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22
 23 **IN THE UNITED STATES DISTRICT COURT**
 24 **FOR THE DISTRICT OF ARIZONA**

25 Roy and Josie Fisher, et al., 26 Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.	4:74-cv-0090-DCB (Lead Case)
Maria Mendoza, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.	4:74-cv-0204 TUC DCB (Consolidated Case)

27
 28 **DISTRICT RESPONSE**
 29 **TO MENDOZA PLAINTIFFS' OBJECTIONS (2283)**
 30 **TO NOTICE OF FILING ALE POLICY MANUAL (2267)**
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1 Defendant Tucson Unified School District No. 1 (“Tucson Unified” or the
2 “District”) respectfully submits this Reply in support of its Notice of Filing ALE Policy
3 Manual (ECF 2267) and addresses the objections made in the Mendoza Plaintiffs’ Related
4 Response and Objection (ECF 2283).

5 The Mendoza Plaintiffs raise two main objections to the District’s ALE Policy
6 Manual, arguing that the ALE Policy Manual fails to comply with Court Order 2123 and
7 that the ALE Policy Manual does not permit a “meaningful” assessment of the District’s
8 success in ensuring equal access to ALEs.

9 For their first objection, the Mendoza Plaintiffs list several minor complaints about
10 the District’s ALE Policy Manual, all of which are addressed below. Although they argue
11 in nearly every instance that the District failed to address a specific topic, their arguments
12 reveal an acknowledgement of and disagreement with the way the District addresses these
13 issues. For their second objection, the Mendoza Plaintiffs isolate specific instances where
14 African American or Hispanic student participation in specific ALEs is not equal to that
15 of White participation, and they argue that this lack of parity evidences a failure to
16 effectively implement the ALE section of the Unitary Status Plan.

17 Parity in ALE participation has never been required in order to obtain unitary
18 status; if it had been, no district could be declared unitary because no district of which
19 Tucson Unified is aware has achieved parity in ALE participation among all students of
20 different ethnicities. Ultimately, the Mendoza Plaintiffs have raised no objection that
21 should bear on the Court’s determination of unitary status for ALEs.

22 The District’s responses below demonstrate compliance with the USP and Court
23 Orders, and they show that the District has operated its ALE program in a unitary manner,
24 which has resulted in great successes for its African American and Hispanic students.

25

1 **I. The District has complied with all requirements set by the Court.**

2 The Court’s September 6, 2018 Order included several directives related to the
3 District’s ALE program. [ECF 2123.] The District’s ALE Policy Manual, ALE
4 Operations Manual, and ALE Progress Report address each of these directives (plus
5 several additional items). Below, the District addresses each of the Mendoza Plaintiffs’
6 assertions of missing information or failure to address specific directives.

7 **A. The District identified and implemented a practicable policy for**
8 **strategically placing self-contained GATE programs to serve the**
9 **greatest number of African American and Latino students.**

10 The Mendoza Plaintiffs incorrectly argue the District’s ALE Progress Report
11 omitted a policy for strategically placing self-contained GATE programs to serve the
12 greatest number of African American and Hispanic students. [ECF 2283, p. 2.] Contrary
13 to this assertion, the District’s very first strategy discussed in the ALE Progress Report is
14 “Expanding cluster and self-contained GATE programs and placing them in locations that
15 serve the highest number of African American and Hispanic students.” [ECF 2267-2, p.
16 7.] Although the Mendoza Plaintiffs may disagree with the details of the District’s policy
17 and strategy, their assertion of omission is incorrect.

18 Both the ALE Progress Report and the Policy Manual discuss the District’s policy
19 of strategically ensuring that GATE services, self-contained and otherwise, are
20 administered and conducted by the District in such a manner that the highest numbers of
21 African American and Hispanic students receive these services. The District has followed
22 this policy in connection with its self-contained GATE program in locating these
23 programs at Doolen, Pistor, Kellond, Wheeler, White, Hollinger, and Vail, each of which
24 are among the schools with the highest number of African American and/or Hispanic
25 GATE qualifiers.

1 The District's policy of locating its self-contained GATE programs to serve the
2 highest number of African American and Hispanic students is part of its overall GATE
3 policy, which also focuses on serving the highest numbers of African American and
4 Hispanic students. This broader GATE policy now includes a heavy emphasis on cluster
5 GATE programs, which have the potential to provide GATE services to much higher
6 numbers of African American and Hispanic students because cluster GATE classes do
7 not require students to qualify through testing. The cluster GATE program is a model for
8 including and providing GATE services to greater numbers of African American and
9 Hispanic students. Therefore, one of the strategies the District has implemented to expand
10 GATE services to African American and Hispanic students is to focus its expansion
11 efforts on the cluster GATE program.

12 Based on the District's pursuit of this policy in its cluster GATE expansion, the
13 District has located cluster GATE programs at schools which serve the highest number
14 of African American and Hispanic students, including Myers-Ganoung, Steele, and
15 Wright, all which serve some of the highest numbers of African American students in the
16 District. [ECF 2267-2, p. 7.]

17 Additionally, the District's expansion of its self-contained GATE programs at
18 Roberts Naylor and Wheeler have been very successful, resulting in a significant increase
19 in African American and Hispanic students participating in self-contained GATE. Due
20 to the location of these schools and the number of students at these schools that qualify
21 for self-contained GATE services, these schools were calculated to serve the highest
22 numbers of African American and Hispanic students within the self-contained program.

23 The self-contained programs in these two schools began in SY16-17, with Wheeler
24 having a second-grade class and Roberts-Naylor having a pre-GATE kindergarten class
25

1 and a second-grade class. In SY 17-18, Wheeler added pre-GATE kindergarten, first and
2 third grades, and Roberts-Naylor added first grade and a third-and-fourth-grade
3 combination class. In SY 19-20, both schools added a fifth-grade class. In addition,
4 Roberts-Naylor added an open access middle school strand in grades 6-8 in various
5 content areas, providing available self-contained services to the students who have open
6 access services in prior grades at Roberts-Naylor, Tully (as part of the Tully feeder
7 pattern), and other schools.

8 The District has increased the number of African American and Hispanic students
9 participating in self-contained GATE classes over the last three years, from 51 to 86
10 African American students, and from 535 to 585 Hispanic students. [ECF 2267-2, p. 17.]
11 As explained in the ALE Progress Report: Roberts-Naylor's self-contained GATE
12 program increased from 3 students in SY16-17 to 39 students in SY17-18 and 57 students
13 in SY18-19, including an overall increase in African American students from 0 to 15, and
14 an overall increase in Hispanic students from 1 to 27. Wheeler's program grew from 8
15 students in SY16-17 to 58 students in SY17-18 and 86 students in SY18-19, including an
16 overall increase in African American students from 3 to 12, and an overall increase in
17 Hispanic students from 2 to 25. [ECF 2267-2, p. 19.]

18 In summary, the first strategy discussed in the ALE Progress Report included
19 expanding self-contained programs to serve the highest number of African American and
20 Hispanic students. In that discussion, the District provided details of how this strategy
21 has operated over the last three years to serve higher numbers of African American and
22 Hispanic students. In particular, the overall increase in African American student
23 participation in self-contained classes in the last three years (an addition of 35 students)
24 was a direct result of the expansion of programs at Roberts-Naylor (an addition of 15
25

1 students) and Wheeler (an addition of 9 students). Similarly, the overall increase in
2 Hispanic student participation in self-contained classes in the last three years (an addition
3 of 50 students) was a direct result of the expansion of programs at Roberts-Naylor (an
4 addition of 26 students) and Wheeler (an addition of 23 students).

5 Thus, the 35-student increase in African American participation in self-contained
6 GATE courses was a direct result of the expansion of the self-contained programs at
7 Roberts-Naylor and Wheeler. Specifically, these two programs added 24 of the additional
8 35 students, or were responsible for 69% of the increase in African American
9 participation in self-contained GATE.

10 Likewise, the 50 student increase in Hispanic participation in self-contained GATE
11 course was a direct result of the expansion of Roberts-Naylor and Wheeler programs,
12 adding 49 of the 50 additional students, or 98% of the increase in Hispanic participation
13 in self-contained GATE.

14 The District's cluster GATE programs have also seen a significant increase in
15 African American and Hispanic student participation, going from 20 African American
16 and 61 Hispanic students in SY16-17 to 199 and 906 African American and Hispanic
17 students in SY18-19, respectively. The District's policy and strategies of expanding its
18 GATE services in ways that serve the highest numbers of African American and Hispanic
19 students are successfully providing GATE services to hundreds of these students that
20 otherwise would not have received such services in this District or any other district.

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1 **B. The District studied the success in AP classes of students who took**
2 **pre-AP courses, but adding additional variables and individual data**
3 **points is beyond the District’s resources when considering the**
4 **likelihood of yielding useful data.**

5 The Mendoza Plaintiffs argue the District has failed to compare the relative success
6 in AP classes of those Tucson Unified students who participated in self-contained GATE
7 in comparison to those who participated in classes labeled as pre-AP. The parties and
8 Special Master discussed a similar issue in 2016 and 2017, and the Special Master
9 discussed a study done by the District along with his analysis:

10 The Special Master’s analysis of the data found that students
11 who take pre-AP classes are only modestly more likely to take
12 AP courses and that taking a pre-AP course is unrelated to
13 whether students achieve a grade of three or higher on [an] AP
14 exam, an achievement that can lead to them receiving college
15 credit and being more likely to be admitted to a competitive
16 entrance college or university.

17 [ECF 2096, pp. 36-37.] The data that the Special Master had considered was a sample of
18 503 11th and 12th grade students who took at least one AP course for the first time in SY
19 2016-17. Of these 503 students, 317 took a pre-AP class in 2015-16; of these 317
20 students 197 (62 percent) completed the related AP course and all of these students
21 received a passing grade at the end of the 2016-17 school year; 87 students (44 percent)
22 received an AP exam score of a 3 or higher. 186 of these 503 students did not take a pre-
23 AP class in 2015-16; of these 186 students, 128 (69 percent) completed the AP course,
24 and all but four students received a passing grade at the end of the 2016-16 school year
25 (97 percent); 41 students (32 percent) received an AP exam score of a 3 or higher.

 Ultimately, the Special Master concluded: “There have been no studies to show
that there are clear benefits from participating in” pre-AP courses. [ECF 2096, pp. 36-
37.]

1 The District also conducted a study of students who had taken self-contained
2 GATE courses in middle school in comparison to those who took classes labeled as pre-
3 AP in middle school. Unsurprisingly, those students who qualified for self-contained
4 GATE courses in middle school had a higher likelihood of scoring a 3 or higher on an AP
5 exam than students who likely did not qualify but instead took course labeled as pre-AP.
6 For non-UHS students who took self-contained GATE courses in middles school, 53% of
7 exams received a passing score. For non-UHS students who took classes labeled as pre-
8 AP and who did not take self-contained GATE classes, 33% of exams received a passing
9 score. For UHS students, 82% of the exams taken by students who took “pre-AP” classes
10 received passing scores, while 88% of the exams taken by students who took self-
11 contained GATE classes received passing scores.

12 This comparison does not establish that self-contained GATE is a “better pipeline”
13 to AP success than pre-AP courses self-contained GATE classes. For example, students
14 who take self-contained courses have already tested into the self-contained program, and
15 they are being compared with students who did not test into the self-contained program.
16 Because the District tests all students at some point in their schooling (the District tests
17 all first and fifth grade students), those students who did not qualify for self-contained
18 GATE have tested lower than those students who qualified for self-contained GATE.
19 This variable is somewhat controlled when looking only at UHS students (who have also
20 successfully tested into a program), and the difference in the percentage of these separate
21 cohorts is minimal. There are many other factors influencing the result which may
22 themselves be correlated with or dependent on AP success, which are not controlled
23 between these groups. Controlling for every possible dependent factor, if possible, would
24 impossible for the District to collect and assess in a way that would lead to a helpful
25

1 analysis. The District thus concluded that this comparison was not helpful in guiding
2 policy decisions.

3 Nevertheless, as detailed in the ALE Progress Report, the District continues to
4 grow its AP program, its self-contained GATE program, and its other ALEs, and it
5 continues to see success in participation and success among the District's African
6 American and Hispanic students. And, as noted above, Tucson Unified aggressively
7 recruits all qualified African American and Hispanic students to participate in self-
8 contained GATE programs, and it continues to expand those programs and the cluster-
9 GATE programs to locations that serve the highest numbers of African American and
10 Hispanic students.

11 **C. The District answered in the affirmative the question of whether a**
12 **school may entirely replace an AP curriculum with a dual credit**
13 **curriculum.**

14 The Mendoza Plaintiffs next argue the District has not answered the question of
15 whether dual credit courses may entirely replace AP classes at a District high school. The
16 District answers this question in the affirmative, and explains in detail several of the
17 benefits of this strategy on page 77 of the ALE Progress Report. [ECF 2267-2, p. 77.]

18 Although the District does not foresee developing another high school with a focus
19 on dual credit courses similar to that at Santa Rita, Santa Rita's program provides
20 significant benefits to students and their families in that, with the exception of University
21 High School's AP program, no other school or program in the District provides more
22 opportunities for students to obtain college credits than Santa Rita.¹ Indeed, in SY17-18,
23 Santa Rita's 92 graduating seniors earned 572 college credits through their participation in
24 the dual credit program, saving them more than \$340,000 in tuition at the University of

25 ¹ As noted in the ALE Progress Report, Santa Rita also recently added both an AP class and a CRC
Honors course. [ECF 2267-2, pp. 48, 85.]

1 Arizona and more than \$46,000 at Pima Community College. In fact, one student
2 graduated from Santa Rita with 35 college credits, and more than 20 students earned 25
3 college credits each. [ECF 2267-2, p. 31.]

4 For many students, particularly lower-income students and those who would not
5 otherwise be inclined to enroll in AP courses, dual credit courses provide the greatest
6 likelihood of earning college credits while still in high school. [See ECF 2123, pp. 77-78
7 (“Dual credit courses guarantee credit at Arizona colleges and universities including
8 community colleges, with almost all students who take dual credit courses receiv[ing]
9 passing grades in comparison to students taking AP or IB classes who must pass a more
10 rigorous examination in order to receive college credit.”).] Many of these students will
11 start college as sophomores, having earned a full year of schooling and having saved
12 thousands of dollars in tuition, giving them a great head start to a successful college
13 career. Some of these same students may not have had the same measure of success with
14 AP classes. [Id.]

15 Consequently, a school that focuses entirely on dual credit instead of offering more
16 AP classes can provide a unique opportunity for many students to obtain a significant
17 number of college credits without additional costs and without qualifying for UHS. And,
18 as noted in the ALE Policy Manual and Progress Report, the District’s dual credit school
19 Santa Rita has recently added an AP course, and it remains open to adding more AP courses
20 if regular analyses indicate this would be the most beneficial course for Santa Rita’s
21 students.

1 **D. The District considered automatically enrolling all qualifying students**
2 **in self-contained GATE classes, but the Fisher Plaintiffs objected to**
3 **pursuit of this strategy.**

4 The Mendoza Plaintiffs argue the District has not considered the strategy of
5 automatically enrolling all qualified students into self-contained GATE courses.

6 The District previously considered automatically enrolling all students who
7 qualify for self-contained GATE services into self-contained programs. Indeed, the
8 parties, counsel and Special Master discussed this strategy in an in-person meeting in
9 2017. During that discussion, counsel and representatives for the Fisher Plaintiffs were
10 adamant that they objected to automatic enrollment of students into ALEs, and that they
11 would object to the District moving forward with this strategy. Thereafter, the Special
12 Master indicated it was not worthwhile to continue considering this strategy in light of
13 the Fisher Plaintiffs' objections.

14 The District remains willing to discuss this strategy. The District would be
15 interested in moving forward with a strategy of automatically enrolling students into self-
16 contained GATE classes when such classes are available at the school(s) where these
17 qualified students are already enrolled. Even if the District were to give families the
18 opportunity to opt out of these classes, the District could not automatically enroll students
19 in self-contained classes when such attendance would require students and their families
20 to travel to another school because such changes to students' transportation requirements
21 necessitate written parental permission in advance.

22 As noted throughout the ALE Policy Manual and Progress Report, the District
23 already reaches out to the families of each qualified student, including making personal
24 phone calls to the families of every qualified African American and Hispanic student with
25 an invitation to participate in self-contained GATE classes.

1 **E. The District discussed the effectiveness of its stipend program for**
2 **recruiting and retaining gifted-endorsed teachers.**

3 The Mendoza Plaintiffs incorrectly argue the District has not addressed the
4 effectiveness of its stipend program for recruiting and retaining gifted-endorsed teachers.

5 On page 11 of the District’s ALE Progress Report, the District explained details
6 regarding the effectiveness of its incentive plan for GATE teachers, including the stipends
7 provided as incentives for recruiting and retaining gifted-endorsed teachers. [ECF 2267-
8 2, p. 11.]

9 Since spring 2017, 46 teachers have earned permanent GATE endorsement, 20 of
10 whom are currently in teaching positions that make them eligible to receive a stipend. An
11 additional 20 teachers have earned their provisional GATE endorsement, with 15 of these
12 teachers in positions eligible for receiving a stipend. This increase in the number of gifted-
13 endorsed teachers has been an important element in the District’s ability to expand its
14 GATE programs so significantly over the last three years.

15 **F. The District addressed whether the most effective tutoring programs**
16 **are teacher-based.**

17 The Mendoza Plaintiffs acknowledge the District has addressed the issue of
18 “whether the most effective tutoring programs are teacher-based like the IB and UHS
19 programs,” and they also acknowledge the District’s formal tutoring programs now require
20 certified teachers and that this is a policy the Mendoza Plaintiffs “have long supported.”
21 [See ECF 2123, p. 97 and ECF 2283, pp. 5-6.] Nevertheless, they argue the District has
22 failed to respond to the Court’s question, and they request “that the District be asked to
23 clarify the ALE Policy Manual and ALE Progress Report to specifically address what
24 tutoring is provided to its ALE students, particularly those in AP classes, and by whom.”
25 [ECF 2283, p. 7.] They also push for an expansion of the IB tutoring model to other ALEs.

1 Contrary to the Mendoza Plaintiffs' assertion, tutoring, including what specific
2 tutoring students receive, is discussed in the ALE Policy Manual and ALE Progress Report:

3 **AP Mentoring and Tutoring**

4 * * *

5 AP Tutoring in math and/or English language arts (ELA)
6 skills is provided by AP teachers and is determined by each
7 school site, based on student needs. AP teachers also provide
8 special test-prep sessions provided before AP exams at the
9 end of the year. [ECF 2267, p. 24.]

8 **IB
9 Tutoring, Test Prep, and Mentoring**

10 All teachers have tutoring hours throughout the school year to
11 academically support students amid the rigors of IB
12 curriculum. Teachers also provide test-prep study sessions
13 starting in March for the IB exams taking place in May.
14 Additionally, teacher advisors track overall student progress
15 throughout the program, providing individual mentoring
16 support. [Id. at pp. 25; 55.]

13 The District's Interscholastics Tutoring Program allows
14 students of all academic levels, including those in ALEs, to
15 receive tutoring under the guidance of certified teachers
16 before, during, and after school at several sites. The purpose
17 of the program is to actively engage students in a meaningful
18 tutorial learning experience with the guidance of a certified
19 tutor who will help students achieve their academic goals.
20 Ongoing support includes setting goals, learning different
21 strategies, and self-reflection on academic progress.

18 As part of the program, the District creates opportunities for
19 students to receive tutoring before and after school, helping
20 students in a variety of subject areas, with a focus on math,
21 science, and writing. Students are encouraged to agree to
22 attend tutoring for four hours per week and are expected to
23 balance extracurricular activities and show improvement in
24 their grades. Each school provides a quiet workplace, and
25 students receive both individual and group attention, as
needed. In addition, the African American and Mexican
American student services departments (AASSD and
MASSD, respectively) provide tutors for AP students before
and after school to assist with homework and difficult course
concepts. [ECF 2267-2, pp. 46-47.]

1 The Mendoza Plaintiffs also take issue that the District's budget is not sufficient for
2 every teacher in the District who teaches an ALE class to provide tutoring to their own
3 students at the same level of tutoring available to Cholla's IB students. Because Cholla
4 currently has only 22 IB Diploma Program teachers, and because Cholla is a Title 1 school,
5 it is able to use in Title 1 funding to support its tutoring program. In SY18-19, Cholla's 24
6 IB Diploma Program teachers provided 3,979 hours of tutoring (an average of about 165
7 hours per teacher) at \$25/hour, which in SY18-19 cost \$99,489.

8 At the high school level, the District currently has 123 AP teachers, 42 dual credit
9 teachers, and 80 honors teachers. If each of these teachers were paid \$25/hour to tutor four
10 hours each week for 32 weeks, it would cost the District \$784,000. This number does not
11 include the \$99,489 paid with Title 1 funds for Cholla's program. The District does not
12 currently have the capacity to provide this additional tutoring from each of its ALE
13 teachers.

14 However, the District's AP teachers are paid to provide four hours of tutoring per
15 year, and each high school has one ELA AP teacher and one math AP teacher who are each
16 paid to provide an additional 2 hours of tutoring per week. Thus, although the District
17 cannot expand the IB tutoring model to all ALEs, all interested ALE students receive
18 individual tutoring throughout the year under the guidance of certified teachers before,
19 during, and after school in the District's formal tutoring program.

20 **G. The District included plans and strategies for effectively increasing**
21 **dual language ALEs, including how to offset the impact of dual**
22 **language ALEs on access to ALEs for non-Spanish speaking African**
American and Latino students.

23 The Mendoza Plaintiffs argue the District does not "adequately" address plans and
24 strategies for expanding dual language ALEs.
25

1 On page 12 of the District's ALE Progress Report, the District details three of its
2 strategies for increasing dual language ALEs: (1) continue to maintain the quality of the
3 K-8 dual language GATE program at Hollinger; (2) improve marketing for the dual
4 language GATE program on the GATE website; and (3) provide strategic marketing to
5 identified families. [ECF 2267-2, p. 12.] The District further explains how these strategies
6 have resulted in increased participation in the GATE dual language program, including an
7 increase in the total number of students participating. [ECF 2267-2, pp. 21-22.]

8 The District also explains its strategies and efforts to reduce any negative effects of
9 its dual language GATE program on non-native Spanish speakers. For example, for those
10 limited number of students who have qualified for self-contained GATE classes and who
11 enroll (voluntarily) at Hollinger after the third grade and who are not proficient in Spanish,
12 they can participate in Hollinger's pullout GATE class, they can receive GATE resource
13 services, or they can choose to go to another single language self-contained GATE course
14 in the District. [ECF 2267-2, p. 12.]

15 The District's current program successfully includes more than 170 students (SY18-
16 19), and is fulfilling an important goal of increasing ALE and GATE access for Spanish-
17 speaking students, several of which may have elected not to participate in a self-contained
18 GATE class presented solely in English.

19 In addition to the dual language GATE program at Hollinger, the District has
20 expanded dual language GATE services through the open-access dual language talent
21 development program, which provides GATE services to the dual language programs
22 serving all kindergarten and first grade classes at Davis, Mission View and Roskruge. In
23 this program, bilingual gifted-endorsed teachers provide GATE instruction in Spanish and
24 English to all kindergarteners and first graders.

25

1 The MPs also argue that the District has reduced the number of sites rather than
 2 increasing the number of sites. The District's ALE Progress Report explains in detail the
 3 strategy and rationale for combining the dual language programs at Pistor and Hollinger
 4 into a single, more successful, program. [ECF 2267-2, pp. 21-22.] One reason was that
 5 several students that were enrolled in Hollinger's K-5 program were opting not to enroll in
 6 Pistor's 6-8 grade program, preferring instead to stay at Hollinger, resulting in a loss of
 7 several students and a disconnect in the program. [Id.] When asked if they would remain
 8 in the GATE dual language program during the middle grade years were it moved to
 9 Hollinger, many students and families answered in the affirmative. [Id.] The District also
 10 contacted those students who had agreed to enroll in the middle grades program at Pistor,
 11 and 5 of the 6 agreed to enroll at Hollinger, and the remaining student enrolled in regular
 12 GATE services at Pistor. [Id.] And as shown in the ALE Progress Report, this strategy
 13 has resulted in an increase in the number of students participating in the District's dual
 14 language ALE program.

School	2014-15	2015-16	2016-17	2017-18	2018-19
Hollinger	68	51	74	83	128
Pistor	91	88	83	47	46

15
 16
 17 [Id.]

18
 19 **H. The District addressed the UHS-related issues in the Mendoza
 20 Plaintiffs' objections.**

21 Although the Mendoza Plaintiffs argue the District did not answer the question of
 22 whether there are any pipeline issues impeding UHS enrollment for African American and
 23 Latino students, they acknowledge that the District's ALE Progress Report answers that
 24 question in the negative, stating that the District did not discover any such pipeline issues.
 25 [ECF 2283, p. 8; ECF 2267-2, pp. 64-65.] In addition to confirming that the District did

1 not find pipeline issues impeding UHS enrollment for African American and Latino
2 students, the ALE Progress Report also explained five yearly strategies it has implemented
3 to improve pipelines for recruiting Hispanic and African American students to UHS:

- 4
5 1. **Educating Tucson Unified’s Communications**
6 **department** regarding UHS’s various programs, benefits,
7 and related issues.
- 8 2. **Educating Tucson Unified principals and counselors**
9 about what UHS is and the importance and value of UHS
10 to ensure clear communication is provided.
- 11 3. **Educating District leadership** to ensure correct
12 information is being shared within the Tucson Unified
13 community.
- 14 4. **Educating middle school students.** The Recruitment and
15 Retention Coordinator meets twice yearly with every 6th,
16 7th, and 8th grader to ensure they understand the UHS
17 admission requirements, are informed about the programs
18 and opportunities the school provides, and have the
19 support they need to get into UHS.
- 20 5. **Educating the parent community about UHS.** Multiple
21 times throughout the year, UHS holds parent and family
22 meetings to ensure the community understands UHS’s
23 benefits and achievements.

24 [ECF 2267-2, pp. 64-65.]

25 These strategies are in addition to many other strategies the District has
implemented over the past several years to recruit more African American and Hispanic
students to UHS. [*See, e.g.*, ECF 2124-1, pp. 4, 64-67.]

The Mendoza Plaintiffs also argue that the District has not addressed the Court’s
directive to consider the practicability of implementing in-District preferences for racially
diverse in-District students on the borderline of qualifying for enrollment at UHS if a
significant number of the UHS students being enrolled from outside the District are White.

[ECF 2123, p. 85.]

1 There is no scenario under which the District admits out-of-District White students
2 instead of in-District African American students who qualify or nearly qualify for
3 enrollment at UHS. The District's admission of out-of-District White students has no
4 negative effect on the admission of in-District African American and Hispanic students.
5 Indeed, no student who has qualified for UHS has ever been denied admission based on
6 the school's capacity. The District admits and aggressively recruits every African
7 American and Hispanic student who qualifies for UHS admission. [ECF 2267-1, pp. 28-
8 30; ECF 2267-2, pp. 65-70.] The District also utilizes alternative assessments to identify
9 additional African American and Hispanic students on the borderline of qualifying for
10 admission into UHS. [ECF 2267-2, pp. 62-64.]

11 The Mendoza Plaintiffs' final UHS argument is that the District purportedly has not
12 identified policies focused on retaining Hispanic students at UHS, complaining that the
13 District's strategies aimed at reducing Hispanic attrition at UHS are also utilized to target
14 attrition for non-Hispanic students. [ECF 2283, p. 9.] This is wrong.

15 UHS monitors and documents the Hispanic students who do not return to school or
16 who withdraw during the school year. Based on information learned from exit interviews
17 with Hispanic students, UHS implemented four additional interventions beginning in
18 SY18-19: (1) Additional reading placement tests to identify students for intervention
19 classes; (2) adding an additional English teacher to reduce freshmen and sophomore class
20 sizes to allow for more individual attention; (3) a new curriculum in health class to address
21 organization, stress management, critical reading, and study skills; and (4) assigning all
22 freshmen an upper-class mentor (the penguin-to-penguin program). The District is also
23 implementing more frequent grade level assemblies that feature guest speakers who talk
24 about stress, time management, goal setting, and other essential topics. [ECF 2267-2, pp.

25

1 72-73.] Finally, MASSD has an ALE program specialist who works with UHS to address
2 issues specific to Hispanic students.

3 Although these strategies benefit all students, they were implemented specifically
4 to address Hispanic attrition based on the responses and feedback of the Hispanic students
5 who considered leaving or left UHS. Likewise, though the District at times reports on its
6 efforts and strategies to serve its Hispanic students in a joint manner (e.g., describing efforts
7 to recruit African American and Hispanic students), the District's efforts and strategies are
8 not necessarily implemented that way. For example, although the District reports working
9 with AASSD and MASSD for recruiting efforts, these departments work independently
10 and often implement similar strategies in different ways best suited for their targeted
11 students.

12 And if one strategy works well for Hispanic students and is likely to be successful
13 with other students who share the same concerns, the District also implements such a
14 strategy for those students. For example, the District contacts all qualifying Hispanic
15 students and their families to encourage and promote enrollment at UHS. The District
16 separately contacts African American students and their families to encourage and promote
17 enrollment at UHS. This is one way that the District uses best practices to improve services
18 to all its students. Additionally, everything UHS distributes, including online, is distributed
19 in Spanish to benefit Hispanic families.

20 **II. The ALE Policy Manual and Progress Report Include and Permit a**
21 **Meaningful Assessment of the District's Success in Ensuring Equal Access to**
22 **ALEs for African American and Hispanic Students.**

23 The Mendoza Plaintiffs' final argument is that the District's ALE Progress Report
24 does not permit a "meaningful" assessment of the District's success in ensuring equal
25 access. [ECF 2283, p. 10.] The District should not be required to satisfy the Mendoza

1 Plaintiffs’ subjective standard for what is meaningful in an assessment of the District’s
2 efforts and successes in operating its ALE program.

3 The District has been incredibly successful in improving access to ALEs over the
4 life of the USP, and the ALE Progress Report is replete with information that shows the
5 District’s extensive efforts and successes in providing equal access to ALEs for all of its
6 students without regard for race or ethnicity. The District provided information showing
7 which ALEs are available at every school at every level in the District. [ECF 2267-2, pp.
8 5-8, 32-34, 46.] The District also provided information showing its extensive efforts to
9 ensure equal access at all levels. [ECF 2267-2, pp. 7-16, 34 – 37, 48-50, 56, 59, 62-65,
10 74-75.] The District further provided data on participation and completion of ALEs
11 throughout the ALE Progress Report, linking its efforts and success in ensuring equal
12 access with its efforts and successes in increasing participation in and completion of
13 ALEs.

14 The Mendoza Plaintiffs’ Objection cherry picks through some of the extensive data
15 provided in the ALE Progress report and argues that unless the District shows continual
16 increases and improvements for African American and Latino students (without similar
17 improvements for the District’s White students), the District cannot be declared unitary
18 in the implementation of its ALE programs. They sum up their argument with two telling
19 statements: “Mendoza Plaintiffs do not intend to suggest that this difference, taken by
20 itself, is dispositive. It simply is yet another indication that the District continues to have
21 work to do especially given the magnitude of the difference between the success rates of
22 its [W]hite and its Latino students in 2019”; and “The data relating to African American
23 and Latino students’ success rates in completing participation in AP courses suggests that
24 the District is not yet doing enough to prepare and support these students.” [ECF 2283,
25

1 pp. 12-13.] In other words, until there is parity in participation and completion between
2 African American, Hispanic, and White students, the Mendoza Plaintiffs believe the
3 District “is not yet doing enough.” This is far from the constitutional standard.²

4 The District has again provided hundreds of pages of charts, data, information and
5 analyses related to its ALE programs, demonstrating equal access to ALEs for African
6 American and Hispanic students. Nevertheless, the Mendoza Plaintiffs argue this still is
7 not enough, and that unless and until African American and Hispanic students participate
8 and succeed in ALEs at the same level as White students, the District cannot be declared
9 unitary in its provision of ALE programs.³ These arguments create a standard not only
10 well beyond constitutional parameters, but a standard that no school district in the United
11 States (of which the District is aware) meets. [See ECF 2092-1, pp. 2-7, (showing the
12 District’s superior ALE participation when compared with comparable districts in
13 Arizona and across the country).]

14 ² As recommended previously by the Special Master, “Parity is not a reasonable goal for all
15 students. Participation in ALEs is voluntary and choice is influenced by perceptions of likely
16 attainment of the putative benefits of participating in a given ALE.” [ECF 2041, p. 6.] The Special
17 Master also explained that “[n]umerous researchers have studied how much of the variance in
18 student achievement can be accounted for by measurable variations in school characteristics. The
19 consensus is that schools, on average, account for less than a third of the variance in student
20 achievement.” [Id. at 9-10.]

21 ³ *Cf. People Who Care v. Rockford Board of Ed., Sch. Dist. No. 205*, 246 F.3d 1073, 1076 (7th Cir.
22 2001) (“The reality is that until minority students achieve parity of educational achievement with
23 the white students in the Rockford public schools, the plaintiffs will contend that the minority
24 students are victims of the unlawful discrimination of an earlier period in Rockford’s history. Yet
25 it is obvious that other factors besides discrimination contribute to unequal educational attainment,
such as poverty, parents’ education and employment, family size, parental attitudes and behavior,
prenatal, neonatal, and child health care, peer-group pressures, and ethnic culture. Some of these
factors may themselves be due to or exacerbated by discrimination, but not to discrimination by
the Rockford school board. The board has no legal duty to remove those vestiges of societal
discrimination for which it is not responsible. Insofar as the factors that we have mentioned, rather
than unlawful conduct by the Rockford school board in years past, are responsible for lags in
educational achievement by minority students, the board has no duty that a federal court can
enforce to help those students catch up. It may have a moral duty; it has no federal constitutional
duty.”).

1 As shown throughout the ALE Progress Report, the District continues to make
2 great strides in improving access to, participation in, and completion of its Advanced
3 Learning Experiences for its African American and Hispanic students. It also implements
4 hundreds of strategies to continue to make improvements, and in the vast majority of areas
5 continues to make improvements. The District has gone above and beyond good faith
6 compliance with the USP and related Court Orders, and it eliminated vestiges of its prior
7 *de jure* segregation decades ago.

8 Each of the Mendoza Plaintiffs' arguments should be rejected, and the District
9 should be awarded unitary status for its ALE Programs.

10 **Conclusion**

11 The District respectfully submits that it has complied with the Court's orders
12 regarding Advanced Learning Experiences and has met the requirements of USP § V.A
13 in its entirety. The District requests that the Court grant unitary status in area § V.A of
14 District operations.

15 Dated this 7th day of October, 2019.

16 Respectfully submitted,

17 /s/ P. Bruce Converse

18 P. Bruce Converse

19 Timothy W. Overton

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22 *District No. 1*

CERTIFICATE OF SERVICE

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I hereby certify that on the 7th day of October, 2019, I electronically transmitted the 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/ P. Bruce Converse