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

Roy and Josie Fisher, et al., 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)

**NOTICE AND REPORT OF COMPLIANCE:
TWO-WAY DUAL LANGUAGE
(ECF 2295)**

1
2 The Court directed the District to engage dual language expert Ms. Rosa Molina
3 to prepare a report updating her initial report from May, 2016, and an inventory of the
4 current TWDL programs. [ECF 2295.] The District was ordered to file a Notice of
5 Compliance including (a) the complete dual language plan, including the plan for
6 expansion of the program filed on August 30, 2019 (pursuant to the Special Master’s
7 recommendation as adopted by the Court, and any updates necessary as a result of Ms.
8 Molina’s report, (b) the inventory of current TWDL programs, and (c) Ms. Molina’s
9 supplemental report.

10 In addition, this notice and Ms. Molina’s report sets out discussion of concerns
11 relating to program isolation, which do not relate to racial isolation as this Court
12 apparently assumed; this notice also clarifies some apparent misunderstandings about
13 the plan for expanding the TWDL program filed on August 30, 2019.

14 **A. Dual Language Plan**

15 In 2016, working with Rosa G. Molina, Executive Director of the Association of
16 Two-Way & Dual Language Education (ATDLE), the District developed its Two-Way
17 Dual Language Access Plan (the “TWDL Access Plan”). The Access Plan was finalized
18 on November 10, 2016. The Access Plan, along with the original Molina Report, was
19 filed as an appendix to the District’s annual report for the 2016-17 school year (ECF
20 2061-6, pp. 1-37).

21 The primary recommendation of the original Molina Report was the creation of
22 a comprehensive District master plan for implementation of TWDL programs. The
23 District formed a task force and developed that implementation plan, known as the
24 TWDL Framework. The TWDL Framework was completed during the 2017-18 school
25 year, and was filed as an appendix to the District’s annual report for that year. [ECF
26 2134-4, pp. 1-61.]

27 Subsequently, the Special Master recommended, and the Court directed, the
28 District to prepare a plan “for expanding dual language laying out the obstacles and the

1 costs for developing additional sites” by September 1, 2019. [ECF 2123, at 101]. The
2 District prepared and filed this expansion plan (the “TWDL Expansion Plan”) on August
3 30, 2019. [ECF 2258-1.]

4 Together, these three documents represent the District’s Dual Language Plan.
5 Although each of these documents is already in the Court record, and mindful of the
6 Court’s enjoinder to file complete plans whenever one part has been added or updated,
7 the District now files its complete Dual Language Plan as Exhibit A hereto, consisting
8 of three components: the TWDL Access Plan, the TWDL Framework (program
9 implementation) and the TWDL Expansion Plan. No updates to these plan documents
10 were necessary as a result of Ms. Molina’s program review and supplemental report this
11 fall.

12 **B. Inventory of Current TWDL Programs**

13 The District worked with Ms. Molina to prepare a complete inventory of the
14 current TWDL programs, including three Court-specified data points.¹ The District and
15 Ms. Molina identified six additional information points to be included in the inventory:
16 language screeners, assessments in English, assessments in Spanish, monitoring and
17 reporting students’ language progress, use of the guiding principles of dual language,
18 and professional learning. The inventory of current TWDL programs is attached as
19 Exhibit B.

20 **C. TWDL Supplemental Final Report (2019)**

21 As directed by the Court, Ms. Molina prepared a supplemental report on the
22 District’s TWDL program. That report is attached hereto as Exhibit C.

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26 ¹ The Court identified three specific issues: (1) identify each school operating a TWDL program
27 and if it is a single strand or double strand, with or without a non-TWDL strand and/or a whole-
28 school TWDL program; 2) determine for each school whether the TWDL classes satisfy the
requisite 33% linguistic composition; 3) identify that each class is being taught by certified
bilingual teacher, and 4) etc. [ECF 2295 at 7:18-23.]

1 **D. Program Isolation**

2 The Court noted that the 2016 Molina Report contained a reference to
3 “programmatically isolation of the TWDL classes at the site.” [ECF 2295 at 5-6]. The
4 Court expressed concern that with the “advent of TWDL schools, the risk of isolation
5 expands to creating segregated schools,” and that “the District fails to explain how it
6 reconciles the enrollment goal of reducing programmatic isolation with whole-school
7 TWDL programs. It fails to address how the whole-school TWDL program can be
8 reconciled with Brown’s rejection of *Plessy*.” *Id.* at 6. The Court directed Ms. Molina
9 and the District to consider this issue.

10 However, Ms. Molina’s reference to programmatic isolation in the 2016 report
11 was **not** describing the type of racial and ethnic isolation referred to in *Plessy*. In her
12 recent report, Ms. Molina clarifies:

13 In the Order, the Court confuses my description of program isolation to mean the
14 “racial isolation” of students. My intent in this recommendation was to suggest to
15 TUSD that additional classes per grade level upon entry in kindergarten (double
16 strands) has great benefit to building stronger program cohorts, programmatic
17 flexibility, and prevents schools from confining students into the same single class
18 cohorts from kindergarten to 8th grades. In other words, double strands would
19 protect against cohort isolation (aka program isolation). **My references to cohort
20 or program isolation were not directed towards racial or ethnic isolation of
21 students.**

22 **Ex. C, p. 7.** Ms. Molina’s references to reducing “programmatically isolation of the
23 TWDL classes at the site” does not relate to isolation of students based on race or
24 ethnicity. The Court expressed concern that school-wide TWDL programs have the
25 potential to create segregated schools. However, there is no evidence at TUSD that
26 either of the two school-wide TWDL programs, Davis or Roskruge, create or
27 exacerbate segregation.

28 School-wide TWDL programs only exist in TUSD as magnet schools – at Davis
 and Roskruge – designed specifically to create *integrated schools*. As magnet schools,
 both programs appeal to parents around a common desire for their students, regardless

1 of race, to become bilingual, biliterate, and bicultural. The programmatic need for
2 linguistic balancing may result in the recruitment of Latino students to ensure native-
3 Spanish speaking peer-to-peer models, but there is a counter-balancing programmatic
4 need to achieve integration and student diversity as a magnet school through the
5 recruitment of native-English speakers. Ms. Molina recognizes that TWDL programs,
6 “throughout the United States are created to help ethnically balance a school through
7 the vehicle of second language opportunities for all students.” **Ex. C, p. 7.**

8 At TUSD, these programs have been used in this precise manner. Davis is a
9 school-wide TWDL program that has gone from 85% Hispanic in SY2011-12, to 59%
10 Hispanic in SY2019-20. After more than a decade as a racially concentrated school,
11 Davis has been an integrated school for the past three years. The District has also
12 reduced racial concentration at Roskruge from 85% to 81% (though it has been as low
13 as 77% in the past three years). The District’s new TWDL school, Bloom ES, is also
14 a double-strand program and is also integrated (though it does have a non-TWDL
15 English-only strand). At all three schools, the TWDL program was the primary
16 vehicle for *promoting* increased integration and reduced racial concentration: attracting
17 non-Latino students to Davis and Roskruge, and attracting Latino students to Bloom.

18 The District also recognizes that Roskruge’s ability to attract students may be
19 enhanced by improvement in overall academic achievement. Ms. Molina has
20 recommended that one key strategy for improving academics, and thereby improving
21 attractiveness and integration, is to ensure that – as occurs at Davis – only students truly
22 interested in the TWDL program are enrolled in the TWDL program (not merely
23 whoever happens to live in the neighborhood). This is achieved through the use of a
24 screener. Thus, despite a theoretical risk of increasing segregation (though that has **not**
25 occurred at TUSD), this is viewed by the TWDL expert (and has proven true at Davis)
26 to be a key means of *promoting integration* by improving academic achievement and
27 thereby improving the overall academic profile and attractiveness of the TWDL
28 program to diverse families.

1 **E. Clarifications to the TWDL Expansion Plan.**

2 In light of the subsequent briefing and orders, the District wishes to clarify three
3 aspects of its TWDL Expansion Plan (part of the District’s overall Dual Language
4 Plan).

5 First, the plan to change the Roskruge program by modifying the boundary was
6 not a plan to *create* a school-wide program – Roskruge *is already* a school-wide
7 TWDL program. This plan is for a modification of the existing school boundary to
8 address point of entry issues that are frustrating TWDL implementation at this school.²

9 Second, the short term Language Academies at TWDL elementary schools are
10 designed to increase enrollment at existing sites, not to create new programs at new
11 schools. These academies are already in place and operational.

12 Finally, the plan to add a TWDL program at Magee MS may be reassessed after
13 the possible K-6 expansion currently under consideration, for which both Bloom and
14 Magee are possible options. Depending on the success of the pilot, if approved, the
15 District may reconsider other middle school candidates or other options for developing a
16 TWDL option for grades 6-8 on the eastside of the District within a seven-year period.

17 **Conclusion**

18 Ms. Molina states that “Two-Way Dual Language schooling... addresses the
19 challenging issues of performance gaps in minority students and equal protection
20 under the law for all students by serving formerly underserved students with a rigorous
21 and well-defined educational program option.” Ex. C, p. 15. According to Ms.
22 Molina, TUSD has “made great progress toward achieving” her 2016
23 recommendations, has “built a strong professional plan,” and has “completed a TWDL
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25

26 ² The Court’s September 30, 2019 Order states that the “boundary change is necessary to
27 accommodate the expansion of the TWDL program under the [USP] at Roskruge by changing it
28 from a single classroom TWDL strand to a double classroom strand.” [ECF 2295 at 2]. But
Roskruge already offers a double-strand; the boundary change will strengthen instruction within
the double strand but it is not being proposed to expand the current model at Roskruge.

1 Program Framework to serve as the roadmap for the present and future development of
2 these programs.” *Id.*

3 The District has utilized double-strand TWDL programs to create integrated
4 schools at Davis ES and Bloom ES, on opposite sides of the District. It has created a
5 comprehensive framework for implementation and continues to expand existing
6 programs by adding double-strand programs. Based on a multi-year effort
7 spearheaded by TUSD staff, State obstacles to English Learning enrollment in TWDL
8 have been relaxed and the District is enrolling more ELs to attain the desired linguistic
9 mix. The District has addressed the once seemingly insurmountable issue of staffing
10 TWDL programs: in SY2019-20, 105 of 112 teachers in TWDL designated classes
11 have a bilingual or provisional bilingual endorsement (all others are working towards
12 earning one). TWDL programs in TUSD now assess students in both English and
13 Spanish, and monitor students’ language progress and communicate such to parents.

14 The program is bearing fruit: test score school comparisons show that despite
15 State obstacles to obtaining the desired linguistic balance, TWDL students *still*
16 *outperform their non-TWDL* peers on State assessments. Enrollment is up more than
17 300 students since SY2014-15, and continuing to grow.

18 The District respectfully submits that it has complied with the Court’s orders,
19 and has met the requirements of USP § V(C), as shown by the record herein and
20 through its annual reporting. Accordingly, the District requests that the Court grant
21 unitary status in this area of District operations (§ V(C)).

22 Respectfully submitted on December 20, 2019.

23
24 **TUCSON UNIFIED SCHOOL
DISTRICT LEGAL DEPARTMENT**

25 /s/Samuel E. Brown

26 Robert S. Ross

Samuel E. Brown

27 *Attorneys for Tucson Unified School
District No. 1*

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December 2019, I electronically transmitted the attached 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/ Samuel E. Brown

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