

1 P. Bruce Converse (#005868)  
2 Timothy W. Overton (#025669)  
3 **DICKINSON WRIGHT PLLC**  
4 1850 N. Central Avenue, Suite 1400  
5 Phoenix, Arizona 85004-4568  
6 [bconverse@dickinsonwright.com](mailto:bconverse@dickinsonwright.com)  
7 [toverton@dickinsonwright.com](mailto:toverton@dickinsonwright.com)  
8 [courtdocs@dickinsonwright.com](mailto:courtdocs@dickinsonwright.com)  
9 Phone: (602) 285-5000  
10 Fax: (844) 670-6009

11 Robert S. Ross (#023430)  
12 Samuel E. Brown (#027474)  
13 **TUCSON UNIFIED SCHOOL DISTRICT**  
14 **LEGAL DEPARTMENT**  
15 1010 East Tenth Street  
16 Tucson, Arizona 85719  
17 [Robert.Ross@tusd1.org](mailto:Robert.Ross@tusd1.org)  
18 [Samuel.Brown@tusd1.org](mailto:Samuel.Brown@tusd1.org)  
19 Phone: (520) 225-6040  
20 *Attorneys for defendant*  
21 *Tucson Unified School District No. 1*

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

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

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

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

26 **DISTRICT RESPONSE**  
27 **TO MENDOZA PLAINTIFFS' OBJECTION (2281)**  
28 **TO NOTICE OF FILING ELL ACTION PLAN (2261)**  
29

1 The Court directed the District to prepare and file an ELL Action Plan for dropout  
2 prevention. [ECF 2123 at 140, 151.] The District filed its ELL Action Plan for dropout  
3 prevention on December 6, 2018. [ECF 2153-1.] In a subsequent order, the Court directed  
4 the District to revise the plan to include family engagement strategies and to identify the  
5 roles and responsibilities of the departments involved in the plan. [ECF 2213, at 11-12.]  
6 The District filed its revised plan on August 30, 2019. [ECF 2261-1.] The Court also  
7 directed the District to reconsider whether its ELL dropout and graduation rate goals were  
8 sufficiently ambitious, as part of its annual process of monitoring and review. The  
9 District did so, and revised its ELL graduation rate goals but determined to leave the  
10 dropout rate goals the same. The District reported on this process, as required by the  
11 Court, both in its Annual Report (ECF 2302-7, pp. 18-19 and in a Supplemental Notice  
12 of Compliance, filed October 1, 2019 (ECF 2310).

13 Despite this plain compliance, Mendoza Plaintiffs object. The Mendoza plaintiffs  
14 do not object to any issue raised by the Court in its April, 2019, order, but now raise new  
15 objections.

16 **A. The District has Reviewed, and Revised, ELL Goals**

17 Mendoza Plaintiffs claim the ELL plan sets out graduation rate goals and dropout  
18 prevention goals only through the 2017-18 school year. This is simply inaccurate. Page  
19 two of the plan (Doc. 2261-1 at 3) stated the **past, actual** four year graduation rates (not  
20 a goal) through the 2017-18 school year. The goal was stated for **future** years:

21 Graduation Rate Goal: *graduate at least 50% of each ELL cohort.*

22 [R-ELL] Graduation Rate Goal: *graduate at least 75% of each ELL*  
23 *cohort.*

24 Dropout Rate Goal: *equal or to or lower than each group's non-ELL rate.*

25

1 These were the goals that the Court directed the District to reconsider as to whether they  
2 were sufficiently ambitious.

3 The District's DPG Committee, as part of its annual monitoring and review  
4 process, and using state graduation and dropout data for ELL students that became  
5 available in August 2019, reviewed those goals in September, 2019, and has adjusted  
6 them. The District reported on the adjusted goals in its Annual Report (ECF 2302-7 at  
7 18-19) and in the supplemental notice of compliance required by the Court (ECF 2310).  
8 Specifically, having met the goals for two years, the DPG Committee increased the  
9 SY2019-20 ELL graduation goal from 50 percent to 60 percent and increased the R-ELL  
10 graduation goal from 75 percent to 85 percent. The 2018-19 AA ELL dropout rate was  
11 **0.0%** and the Hispanic ELL dropout rate was **0.1%**. This was far better than state  
12 averages, and far lower than the corresponding non-ELL dropout rate. The DPG  
13 Committee determined that an ELL dropout goal that was equal to or better than the non-  
14 ELL dropout goal was sufficiently ambitious, considering that the goal was met (and  
15 equaled or was lower than the state dropout rate of 1.8 percent) in two of the past four  
16 years for African American ELLs and for three of the past four years for Hispanic ELLs.

17 **B. The Status of Efforts to Strengthen Sheltered Content Classes**

18 **1. The Process to Monitor Successes and Failures of the Program**

19 The District has and will continue to implement processes for monitoring,  
20 observing, and adjusting sheltered content classes. The process includes the use of the  
21 Sheltered Instruction Observation Protocol (SIOP) in conjunction with the Danielson  
22 teacher evaluation model, and training for the SIOP process. The SIOP component of the  
23 process is already described in the plan:  
24  
25

1 Administrators at select sites will receive training on strategies to look for while  
2 observing sheltered content classes (using the SIOP Protocol, and making connections  
3 with the Danielson Model) so principals know specifics to look for when observing these  
4 classes (crosswalk of Danielson and SIOP). (Doc. 2261-1 at 6).

5 At the time the plan was written, the District planned to target select sites. Now,  
6 the District is targeting *all* sites that implement sheltered content classes, rather than  
7 “select sites” – going further than the plans developed last year. The Language  
8 Acquisition staff has completed its surveys to identify all existing sheltered content  
9 classes and completed interviews with sheltered content math teachers to examine the  
10 best ways to evaluate student enrollment and progress within sheltered classes. Based on  
11 the surveys and teacher input on best practices, staff began developing formal processes  
12 to identify whether or not ELL students were demonstrating mastery of certain concepts  
13 taught within the sheltered content class. In developing the processes, Language  
14 Acquisition staff proposed and is now implementing three strategies to be used to better  
15 evaluate program performance in SY2019-20:

- 16 • **Create a Specific “Sheltered Designation” in Synergy.** In the past, school  
17 counselors scheduled ELL students into sheltered content classes but not all ELL  
18 students were being systemically placed in sheltered classes. Language  
19 Acquisition staff worked with the Technology Services department to create a  
20 unique “sheltered designation” to improve monitoring of student placement and  
21 track sheltered class enrollment.
- 22 • **Monitor Student Success in Mastering Content.** It is difficult to monitor ELL  
23 student success in these classes because students come with varied levels of  
24 English language and content proficiency. In addition, students may become  
25

1 reclassified as English proficient while still enrolled in a sheltered content class.  
2 Sheltered content teachers use SIOP strategies, including alternative assessments  
3 such as student oral assessments, student demonstrations of content mastery, oral  
4 presentations, graphic organizers, and other alternative assessment types.

- 5 • **Monitor Grades.** In the past, Language Acquisition monitored whether students  
6 were passing or failing. Now, staff monitors grades of individual semester grades  
7 of sheltered content students to ensure student progress: if groups of students have  
8 lower grades (Ds or low Cs) it may be an indication that students are not mastering  
9 the content, and Language Acquisition contacts the school, investigates, and  
10 provides additional support if needed.

## 11 2. Expanding Sheltered Content Classes

12 The District had been offering sheltered content math classes and, in SY2018-19,  
13 offered a few social studies and science sheltered content sections (seven in total). In  
14 SY2019-20, the District has expanded social studies and science to eleven sheltered  
15 sections.

## 16 Conclusion

17 The District respectfully submits that it has complied with the Court's orders, and  
18 has met the USP requirements for dropout prevention and ELL students as shown by the  
19 record herein, including its annual reports and its prior assessment of compliance.<sup>1</sup>  
20  
21

---

22  
23 <sup>1</sup> Compliance with USP requirements for ELL students and dropout prevention is  
24 addressed in the record at the following specific locations incorporated herein by  
25 reference: ECF 2057-1, pp. 242-262 and appendices cited therein; ECF 2124-1, pp. 79-  
82 and appendices cited therein; ECF 2075-5, pp. 39-72, 290-311 and documents cited  
therein.

1 Accordingly, the District requests that the Court grant unitary status in this area of District  
2 operations (USP § V.E.1.b.i).<sup>2</sup>

3 Dated this 7<sup>th</sup> day of October, 2019.

4 Respectfully submitted,

5 /s/P. Bruce Converse

6 P. Bruce Converse

7 Timothy W. Overton

8 **DICKINSON WRIGHT, PLLC**

9 1850 N. Central Avenue, Suite 1400

10 Phoenix, Arizona 85004-4568

11 *Attorneys for Tucson Unified School*

12 *District No. 1*

13  
14  
15  
16  
17  
18  
19  
20  
21  
22 \_\_\_\_\_  
23 <sup>2</sup> The District submits this notice filing without waiver of its position that there is no  
24 basis in fact or law for continued federal court supervision of the District in this or any  
25 other area, including the requirement of preparing the attached plan, given the findings  
of Judge Frey in 1978, subsequent rulings of this Court, and the record herein. The  
District recognizes that the Court has overruled these objections, but wishes to make  
clear that they are preserved for appeal.

**CERTIFICATE OF SERVICE**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I hereby certify that on the 7<sup>th</sup> 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