effectiveness of its magnet schools,
18 the District developed a walk-through protocol ("WTP") and reports the Special Master's
19 assessment that "WTP, coupled with systematic assessment of student outcomes, are
20 essential tools for facilitating continuous school improvement." (Doc. 2123 at 18: 20-23.)
21 The Court also references the Special Master's recommendation that "unitary status not be
22 ordered until the District demonstrates effective use of these processes and procedures over
23

24 ² That such essential information is omitted from the MSPs is even harder to explain given
25 that it is included in the plans that the District filed for each non-magnet school. *See, e.g.*,
26 the plan for Banks ES in which the AzMerit scores of the school's white students are
27 separately reported and in which the data relating to the achievement gaps between white
28 students and African American and Latino students is presented. (Doc. 2270-3 at 7; there is
an apparent typo in the template the District developed so that it has labeled its chart "AA
vs W" and "AA vs H" when what is plainly intended (and what the math confirms) in the
latter comparison is "H vs W".)

1 (Compare, Holladay MSP, Attachment A, at 3-4 with Roskruge MSP, Attachment B, at 3-
2 4.) Sadly, this confirms the Mendoza Plaintiffs' oft-expressed view that the District has
3 failed to adequately monitor and support integration efforts at Roskruge and further
4 establishes that the District has not yet demonstrated "the commitment and capability to
5 engage in a process of continuous improvement with respect to magnets now in place...."
6 (9/6/18 Order at 18:16-19.)
7

8 *Issues Relating to the Integration Plans of the Non-Magnet Schools*

9 Pursuant to this Court's 9/6/18 Order, TUSD has prepared plans for each of its non-
10 magnet schools that identify actions each school will undertake to maintain or increase the
11 integration of the school and improve the academic achievement of its students. (Doc.
12 2270-3.) Mendoza Plaintiffs acknowledge that the plans present useful data on which to
13 base these undertakings³. However, little that is presented in the plans goes beyond what
14 one would have hoped schools under a desegregation order, particularly those with low
15 enrollment, would have been doing from day #1. For example, Robins K-8, a racially
16 concentrated B school that the District has concluded has a "high" potential to be
17 integrated, reports that its marketing, outreach and recruitment strategies for integration
18 will consist of hosting parent welcome nights for new families, promoting scheduled
19 parent workshops, hosting a community Earth Carnival, a STEAM night, and a literacy
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23

24 ³ Surprisingly, the only nonintegrated non-magnet school other than Borman K-8 (whose
25 enrollment is determined by the nature of the population that resides on the Davis-
26 Monthan Air Force Base) for which the District has not done a calculation of an
27 "Integration target population" is UHS. Yet, the fact that it is an "exam school" does not
28 mean that an "Integration target population" cannot be calculated for UHS and that its
leadership should not be mindful of the number of African American and Latino students
whose addition to the school would move UHS to the status of integrated. Mendoza
Plaintiffs therefore request that the District be directed to provide such information in the
UHS plan.

1 night, marketing a PTO sponsored Peter Piper Pizza family event⁴, and participating in
2 district recruitment events, including a bowl-in, school choice fairs, and the “Kinder
3 Welcome at Brichta ELC.” (Doc. 2270-3 at 204.) The only marketing, outreach, and
4 recruitment strategy for integration that appears in the Lineweaver plan is the statement
5 that “Lineweaver currently participates in all GATE and ALE outreach and recruitment
6 activities.” (*Id.* at 80.) Yet, the District concluded that Lineweaver has a “high” potential
7 to be integrated.
8

9 What therefore emerges from a reading of the individual school plans is that while
10 each school does indeed have a “plan”, no overall districtwide approach that implements
11 this Court’s directive that “[p]riority shall be given to creating Integrated schools and
12 integrating Racially Concentrated schools” (9/6/18 Order, Doc. 2123, at 31:26-27) has
13 been developed. This is even more apparent when one considers the District’s treatment
14 of transportation to support integration efforts at its non-magnet schools, as is discussed
15 below.
16
17

18 ***The Transportation Component of the 3-Year PIP Fails to Comply with***
19 ***This Court’s Order***

20 To a very great extent, the Transportation Plan component of the 3-Year PIP is not a
21 plan. Rather, it is a description of the forms of transportation TUSD currently provides to
22 support implementation of the USP (*see*, Transportation Plan, Doc. 2270-4, at 1-2)
23 combined with a very general description of a change the District is “exploring” on how
24 eligibility for “incentive transportation” should be determined (*id.* at 2, 3), identification of
25
26

27 ⁴ It appears that a number of these listed marketing, outreach and recruitment strategies are
28 primarily directed to families whose children already are enrolled in the school rather than
targeted to potential new enrollees.

1 three express shuttles the District says it “will seek to operate” in 2019-20 (discussed
2 further below), an apparent undertaking to save unspecified amounts of money by using a
3 single bus to serve multiple schools (even as the plan notes that this approach “may make
4 it harder to integrate...magnet school[s]” (*id.* at 3)), and a statement that the
5 contemporaneous study of “geographic areas to target for integration purposes” (Doc.
6 2270-1 at 4),⁵ undertaken by the committee the District convened to identify non-magnet
7 schools that had potential to become integrated, suggested that “flexible routing and
8 targeted marketing may prove effective to capture students to improve integration at a
9 limited number of non-magnet schools” (*id.* at 4) -- without (1) stating how the possibility
10 of “flexible routing” relates if at all to the exploration of changing the criteria for eligibility
11 for “incentive transportation” or (2) identifying either the neighborhoods that might be
12 served by new “flexible routing and targeted marketing” or the “receiving school[s]” the
13 integration of which might be furthered by providing “incentive transportation” to students
14 living within [unspecified] “incentive zone[s]” (*id.* at 2).⁶

18 Insufficient Cost and Budget Information

19
20 ⁵ Mendoza Plaintiffs cannot help but observe that six years after approval of the USP, and
21 almost four years after the Court approved the stipulation pursuant to which the District
22 undertook to develop and propose initiatives to increase the number of students attending
23 integrated schools (Docs. 1865 and 1870), the District embarked on a study to determine
24 the number of students living in the District who “were available to recruit for integration
25 purposes.” (Doc. 2270-1 at 4.) It is noteworthy that the author of the Transportation Plan
26 tacitly admitted that TUSD had failed to develop such information in the past when he/she
27 wrote: “The comprehensive study *revealed* valuable information about the location and
28 distance of various targeted populations to schools where their enrollment may help
integration.” (Doc. 2270-4 at 3; emphasis added.)

25 ⁶ The District has suggested that the maps it created as part of its study to identify potential
26 magnet schools and themes (Doc. 2270-1, Attachment 2) identify the “incentive zones” to
27 which it is referring in its Transportation Plan. However, even after having studied those
28 maps, which (as Mendoza Plaintiffs understand it) show what census tracts have 30 or
more white and Latino students not currently attending District schools, Mendoza
Plaintiffs do not understand how the change the District is exploring is intended to be
implemented or what its integrative effect is expected to be.

1 Given the absence of specificity in the plan, it perhaps is not surprising that the plan
2 fails to address budgetary implications except in the most general terms. Yet, this Court’s
3 Order, expressly recognizing that “transportation is a driving force fiscally” (9/6/18 Order,
4 Doc. 2123, at 32:22), stated that “both future magnet and non-magnet integration plans
5 require factoring in budgetary costs and constraints....The District shall include a
6 transportation plan in the 3-Year PIP:CMP, considering it as a budget item....
7 [T]ransportation...must inform future plans or the District may annually repeat its
8 determination that ‘budget capacity does not exist to adequately resource and staff new and
9 replicated programs.’” (*Id.* at 32: 15-24.)
10
11

12 Failure to Make Decisions About Routes or Establish Guidelines for Such
13 Decisions

14 That the District has yet to make the decisions this Court anticipated in developing
15 its 3-Yr. PIP and associated Transportation Plan is perhaps best illustrated by the way it
16 has presented the transportation component of the individual school integration plans. The
17 statement “Additional transportation routing *may be* necessary. *Consider* routing
18 modification or additional routing; *consider* express shuttles; see Transportation Plan”
19 (emphasis added) or substantially similar language appears in nine separate individual
20 school integration plans: Dunham, Doc.2270-3, at 34 [identified as having a “neutral”
21 integration status and as a B school with a “moderate” potential to be integrated]; Ford, *id.*
22 at 42 [identified as having a “neutral” integration status and as a C school with a
23 “moderate” potential to be integrated]; Oyama, *id.* at 114, [identified as racially
24 concentrated and as a B school with a “moderate” potential to be integrated]; Soleng Tom,
25 *id.* at 128 [identified as having a “neutral” integration status and as an A school with a
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1 “moderate” potential to be integrated]; Tolson, *id.* at 136 [identified as racially
2 concentrated and as a B school with a “moderate” potential to be integrated]; Van Buskirk,
3 *id.* at 140 [identified as racially concentrated and as a B school with a “moderate” potential
4 to be integrated]; Vesey, *id.* at 144 (language is somewhat different but ends with
5 “consider routing modification or additional routing”) [identified as racially concentrated
6 and as a C school with a “moderate” potential to be integrated]; Wright, *id.* at 165
7 [identified as having a “neutral” integration status and as a B school with a “moderate”
8 potential to be integrated]; and Gridley, *id.* at 221 [identified as “not racially concentrated
9 nor integrated” and as a C school with a “moderate” potential to be integrated]. A slightly
10 different variation of the statement appears in the Bloom plan (“Currently utilizes
11 transportation to support TWDL recruitment. Consider routing modification or additional
12 routing and consider incentive transportation and/or express shuttles in the future, see
13 Transportation Plan.” (*Id.* at 13) [identified as “not integrated nor racially concentrated”
14 and as a B school with a “high” potential to be integrated].

18 Nothing in the Transportation Plan addresses the potential cost of providing
19 additional transportation to these 10 schools or when “consideration” of doing so is to
20 occur. Assuming, as Mendoza Plaintiffs do, that the District cannot afford to provide
21 additional transportation to all 10 of these schools without decreasing transportation to
22 other schools or making other budgetary adjustments, the Transportation Plan lacks needed
23 discussion of how priorities are to be set: serve racially concentrated schools first?
24 schools that are B or A before schools that are C? schools for which the added routes
25 would be least expensive to provide? schools with higher potential to become integrated?
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1 schools that, based on their size and current enrollment, would provide the greater
2 opportunities for more students to attend an integrated school? etc.

3 Multiple Problems with the District's Plan as it Relates to
4 Express Shuttle Bus Service

5 The way in which express bus service is treated in the transportation and individual
6 school plans illustrates yet other problems with the plan. The Transportation Plan says that
7 during the 2019-20 school year (that is, the current year), "the District will seek to operate
8 three express shuttles": one to Sabino High School, one to Santa Rita High School, and
9 one "from the eastside to Roskruge K-8 magnet." (Doc. 2270-4 at 3.) While the TUSD
10 website confirms that the Sabino and Santa Rita express shuttles are running, there is no
11 reference to those express shuttle buses in the individual school plans. To the contrary, the
12 Sabino plan states: "Sabino is hampered by its location and access is limited compared to
13 other geographical areas. Travel to and from the school from other parts of the District can
14 be difficult." (Doc. 2270-3 at 260.) The Santa Rita plan (*id.* at 269) lacks any discussion
15 of transportation.⁷

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19 Mendoza Plaintiffs can only conclude that the persons responsible for addressing
20 efforts to integrate Sabino and maintain the current integrated status of Santa Rita either
21 know nothing about the express shuttle buses or do not understand them to contribute to
22 those schools' efforts to attain or maintain integration.

23
24 ⁷ Oddly given that there is no reference to such buses either in the Transportation Plan or
25 on the TUSD website, the Sahuaro High School plan says: "The District currently runs
26 express shuttles to and from Sahuaro." (*id.* at 265.) Compounding the confusion
27 surrounding express busses in the District's various plans, the ALE Progress Report (Doc.
28 2267-2 at 46) says that the District provides express busses to Magee but no such bus is
referenced either in its plan or the Transportation Plan. (This Court's on-going concern
about the cost and integrative impact of a Magee express shuttle bus was referenced most
recently in its 9/10/19 Order concerning the 2019-20 USP Budget, Doc. 2272, at 15:25-
16:4.)

1 The issue with the Roskruge express bus is more complicated. In its order relating
2 to magnet status, the Court adopted the Special Master’s recommendation that the District
3 implement express bussing from the eastern portion of the District, where the greatest
4 number of white students in the District reside, to the school to support the integration of
5 its dual language program. (2/26/19 Order, Doc. 2205, at 4:23-24.) However, that bus
6 route was not created until early September 2019, well after recruiting for this school year
7 had ended (indeed, weeks after the school year had commenced).⁸ How much those
8 responsible for preparing the Roskruge MSP knew about the proposed express bus or how
9 much they believed it would help the school in its efforts to integrate is not known, since
10 no reference to an express bus is included in the Roskruge MSP. (*See* Exhibit B.)⁹

13 This highlights yet another problem with the Transportation Plan. In it the District
14 says that it “will monitor express shuttle ridership to assess their effectiveness in
15 improving integration.” (Doc. 2270-4 at 3.) But that is something that already should
16 have occurred. As this Court wrote last year in its 9/6/18 Order: “The Mendoza Plaintiffs
17 are right to complain that the District has not even tracked the race of students using the
18 express busses. If the District is financing the Express Busses, pursuant to the USP, the
19 District must establish that the busses are being used in efforts to integrate its schools or
20 improve student achievement, not just that minority students can use the bus....” (9/6/18

23 ⁸ Mendoza Plaintiffs saw nothing about an express bus to Roskruge on September 1, 2019
24 when they reviewed the TUSD website after having received the Transportation Plan.
25 They did see an announcement of the express bus when they again viewed the website on
26 September 11, 2019.

27 ⁹ The District’s Progress Report on Advanced Learning Experiences [ALE Progress
28 Report] (Doc. 2267-2) says that on some unspecified date the District implemented
“express busses to Davis and Roskruge dual language schools. (*Id.* at 27.) But no express
bus is identified in the Davis MSP under its discussion of “actions to address integration
indicator and achieve goal[s]” and no reference to a Davis express shuttle bus appears in
the Transportation Plan. (The Davis MSP is attached as Exhibit C.)

1 Order, Doc. 2123, at 30: 19-20 and n. 17; *see also id.* at 37:20-21 (“The Court rejects the
2 Mendoza Plaintiffs’ request for further data and studies, except for the express bus pilot
3 projects.”))

4 Failure to Include Transportation to Support Participation in Student
5 Achievement Programs (ALEs) in the Transportation Plan

6 The Court’s 9/6/18 Order expressly retained jurisdiction over the transportation
7 section of the USP “for the purpose of considering unitary status for...Advanced Learning
8 Experiences (ALE) Programs.” (9/6/18 Order, Doc. 2123, at 149:20-22.) In its discussion
9 of transportation, it specifically referenced both the District’s finding that ““one of the
10 reasons most frequently given for why families decide not to send their qualified students
11 to self-contained programs is transportation”” and its statement that ““representatives of the
12 TUSD GATE and Transportation Departments met to discuss increasing alternative routes
13 to reduce travel time to GATE sites but “[b]udget constraints prevented significant
14 transportation changes.”” (*Id.* at 37:7-13.) The Court then expressed its expectation that
15 the District would “develop sustainable future transportation plans to support ongoing and
16 future integration **and** student achievement programs planned for the District.” (*Id.* at
17 37:23-25; emphasis added.)

18 Yet the Transportation Plan is silent on the subject of transportation to support
19 participation in the District’s GATE and other ALEs. Instead, one has to comb through the
20 District’s ALE filing (Doc. 2267) to glean an understanding of the transportation that is
21 being offered to support participation in ALEs – and even then, the District provides
22 virtually no discussion of cost or of budgetary tradeoffs made to be able to provide that
23 transportation.
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Transportation to Support Participation in GATE

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2 For example, TUSD says in the ALE Progress Report that the “District’s strategy of
3 transporting qualified students to self-contained GATE programs is not currently
4 constrained by budgetary issues.” (ALE Progress Report at 11.) Missing, however, is an
5 express statement that it actually made route changes and reduced travel time to GATE
6 sites as opposed to maintaining existing routes and continuing to inform families that their
7 child qualifies for transportation to a self-contained GATE site (regardless of whether the
8 travel time is a disincentive to actual enrollment in the GATE program). Nor does TUSD
9 provide any indication of what tradeoffs it made either in the transportation budget itself or
10 elsewhere in the budget if it did indeed make route changes to respond to parental concerns
11 about travel time. Significantly, TUSD also fails to address whether the addition of self-
12 contained GATE programs at new or different schools is “constrained” by budgetary issues
13 relating to transportation and, if so, what tradeoffs might be made to support such change
14 in the GATE program notwithstanding that the Court explicitly directed that, in the ALE
15 Policy Manual, the District “should identify a practicable policy for strategically placing
16 Self-contained GATE programs to serve the greatest number of African-American and
17 Latino students, especially targeting African-American students for ALE services, and
18 apply that policy to identify where and when this expansion will occur.” (9/6/18 Order at
19 97:24-27.)¹⁰

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24 The ALE Policy Manual states that students from Tully can attend Robert-Naylor’s
25 open-access GATE middle school program with free transportation. (ALE Policy Manual,
26

27
28 ¹⁰ Mendoza Plaintiffs address the District’s failure to adhere to this directive in their
response to the District’s Notice of Filing: ALE Policy Manual.

1 Doc. 2267-1 at 10.) Nothing is said in that Manual or elsewhere about the cost of this
2 service, whether free transportation is similarly available to Roberts-Naylor students from
3 outside its neighborhood who did not attend Tully but are similarly interested in the open-
4 access GATE program, and, if not, what the costs and tradeoffs would be to provide such
5 transportation to all out of neighborhood Roberts-Naylor open-access GATE students.
6

7 *Transportation to Support Participation in Other ALEs*

8 Although free transportation to TUSD dual language schools does not appear to be
9 discussed in the District's ALE documents¹¹, the Bloom school plan states that the school
10 "utilizes transportation [which Mendoza Plaintiffs understand to be free transportation] to
11 support TWDL recruitment." (Doc. 2270-3 at 13.) However, even as racially concentrated
12 Mission View states that one of its recruitment strategies to support integration will be "to
13 conduct outreach to parents on Davis Magnet School waiting list, to offer alternative dual
14 language placement at Mission View" (*id.* at 102), nothing is said in its plan about utilizing
15 the offer of free transportation to support that recruitment.
16
17

18 The fullest discussion of the provision of transportation to support student
19 participation in ALEs appears in the ALE Progress Report discussion of the transport of 8th
20 graders to take Algebra I at other schools. There, TUSD states that the cost is
21 approximately \$30,000 and that this "has not been a financial constraint...." (ALE
22 Progress Report, Doc. 2267-2 at 37.) Elsewhere in that same Report, TUSD says that if
23 Santa Rita students "prefer to take additional AP courses instead of dual credit courses,
24 they may do so by attending another high school within the District." (*Id.* at 33.)
25
26

27 ¹¹ Because references to TUSD provided transportation are sprinkled throughout the
28 District's ALE and other filings, Mendoza Plaintiffs cannot be sure they have located all
instances in which the District reports that it provides transportation.

1 However, the Report is silent on whether the District provides transportation to make such
2 course attendance possible and, if so, whether that transportation is free.

3 In the ALE Policy Manual, TUSD reports that UHS provides free transportation (as
4 well as free breakfast and lunch) for all of its summer programs: the BOOST freshman
5 orientation program, BOUNCE math and science support program, and BLAST, a summer
6 program for 7th and 8th graders. (ALE Policy Manual, Doc. 2267-1 at 31.) So far as the
7 Mendoza Plaintiffs can determine from the face of the document, free transportation is not
8 provided to those attending the District's AP Summer Boot Camp (*id.* at 24) or the Cholla
9 IB Summer Boot Camp. (*Id.* at 25.) Mendoza Plaintiffs do not here challenge the decision
10 to provide free transportation for the UHS summer programs (assuming they serve a
11 meaningful number of African American and Latino students). Rather, they note and
12 object to the District's failure to provide a rationale and a process for allocating the cost of
13 free transportation among the summer programs it offers to support attendance in its ALEs
14 in its Transportation Plan.

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18 Absence of an Undertaking to Coordinate Transportation in the ALE Policy
19 Manual

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21 Mendoza Plaintiffs find it significant that the Transportation Department is not
22 explicitly identified as among the departments with which the ALE Department
23 collaborates. (*See*, ALE Policy Manual, Doc. 2267-1, at 33- 35.) But collaboration is
24 required not only for the purpose of ensuring that appropriate transportation is available to
25 enable full participation in the District's ALE offerings by qualified African American and
26 Latino students but also to address and resolve priorities with respect to the allocation of
27 transportation resources among ALE programs. Mendoza Plaintiffs respectfully suggest
28

1 that a transportation plan should set guidelines and priorities for the allocation of
2 transportation resources to support the District's ALE recruitment efforts. Moreover, the
3 failure of the Transportation Plan to include transportation to support participation in ALEs
4 means that it does not permit a fully informed assessment or understanding of the USP
5 transportation budget or how all the multiple demands for those necessarily limited funds
6 are to be prioritized and allocated.
7

8 9 **Conclusion**

10 For the reasons set forth above and in the separately filed response to TUSD's
11 Outreach and Recruitment Addendum for Magnet and ALE Programs, Mendoza Plaintiffs
12 respectfully request the Court to hold that the District has failed to comply with its 9/6/18
13 Order relating to USP Section II and deny the District's request that it be granted partial
14 unitary status with respect to Section II of the USP.¹² In an excess of caution, Mendoza
15 Plaintiffs respectfully invite the Court's attention to their earlier objections to such requests
16 by the District and to their Motion to Stay (Doc. 2186), expressly incorporate herein the
17 arguments set forth in those pleadings, and also note this Court's statement when it denied
18 that Motion that it will not again reach the question of unitary status until after the
19 District's Executive Summary filing and the proceedings relating thereto.
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26 _____
27 ¹² In expressly addressing the District's recent submission with respect to a portion of
28 Section II of the USP, Mendoza Plaintiffs do not intend to waive, and hereby retain, their
claim that the District has not yet attained unitary status with respect to any portion of the
USP.

Dated: September 20, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD NOTICE OF FILING OF 3-YEAR PLUS INTEGRATION PLAN AND OUTREACH AND RECRUITMENT ADDENDUM (DOC. 2270) AND OBJECTION TO THE DISTRICT'S REQUEST THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION II OF THE USP** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: September 20, 2019