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12
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' OBJECTION
TO TUSD'S NOTICE AND REPORT OF
COMPLIANCE: TWO-WAY DUAL
LANGUAGE [DOC. 2401]**

Hon. David C. Bury

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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 **Introduction**

11 Under this Court’s September 30, 2019 Order (“9/30/19 Order”) (Doc. 2295) and its
12 November 27, 2019 Order (Doc. 2382), Mendoza Plaintiffs submit this response and
13 objection to the District’s Notice and Report of Compliance: Two-Way Dual Language
14 (“District Report” or “District’s Report”) (Doc. 2401).
15

16 Mendoza Plaintiffs engaged the assistance of Dr. Beatriz Arias,¹ their expert in
17 bilingual education, inclusive of dual language programs, to analyze the District’s Report.
18 As the District Report and Dr. Arias’s analysis (“Dr. Arias’s Report”), attached here as
19 Exhibit B, demonstrate, the District has fallen far short of implementing what this Court in
20 its 9/30/19 Order recognized were “two critical components to the TWDL program
21 necessary to achieve both integration and improved student achievement[:]” “linguistically
22 balanced classrooms” and achievement of bilingual and biliteracy goals in the Spanish
23 language. (9/30/19 Order at 3:22-5:22.) Further, particularly in light of this Court’s
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27 ¹ Dr. Beatriz Arias’s *curriculum vitae* is attached as Exhibit A.
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1 concern regarding the number of *certified* bilingual teachers (with full bilingual
2 endorsements) (*id.* at 7:11-17), Dr. Arias’s Report highlights the need for further data from
3 the District because the report prepared by Rosa Molina at the Court’s direction fails to
4 distinguish between teachers who are “certified” bilingual teachers and those who hold
5 only a provisional bilingual endorsement. As explained by Dr. Arias, the distinction is
6 significant. Therefore, the failure to distinguish between the two categories in the
7 District’s Report provides a picture of the status of TWDL implementation in the District
8 that may be misleading.
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11 **Argument**

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13 Unfortunately, the District Report demonstrates that the District has much progress
14 to make with respect to implementation of crucial components of its own TWDL model.
15 Indeed, based on her review of the District Report, Dr. Arias concluded that it would be
16 premature to grant TUSD unitary status as it relates to its dual language programs at this
17 time.²
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20 *Failure to Achieve Classroom Linguistic Balance*

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22 As this Court detailed in its 9/30/19 Order (citing Ms. Molina’s 2016 Two Way
23 Dual Language Program Review (Doc. 2061-6 at 12-62)), “[t]here are two critical
24 components to the TWDL program necessary to achieve both integration and improved
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26 ² Dr. Arias is particularly well qualified to address a school district’s readiness for unitary
27 status in this (and other areas) having served as court-appointed compliance monitor for
28 the San Jose, California, Unified School District for over twenty years and assisted that
district to attain unitary status, as well as having served on court-appointed compliance and
expert panels in other school district litigation. (Exhibit A at 3.)

1 student achievement. The first and most compelling factor is the classroom composition of
2 the current TWDL classes. A TWDL Immersion program is a carefully constructed
3 program design that consists of ‘linguistically balanced classrooms’ where two language
4 groups cross-learn the language by serving as language models for each other[.]” (9/30/19
5 Order at 3:21-27; quotation marks omitted.) In this regard, the District Report and Dr.
6 Arias’s Report demonstrate that of the 112 TWDL classrooms for which information is
7 provided, only four are linguistically balanced. (Dr. Arias’s Report at 1; District Report,
8 Exhibit B, Attachment 1 (Doc. 2401-2 at 1-4.) (“Compliance Chart”).) No information is
9 provided for 27 of the 112 classrooms, including nine at Roskruge, a school whose TWDL
10 program has been and likely will continue to be before this Court³. As described in greater
11 detail in Dr. Arias’s Report, in Dr. Arias’s professional judgment, the data “casts serious
12 doubt regarding the fidelity of the TWDL model to the classroom composition standard.”
13 (Dr. Arias’s Report at 1.)

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17 Of particular note in this regard is that notwithstanding the changes in Arizona law
18 to permit more “flexibility in language ability assessment and Kindergarten placement”
19 (District Report, Exhibit B at 1), the District was able to achieve linguistic balance in only
20 two of its 14 kindergarten TWDL classrooms in 2019-20. (Compliance Chart at 1-4.)⁴
21

22
23 ³ The District provides no explanation for why no information has been provided for these
24 27 classrooms. All are 6-12 grade content courses but it does not appear that the District
25 determined for a reason not stated to omit such courses from its report since the
26 information (all “N”) is provided for Hollinger. (Compliance Chart at 2.) That such
27 information is important is underscored in Dr. Arias’s Report where she states: “It is
28 essential, particularly at the intermediate and middle school grades, that teachers are fluent
in the technical vocabulary required in content areas.” (Dr. Arias’s Report at 3.)

⁴ The discussion in the District’s Report combines the figures for linguistic balance at the
kindergarten and first grade levels. (District Report, Exhibit B at 1.) Breaking the grades
out, one sees that there similarly are two linguistically balanced first grade TWDL classes
in the District out of a total of 15 TWDL first grade classes.

1 Significantly, notwithstanding the attention being paid to the new TWDL program at
2 Bloom, linguistic balance was not achieved in its two 2019-20 kindergarten classes. (Nor
3 does it exist at any grade level at the school.) (Compliance Chart at 1.) Similar,
4 disappointing results are reported for both the TWDL magnet schools, Davis and
5 Roskruge. (*Id.* at 1, 3.)
6

7 The District’s Report recites steps the District now is putting in place to improve the
8 linguistic balance of its TWDL classrooms. (District Report at 2.) Mendoza Plaintiffs
9 respectfully suggest that given the data presented in the Compliance Chart, an award of
10 unitary status in this area must be deferred until it can be shown that these steps are indeed
11 increasing linguistic balance in the District’s TUSD classrooms.
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14 *Need to Build Stronger Spanish Literacy Skills*

15 This Court recognized that “equally important to the integrity of the TWDL
16 program is the ability of teachers to ensure “that the students are reaching the bilingual and
17 biliteracy goals set out by the program and inform parents of their child’s progress *in both*
18 *languages.*” (9/30/19 Order at 5:14-16 (citing Dual Language Plan (Doc. 2258-1) at 21;
19 emphasis added).) Based on the District’s Report, including among other elements the
20 findings of TUSD’s engaged expert Dr. Kathryn Lindholm-Leary that “[s]cores in Spanish
21 reading on both the ELD and Logramos Reading/Language Arts subtest assessment were
22 much lower than grade level overall” (District Report, Exhibit B, at 7) and that these
23 results are particularly “troubling” for EL students (*id.*). Dr. Arias concludes that this too
24 is a “critical component” that is “severely limited” and that a “more aggressive effort to
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1 ensure fidelity to th[e] model is needed....” (District Report, Exhibit B, at 7; Dr. Arias’s
2 Report at 4.)⁵

3 Of additional concern is the fact that, as noted in Dr. Arias’s Report, Ms. Molina, in
4 her 2016 Report, noted that TWDL classrooms were particularly weak in Spanish at the
5 intermediate and middle school levels. (Dr. Arias’s Report at 2.) Yet nothing is said about
6 this issue in Ms. Molina’s discussion of the District’s progress. (Two-Way Dual
7 Language Progress Report, Doc. 2401-3 at 7 (“Molina Progress Report”).) Indeed, while
8 Ms. Molina discusses assessment processes in that report, she fails to address outcomes at
9 all, stating only that Dr. Lindholm-Leary organized data sets and shared her analysis with
10 District personnel. (*Id.* at 8.) (The charts included in the District’s Report, Exhibit B,
11 Attachment 5, presumably based on the data sets organized by Dr. Lindholm-Leary,
12 unfortunately report that the poorest scores in Spanish language arts are those of the
13 District’s sixth, seventh, and eighth graders. (*See, e.g.*, Logramos Spanish Language Arts,
14 Sp. 2018, Grades 2-8.)
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19 *Further Clarity Required on the Number of Teachers with Bilingual Endorsements*

20 As noted above, the District’s Compliance Chart fails to distinguish between
21 teachers who are “certified” bilingual teachers and those who hold only a provisional
22 bilingual endorsement. In her report, Dr. Arias notes that there is a “significant gap
23 between the professional requirements for a bilingual endorsement and a provisional
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27 ⁵ Tellingly, in apparent recognition of its shortcomings in both “critical components” of the
28 TWDL model, the District asserts that efforts “to increase academic achievement in Spanish has been hindered by... the inability to linguistically balance classes....” (District Report, Exhibit B, at 5.)

1 bilingual endorsement.” (Dr. Arias’s Report at 1.) As detailed further in that report, a
2 provisional bilingual endorsement is a temporary endorsement that a teacher can obtain
3 with “little knowledge of pedagogy in the TWDL classroom”. (*Id.* at 2.) In Dr. Arias’s
4 professional judgment, “it is appropriate to ask the District to identify teachers separately,
5 those with bilingual endorsement and those with a provisional bilingual endorsement.”
6 (*Id.*) Indeed, Mendoza Plaintiffs believe that doing so is called for in this Court’s 9/30/19
7 Order in which it asked Ms. Molina to report on “whether *certified* bilingual teachers are
8 teaching in every TWDL classroom.” (9/30/19 Order at 7:16-17; emphasis added).
9

10
11 Mendoza Plaintiffs additionally note that the District has separately recognized how
12 important teachers with a full bilingual endorsement (as opposed to provisional
13 endorsement) are to the success of a TWDL program. Thus, in its Executive Summary it
14 reports that it has a special stipend program at Roskrige for teachers “who do not currently
15 hold a Spanish-Bilingual Endorsement ... and want to commit to be part of the Roskrige
16 revision to *becoming* a bilingual school.” (TUSD’s December 1, 2019 Executive
17 Summary (Doc. 2384-1) at 37; emphasis added.)
18

19 Accordingly, so that the Court and the parties are fully informed of the status of
20 bilingually endorsed teachers at TUSD (and the true state of implementation of its TWDL
21 program), Mendoza Plaintiffs respectfully request that the District be ordered to file
22 supplemental data that provides a clear breakdown (by school and grade level) of teachers
23 who are fully bilingually endorsed, and those with a provisional bilingual endorsement.
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Issues Related to Program Sustainability and Expansion; Professional Development

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2 The Compliance Chart reports that Bloom is “double strand” under the heading
3 “TWDL Program Strands”. (Compliance Chart at 1.) However, the chart itself reveals
4 that Bloom only added one classroom (a single strand) at the third grade level this year.
5 (*Id.*) Unless Bloom succeeds in a massive effort to recruit students with sufficient Spanish
6 fluency to participate in a fourth grade TWDL program, this suggests that it will have only
7 a single strand at the fourth grade next year (and only a single strand at the fifth grade level
8 the year after). It further raises the question, not addressed in the Molina Progress
9 Report, of why Bloom was unable to sustain a two strand program going from second to
10 third grade this year. Given what Ms. Molina has said is the importance of a two strand
11 program (*see, e.g.*, Molina Progress Report at 8-9), the Mendoza Plaintiffs respectfully
12 suggest that this issue should have been explored by Ms. Molina and addressed by the
13 District in its submission to the Court.
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17 After having reviewed the professional development component of the TWDL
18 Language Framework, Dr. Arias noted that “very few of these instructional components
19 focus on developing teachers’ proficiency in the target language.” (Dr. Arias’s Report at
20 3.) She then stated: “While it is assumed that teachers will possess adequate fluency in the
21 target language, they must serve as language models for students. It is essential,
22 particularly at the intermediate and middle school grades, that teachers are fluent in the
23 technical vocabulary required in content areas. As the reader reflects on the low
24 achievement in Spanish and Spanish language arts across the TWDL program, one
25 component to closely examine is teachers’ proficiency in Spanish. Professional
26 development that provides teachers practice and scaffolds their Spanish proficiency is
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1 strongly recommended.” (*Id.*) For the reasons stated by Dr. Arias, the Mendoza Plaintiffs
2 ask the Court to direct the District to revise the professional development component of the
3 TWDL plan as recommended by Dr. Arias and to revise its evaluation instrument for
4 TWDL teachers to the extent necessary to include language proficiency.

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7 **Conclusion**

8 For the reasons set forth above, the Mendoza Plaintiffs respectfully request that this
9 Court direct the District to (1) file a supplemental report that (a) provides a clear
10 breakdown (by school and grade level) of teachers who are fully bilingually endorsed, and
11 those with a provisional bilingual endorsement and (b) provides information on linguistic
12 balance for the 27 classrooms for which the entry currently is blank on the District’s
13 Compliance Chart; (2) provide an explanation for the decrease from two strands to one at
14 the third grade level at Bloom and what steps are being taken to ensure that the TWDL
15 program at that school can be sustained as a two strand program; (3) revise the
16 professional development component of the TWDL framework to include teacher language
17 proficiency and revise the evaluation instrument for TWDL teachers to the extent
18 necessary to include language proficiency. They further respectfully request that this Court
19 deny the District’s request that it be granted partial unitary status with respect to Section V,
20 C of the USP until it has done the foregoing and demonstrated both that its plans to
21 increase linguistic balance in the TWDL classrooms are working and that it has taken steps
22 to improve the Spanish language attainment of its TWDL students. In an excess of
23 caution, Mendoza Plaintiffs respectfully invite the Court’s attention to their earlier
24 objections to such requests by the District and to their Motion to Stay (Doc. 2186),
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1 expressly incorporate herein the arguments set forth in those pleadings, and also note this
2 Court's statement when it denied that Motion that it will not again reach the question of
3 unitary status until after the District's Executive Summary filing and the proceedings
4 relating thereto.
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7 Dated: January 10, 2020
8

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS’ OBJECTION TO TUSD’S NOTICE AND REPORT OF COMPLIANCE: TWO-WAY DUAL LANGUAGE [DOC. 2401]** 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: January 10, 2020