

1 On July 16, 2019, the Defendant Tucson Unified School District (the District)
2 submitted a Notice and Request for Approval (NARA) to create a no-boundary
3 attendance area for Roskruge K-8 Magnet School by eliminating its K-5 boundary.
4 Currently, there is no neighborhood boundary for Roskruge’s middle grades 6 through 8.
5 Roskruge is, however, a boundary defined neighborhood school for grades K-5.

6 The boundary change is necessary to accommodate the expansion of the TWDL
7 program under the Unitary Status Plan (USP) at Roskruge by changing it from a single
8 classroom TWDL strand to a double classroom strand. Implementing TWDL in two
9 classrooms at each grade level at Roskruge K-8 means “Roskruge does not have physical
10 space for a third, non-TWDL strand,” (NARA (Doc. 2236) at 2), and means that
11 Roskruge becomes a school-wide TWDL.

12 The Court recognizes that it has approved the TWDL model for expanding the
13 dual language programs under the USP. The Court has not, however, approved the
14 specifics of any TWDL plan for the District. In fact, the District’s Dual Language Action
15 Plan (Doc. 2258) was just submitted on August 30, 2019 and is pending review. The
16 Court cannot consider this NARA without considering the TWDL Plan, which is
17 currently not yet fully briefed by the parties and the Special Master.¹

18 The Court has cursorily reviewed the Dual Language Action Plan (Doc. 2258)
19 and finds that it cursorily mentions Roskruge three times: 1) identifies Roskruge as one of
20 the current eleven TWDL program schools, 2) mentions the “no boundary” change to
21 expand TWDL at Roskruge, and 3) recognizes that Roskruge became a bilingual middle
22 magnet school in the 1980s. These three references are not going to suffice for this Court
23 to approve the expansion of TWDL at Roskruge to the whole school, including the
24 requisite boundary change. The Court takes time, here, to explain its reasoning for
25 strictly scrutinizing the TWDL program in the context of its implementation and

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27 ¹ Because Roskruge is also a Magnet school, the Court may also need to consider
28 the 3-Year Plus Integration Plan (3-Year PIP (Doc. 2270), which is also pending review.
The Court does not consider TWDL programs to be Advanced Learning Experience (ALE)
programs. (Order (Doc. 2123) at 98-99, n. 44), *but see* (3-Year Plus Integration Plan (Doc.
2270) identifying Roskruge K-8 as a dual language ALE.

1 operation at Roskruge because the NARA has brought to light unanswered questions
2 regarding implementation of the TWDL programs. To expedite its consideration of the
3 Dual Language Action Plan, the Court asks the District to file a supplemental report from
4 its TWDL expert Ms. Rosa Molina updating the status of her 2016 recommendations for
5 action and expansion, and the Court asks that she revise her recommendations, if
6 necessary, after considering the concerns of the Court as explained here.

7 As previously expressed by the Mendoza Plaintiffs, there is potential for TWDL
8 programs to create program isolation. As this Court has noted previously, the TWDL
9 program when implemented school-wide has the potential to create segregated schools.
10 (Order (Doc. 2123) at 100.) As the Court said on September 6, 2018, it will not ignore
11 that the TWDL classes do not promote integration. *Id.* It will likewise not ignore that
12 whole-school TWDLs have the potential to create segregated schools.

13 The District has a long history of dual language programs, but in 2016 the District,
14 at the direction of this Court, hired an expert to “develop a plan for increasing student
15 access to dual language programs which must be implemented by SY 2016-17.” (2016-
16 17 DAR, Appendix V-88 (Doc. 20161-6) at 2 (quoting (Order (Doc. 1879) at 6)). The
17 District hired Ms. Rosa Molina, Executive Director of the Association of Two-Way &
18 Dual Language Education (ATDLE), who worked for approximately three months to
19 develop options for expansion of TWDL in SY 2016-17 and going forward. (TWDL
20 Access Plan, Executive Summary, November 10, 2016 (Doc. 2061-6) at 2-11; TWDL
21 Program Review, Molina Final Report (Doc. 2061-6) at 12-62.)

22 There are two critical components to the TWDL program necessary to achieve
23 both integration and improved student achievement.

24 “The first and most compelling factor is the classroom composition of the current
25 TWDL classes. A TWDL Immersion program is a carefully constructed program design
26 that consists of ‘linguistically balanced classrooms’ where two language groups cross-
27 learn the language by serving as language models for each other[.]” A TWDL classroom
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1 must be linguistically balanced as follows: 33% Spanish Speakers, 33% Bilingual
2 Students, and 33% English-Only Speakers. *Id.* at 19.

3 Without this perfect mix, English Speakers cannot fully develop the target
4 language (Spanish) because the classroom is “bereft of native speakers who help supply
5 the oral language practice, vocabulary, pronunciation, and cultural norms of the target
6 language.” *Id.* It works in reverse, with Spanish Speakers being equally adrift to fully
7 develop English oral language practice, vocabulary, pronunciation, and cultural norms
8 where there are too few English-Only Speakers in the class. The English-Only Speakers
9 ensure a degree of racial diversity, assuming, Anglo and Black students will be English-
10 Only Speakers. Too many English Speakers, however, “jeopardize Spanish Speakers to
11 fully develop their first language base and study in an integrated language setting that
12 supports their literacy development in both languages.” *Id.* at 20. This is of course the
13 problem that the District’s NARA is aimed at remedying: the boundary change will
14 preclude English-Only speaking students from entering the TWDL program at Roskruge
15 after kindergarten and the first semester of grade one. This is necessary because English-
16 Only Students who enter after these grades cannot keep up with the substantive course
17 work which is being taught in Spanish, slowing down the delivery of course content and
18 jeopardizing the ability of TWDL to improve academic achievement for all TWDL
19 students. The NARA Roskruge boundary change recommends assigning English-Only
20 speaking students, grades 2-5, a new neighborhood school, Cragin.²

21 “TWDL programs allow students the maximum time possible to fully develop
22 their proficiencies and academic abilities in two languages, starting students at
23 kindergarten or first-semester of first grade to have an early immersion experience (90%
24 Spanish/10% English) that allows them to build their foundational literacy skills in the
25 target language [(Spanish)] over 7 to 9 years of study to become truly proficient in
26 [Spanish] and English.” *Id.* at 23. By second grade, TWDL content courses are being
27 taught 80% Spanish and 20% English, with English increasing, thereafter, every grade to

28 ² Cragin is a 20-30-minute bus ride from Roskruge. (NARA (Doc. 2236-1) at 68.)

1 be 50/50 by the fifth grade. *Id.* at 42. There must be a clear TWDL pathway retained
2 through elementary, middle, and high school for students to nurture bilingualism and bi-
3 literacy. *Id.* at 5. TWDL is not bilingual representation of the same subject matter, but
4 instead includes two language blocks of study, English and Spanish, and content
5 instruction divided generally between Reading in English and other content courses in
6 Spanish. The goal is bilingual literacy by fifth grade, then a minimum of two courses
7 taught in Spanish from 6th-8th grades to create a pathway to advanced high school
8 Spanish course work to complete the requisites for the Arizona Seal of Biliteracy. (Dual
9 Language Plan (2258-1) at 29, 34.) To secure success in upper level TWDL programs,
10 the TWDL program at the elementary level must produce enough qualified TWDL
11 students to offset the attrition seen in the program at the middle school and high school
12 grades. This accounts for the two-strand design of TWDL programs in elementary
13 grades.

14 Equally important to the integrity of the TWDL program is the ability of teachers
15 to ensure “that the students are reaching the bilingual and biliteracy goals set out by the
16 program and inform parents of their child’s progress in both languages.” *Id.* at 21.
17 Students must be able to perform equally well in both languages by fifth grade or Spanish
18 Speakers will be unable to transition as English-content courses increase in middle and
19 high school. It is equally important that English Speakers do not slow down the delivery
20 of Spanish content in elementary school TWDL classrooms because preparatory
21 deficiencies in content impede academic achievement for all TWDL students in upper
22 level grades.

23 What is abundantly clear from the Molina Final Report and the Dual Language
24 Plan is that a failure to implement TWDL with fidelity jeopardizes the ability of a TWDL
25 program to improve academic achievement. Simply put, if the “perfect mix” is not
26 ensured, then TWDL will not result in improved academic achievement. The Court must
27 consider both the potential success of TWDL to improve academic achievement and the
28 risk of program isolation. The Molina Final Report recognized the importance of

1 “reviewing the enrollment at each site in order to design a two classroom TWDL
2 structure, reduce programmatic isolation of the TWDL classes at the site, and make the
3 program accessible to additional students.” (Molina Final Report (Doc. 2061-6) at 8.)
4 With the advent of TWDL schools, the risk of isolation expands to creating segregated
5 schools. The concept of separate but equal schools, *Plessy v. Ferguson*, 163 U.S. 537
6 (1896), has been long abandoned because separate educational facilities are inherently
7 unequal. *Brown v. Board of Educ. Topeka*, 347 U.S. 483, 495 (1954). The District fails
8 to explain how it reconciles the enrollment goal of reducing programmatic isolation with
9 whole-school TWDL programs. It fails to address how the whole-school TWDL program
10 can be reconciled with *Brown’s* rejection of *Plessy*.

11 The Court does not intend this discussion to jeopardize the TWDL Davis Magnet
12 School, which it recognizes is a whole-school TWDL. As the Court has previously
13 noted, TWDL programs might in some instances be successful magnet programs. Davis
14 Magnet is such a program, with a school-wide TWDL program being offered at an
15 integrated school with a B rating. The Court realizes that Roskruge is also a designated
16 TWDL magnet program, but in name only. It is neither integrated nor an exceptional B
17 rated academic program. The District strongly suggests that integrating Roskruge will be
18 unlikely because its competition, Davis K-5 Magnet, is about one mile away, and Davis
19 and Roskruge are two of seven schools³ within a two-mile radius that compete from the
20 same limited pool of non-Hispanic students in grades K-8. The Court has not yet
21 reviewed the District’s comprehensive 3-Year Plus Integration Plan (3-Year PIP) and,
22 therefore, takes no position regarding Roskruge’s magnet status.

23 The Court has held that TWDL programs are not per se ALEs. (Order (Doc.
24 2123) at 100.) Now, it holds that TWDL programs are also not per se magnet programs.
25 To the extent this holding changes the District’s 3-Year PIP, it shall immediately file a
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28 ³ Borton, Carrillo, Davis and Holladay ES; Drachman and Roskruge K-8, and Mansfeld MS.

1 Notice with the Court that the 3-Year PIP (Doc. 2270) needs revision, seek an extension
2 of time to make the revision, and refile the 3-Year PIP.

3 A cursory review of the Molina Final Report and Executive Summary reflects that
4 the District's expert did not address isolation issues for whole-school TWDL programs.
5 A cursory review of the Dual Language Plan reflects that it is long on planning and short
6 on specifics of on-the-ground actual TWDL program operations, including actual planned
7 TWDL program expansions at respective schools. The USP is about doing which
8 necessarily requires planning, but the unitary status decision must be based on both: what
9 the District is doing and planning to do in the future. The District shall secure an update
10 from Ms. Molina, who shall provide a status report for the identified "actions" set out in
11 her 2016 Final Report. For recommended actions at the school-site level, she shall review
12 each school, determine, and report the implementation of the requisite actions, such as
13 whether the requisite "33% linguistic balanced" classroom composition is being met in
14 each classroom; whether schools are using screeners post-2nd grade; whether academic
15 achievement is being assessed in both languages and report cards are being sent home,
16 accordingly; whether certified bilingual teachers are teaching in every TWDL classroom,
17 etc.

18 Ms. Molina shall enlist the assistance of the District to prepare a complete
19 inventory of the current TWDL programs, as needed and including: 1) identify each
20 school operating a TWDL program and if it is a single strand or double strand, with or
21 without a non-TWDL strand and/or a whole-school TWDL program; 2) determine for
22 each school whether the TWDL classes satisfy the requisite 33% linguistic composition;
23 3) identify that each class is being taught by certified bilingual teacher, and 4) etc. In the
24 event classroom composition is not 33% linguistically balanced, Ms. Molina should work
25 with the District to determine whether the school has the ability now or in the future to
26 attain this requisite student-mix and develop any necessary strategies to do so. The
27 District shall provide test-score school comparisons from SY 2016-17 to SY 2018-19 for
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1 TWDL students with their District peers, identifying where programs are improving
2 student achievement or not.

3 After completing this in-depth inventory and review of the current status of the
4 TWDL programs in comparison to the SY 2016-17 Final Report recommended actions,
5 the District shall file a supplement from Ms. Molina of her 2016-17 Final Report,
6 including the following: 1) her status report; 2) addresses the concerns of this Court
7 regarding the risk of program isolation, especially at whole-school TWDL programs, and
8 3) updates the recommendations for expansion. The 2016-17 Final Report
9 recommendations for expansion targeted Bloom ES, Dietz K-8, and Marshal MS. It did
10 not include Roskrige K-8 or any other schools beyond the three mentioned. The Court
11 presumes that given the limiting parameters involved for a functioning and successful
12 TWDL, the District should have a pretty good idea, at least for planning purposes, as to
13 which schools will be successful hosts of future TWDL programs, if any. This specificity
14 is missing from the Dual Language Plan (Doc. 2258). The Molina Supplemental Report
15 shall be expeditiously prepared and filed with the Court for the parties and Court's
16 consideration in the context of reviewing the Dual Language Plan (Doc. 2058).

17 **Accordingly,**

18 **IT IS ORDERED** that the NARA (Doc. 2236) is DENIED, without prejudice to
19 being reurged.

20 **IT IS FURTHER ORDERED** that the 2019-20 Supplemental Final Report shall
21 be filed as soon as possible but no later than 60 days from the filing date of this Order.
22 Objections to the Dual Language Plan shall be filed thereafter.

23 Dated this 30th day of September, 2019.

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27 Honorable David C. Bury
28 United States District Judge