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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: PLAN
FOR EXPANSION OF DUAL
LANGUAGE PROGRAM (DOC. 2258)
AND OBJECTION TO DISTRICT'S
REQUEST THAT IT BE AWARDED
PARTIAL UNITARY STATUS WITH
RESPECT TO SECTION V, C OF THE
USP**

Hon. David C. Bury

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

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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: Plan for Expansion of Dual Language Program
13 (“DL Expansion Plan”) (Doc. 2258)
14

15 **Argument**

16 ***The DL Expansion Plan Says Almost Nothing About Adding Additional***
17 ***Sites or the Obstacles and Costs Related to Doing So, and, Wiithout Explanation,***
18 ***Fails to Include as Additional New (or Expanded) Sites Sites that Previously***
Were Identified for Expansion

19 The Court’s 9/6/18 Order expressly directed the District to “[d]evelop a
20 comprehensive plan for expanding dual language laying out the obstacles and costs for
21 developing additional sites.” (Doc. 2123 at 101:22-24; citation to 2016-17 SMAR
22 omitted.) Instead, the District has presented a plan that says almost nothing about
23 additional new sites but, instead, focuses on the growth of programs at existing sites
24 through the addition of grades to schools like Bloom, that started their programs at the 1st
25 grade level with the intent to add a grade a year until all grades at the school included a
26 dual language option, or adding second classes to schools that currently offer only one dual
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1 language class per grade in order to bring those currently non-compliant schools into
2 compliance with the TWDL Model.¹ Mendoza Plaintiffs do not believe that the building
3 out of an existing program or the addition of classes to conform to a required framework,
4 notwithstanding that these actions should have the laudable result of increasing the
5 numbers of students participating in these existing programs, is the equivalent of planning
6 for the development of additional sites.
7

8 As to the development of additional sites, the only thing the DL Expansion Plan
9 says is that starting in school year 2024-25 (DL Expansion Plan, Doc. 2258-1, at 4), the
10 District will start the process of adding grade by grade a new TWDL program at Magee
11 Middle School. (*Id.* at 2.) Anticipated costs are set forth (*id.* at 4) but absolutely nothing
12 else is said about this aspect of the plan, for example, why Magee was selected, why the
13 District determined to wait until 2024-25 to begin implementation of this portion of its
14 plan, how it will work to develop an integrated TWDL program at Magee particularly
15 given its less than successful effort to use an express bus to further integration at the school
16 (*see, e.g.*, the Court’s prior questioning of the efficacy of this use of 910(G) funds, 9/10/19
17 Order, Doc. 2272, at 15:25-16-4.), etc.
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22 ¹ *See, e.g.*, the TUSD Two-Way Dual Language Framework, Doc. 2258-1, at 23 (“Each
23 school **begins** with a minimum of two classes per grade level to mitigate the mobility rate
24 as the program progresses through the upper grades.” Emphasis added.) It is Mendoza
25 Plaintiffs’ understanding that in addition to the schools to which the District now plans to
26 add a second “strand”, that is a second class per grade, (Grijalva and White, Doc. 2258-1,
27 at 2), two additional existing dual language sites (Van Buskirk and Mission View) also
28 have only a single “strand” (or class per grade). To the extent the District has used the DL
Expansion Plan to identify the addition of required “strands” at existing sites, Mendoza
Plaintiffs believe it is incumbent on the District to address obstacles to program fidelity
and the addition of required “strands” (that is second classes per grade) at these two
schools (which they believe are too small to house/support a second class per grade) and
how that obstacle is being addressed and/or mitigated.

1 In November 2016, the District developed a Two-Way Dual Language (TWDL)
2 Access Plan (“2016 DL Access Plan”) (a copy of which is attached as Exhibit A). Among
3 other things, that 2016 DL Access Plan stated that for the 2017-18 school year the District
4 would “strongly consider” adding the TWDL program at Dietz K-8 as well as at Marshall
5 elementary school. (*Id.* at 2.) Leaving aside the issue of why that program expansion
6 failed to occur in 2017-18 what is of concern now is the failure of the new DL Expansion
7 Plan to include these two expansion sites (or even to discuss its current assessment of these
8 two sites as viable candidates for dual language programs.)
9

10 Further complicating an understanding of how the District is planning and
11 implementing its dual language expansion is the fact that notwithstanding the failure of its
12 2016 DL Access Plan to say that the District was “strongly considering” adding a TWDL
13 program at Ochoa in 2017-18, its budget for 2017-18 proposed the addition of the program
14 at that school. (2017-2018 USP Budget Narrative, January 20, 2017 at 14, 31, attached as
15 Exhibit B (“Ochoa will initiate a TWDL program with two kindergarten classes.”).)
16
17 Mendoza Plaintiffs understand that the District ultimately determined not to proceed with
18 the Ochoa expansion, and it is not included in the list of schools that offer dual language
19 programs in the District’s DL Expansion Plan. Additional complication is provided by the
20 fact that, notwithstanding that it is not included in the list of schools that offer dual
21 language programs in the District’s DL Expansion Plan, Catalina is reported to have
22 “increased its offering of ...dual language classes” in the District’s Progress Report on
23 Advanced Learning Experiences. (Doc. 2267-1 at 31; emphasis added.)
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27 Mendoza Plaintiffs respectfully suggest that this Court should defer acting on
28 TUSD’s request for partial unitary status until it presents a plan for expansion that first sets

1 out the locations and extent of existing programs at each school that currently offers dual
2 language in the District and then provides a reasoned policy and process for expansion. (In
3 this regard Mendoza Plaintiffs suggest that the process that has been created for the
4 addition of new magnet programs and sites could be a model.)
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7 **Conclusion**

8 For the reasons set forth above Mendoza Plaintiffs respectfully request the Court to
9 require TUSD to revise its DL Expansion Plan to address the deficiencies set forth above
10 and that it deny the District's request that it be granted partial unitary status with respect to
11 Section V, C.² In an excess of caution, Mendoza Plaintiffs respectfully invite the Court's
12 attention to their earlier objections to such requests by the District and to their Motion to
13 Stay (Doc. 2186), expressly incorporate herein the arguments set forth in those pleadings,
14 and also note this Court's statement when it denied that Motion that it will not again reach
15 the question of unitary status until after the District's Executive Summary filing and the
16 proceedings relating thereto.
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27 ² In expressly addressing the District's recent submission with respect to Section V, C of
28 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: PLAN FOR EXPANSION OF DUAL LANGUAGE PROGRAM (DOC. 2258) AND OBJECTION TO DISTRICT'S REQUEST THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION V, C 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