

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
7 toverton@dickinsonwright.com
8 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
18 Samuel.Brown@tusd1.org
19 Phone: (520) 225-6040
20 *Attorneys for defendant*
21 *Tucson Unified School District No. 1*

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.
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)

27
28
29
30
31
32 **SUPPLEMENTAL PETITION FOR UNITARY STATUS**

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
26

Table of Contents

Table of Authorities..... ii

Relevant Procedural History 1

Detailed Analysis..... 8

I. NO VESTIGES OF THE PRIOR DUAL SCHOOL SYSTEM REMAIN. ... 10

 A. Applicable Law. 12

 B. *Green* Factors. 14

 C. Other Factors. 24

 D. Conclusion: No vestiges remain. 27

II. THE DISTRICT MEETS THE GOOD FAITH COMPLIANCE STANDARD. 28

 A. The good faith requirement is independently satisfied because there is no risk that this District will suddenly revert to a pre-1950s dual school system. 30

 B. The overall effort by the District independently satisfies the good faith requirement. 31

Conclusion..... 84

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
26

Table of Authorities

Cases

Bd. of Educ. of Oklahoma City Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma County, Okla. v. Dowell, 498 U.S. 237 (1991) 9, 13, 32

Belk v. Charlotte-Mecklenburg Bd. of Educ., 269 F.3d 305 (4th Cir. 2001) 10, 24

Berry v. Sch. Dist. of City of Benton Harbor, 195 F. Supp. 2d 971 (W.D. Mich. 2002), *order clarified*, 206 F. Supp. 2d 899 (W.D. Mich. 2002) 22, 29, 30

Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955) 8

Brown v. Bd. of Educ. of Topeka, Shawnee County, Kan., 347 U.S. 483 (1954) 8

Coal. to Save Our Children v. State Bd. of Educ. of State of Del., 90 F.3d 752 (3d Cir. 1996)..... 10, 23, 24

Fisher v. Tucson Unified Sch. Dist., 652 F.3d 1131 (9th Cir. 2011)..... 6

Freeman v. Pitts, 503 U.S. 467 (1992)..... 9, 10, 11, 15, 16, 21, 27, 28

Green v. County Sch. Bd. of New Kent County, Va., 391 U.S. 430 (1968)..... 5, 8, 10

Hart v. Cmty. Sch. Bd. of Brooklyn, N.Y. Sch. Dist. #21, 536 F. Supp. 2d 274 (E.D.N.Y. 2008), *as amended* (Feb. 28, 2008) 21

Hoots v. Pennsylvania, 118 F. Supp. 2d 577 (W.D. Pa. 2000) 26

Jenkins v. Sch. Dist. of Kansas City, Mo., 77-0420-CV-W-DW, 2003 WL 27385936 (W.D. Mo. Aug. 13, 2003) 28, 29

Keyes v. Congress of Hispanic Educators, 902 F. Supp. 1274 (D. Colo. 1995)..... 20, 21

Liddell v. Special Sch. Dist., 149 F.3d 862 (8th Cir. 1998) 29

Little Rock Sch. Dist. v. Pulaski Cty. Special Sch. Dist., 237 F. Supp. 2d 988 (E.D. Ark. 2002), *opinion modified on denial of reconsideration* (Oct. 11, 2002), *aff'd sub nom. Little Rock Sch. Dist. v. Armstrong*, 359 F.3d 957 (8th Cir. 2004)..... 13

Lockett v. Bd. of Educ. of Muscogee County Sch. Dist., Ga., 111 F.3d 839 (11th Cir. 1997)..... 28

Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty., Fla., 244 F.3d 927 (11th Cir. 2001)..... 10, 28, 29

Missouri v. Jenkins, 515 U.S. 70 (1995) 12, 13, 25, 31

Monteilh v. St. Landry Parish Sch. Bd., 848 F.2d 625 (5th Cir. 1988)..... 14

Morgan v. Nucci, 831 F.2d 313 (1st Cir. 1987) 28

N.A.A.C.P., Jacksonville Branch v. Duval County Sch., 273 F.3d 960 (11th Cir. 2001). 13, 20

Pasadena City Bd. of Educ. v. Spangler, 427 U.S. 424 (1976)..... 15, 16

San Francisco NAACP v. San Francisco Unified Sch. Dist., 413 F. Supp. 2d 1051 (N.D. Cal. 2005) 20, 21

Sch. Bd. of the City of Richmond, Va. v. Baliles, 829 F.2d 1308 (4th Cir. 1987) 24

Singleton v. Jackson Mun. Separate Sch. Dist., 541 F. Supp. 904 (S.D. Miss. 1981)..... 23

Smiley v. Blevins, 626 F. Supp. 2d 659 (S.D. Tex. 2009) 29

Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971)..... 14, 32

Tasby v. Moses, 265 F. Supp. 2d 757 (N.D. Tex. 2003) 12

Taylor v. Ouachita Parish Sch. Bd., 965 F. Supp. 2d 758 (W.D. La. 2013)..... 16

1 *Taylor v. Ouachita Parish Sch. Bd.*, CIV.A. 66-12171, 2012 WL 4471643 (W.D. La.
2 Sept. 27, 2012)..... 24
3 *United States v. Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d 670 (M.D.N.C.
4 2009)..... 19, 22, 23, 26
5 *United States v. City of Yonkers*, 197 F.3d 41 (2d Cir. 1999)..... 24
6 *United States v. City of Yonkers*, 833 F. Supp. 214 (S.D.N.Y. 1993)..... 24
7 **Statutes**
8 A.R.S. § 15-181 *et seq.*..... 35
9 A.R.S. § 15-861.01 35

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 Tucson Unified School District No. 1 is operating in unitary status. There are no
2 remaining vestiges of discrimination causally linked to the *de jure* segregation that ended
3 more than 50 years ago. The District complied in good faith with the original
4 desegregation decree for several years in the 1980s, and it has complied in good faith with
5 the provisions of the current desegregation injunction — the Unitary Status Plan entered
6 nearly seven years ago, in February 2013. Those periods of compliance and other factors
7 demonstrate that there is no chance that the District will revert to a dual school system
8 once court supervision and control have ended. Accordingly, the District respectfully
9 requests that the Court acknowledge that the District is operating in unitary status,
10 dissolve the injunction, and return the District to the control of its locally elected
11 authorities.

12 This motion is based on the grounds asserted in the following memorandum, the
13 Annual Reports filed by the District along with the appendices to those reports, the initial
14 and revised analyses of compliance with the USP filed by the District (ECF 2075;
15 ECF 2092), the prior motion for partial unitary status (ECF 2005), the District’s
16 objections to the Special Master’s report and recommendation on unitary status
17 (ECF 2099), the Executive Summary (ECF 2384-1), and specific cited portions of the
18 record, as well as generally on the prior record and proceedings herein.

19 **Relevant Procedural History**

20 Prior to 1951, Arizona law required segregation of African American elementary
21 school children from students of other races/ethnicities. Prior to 1951, the District
22 operated a single all-African American elementary school, as required by state statute at
23 the time.

24
25

1 In 1951, in response to an effort led by the superintendent of the Tucson school
2 district, the state statute mandating such segregation was changed, and instead the law
3 merely *permitted* segregation of African American elementary school students from
4 others. The District immediately integrated, closing its one all-African American school
5 and assigning African American students to neighborhood schools without regard to race.

6 In 1974, two lawsuits were filed in the United States District Court, asserting that
7 the District was still intentionally discriminating against African American and Hispanic
8 students in the District. Judge Frey conducted an extensive evidentiary trial in 1977 and
9 issued a comprehensive ruling, finding facts and reaching conclusions of law. [ECF 345.]

10 Judge Frey found that the District's effort to integrate in 1951 was commendable
11 and met the legal standard that had later been set out in the landmark *Brown v. Board of*
12 *Education* case in 1954, three years after the District's integration. Indeed, throughout the
13 1950s, the Tucson school district was nationally recognized as in the vanguard of the
14 effort to eliminate *de jure* segregation and more broadly to reduce discrimination of all
15 forms against all racial and ethnic groups.

16 Judge Frey also found that the District was not currently engaged in any racial or
17 ethnic discrimination against either African American or Hispanic students in the District.
18 However, Judge Frey did find that some elements of the District's conduct in the 1950s
19 and 1960s violated Constitutional prohibitions against discrimination. Judge Frey's
20 findings of discriminatory actions may be summarized as follows:

21 a. The District failed to properly assign African American students to other
22 schools when dismantling the prior segregated system in 1951, because its assignment of
23 African American students to other geographically close neighborhood schools resulted
24 in too many African American students at schools that were heavily Hispanic.

25

1 b. During the 1950s and 1960s, some elementary school construction and
2 siting decisions were made with segregative intent, resulting in higher concentrations of
3 Hispanic students in some schools.

4 c. During the 1960s, some decisions to relieve individual school
5 overcrowding were made with segregative intent, resulting in Hispanic students being
6 assigned and transported to schools with high Hispanic concentrations and Anglo students
7 being assigned and transported to schools with lower Hispanic concentrations, despite the
8 availability of closer, more integrative alternatives.

9 [ECF 345, *passim*.]

10 Judge Frey was careful to limit his findings of violations. First, he found that the
11 District had never operated a dual school system with respect to Hispanic and white
12 students:

13 In light of the principles discussed above and the evidence presented, the
14 segregative acts by the District and the existence of racial imbalance in the
15 schools are insufficient for a finding that a Mexican-American/Anglo dual
16 school system has ever been operated by the defendants.

17 [*Id.* at 221.] He noted that the District had made substantial but not complete progress in
18 eliminating the vestiges of the state-mandated segregation that ended in 1951:

19 It appears that at the time Brown v. Board of Education, (Brown I) 347 U.S.
20 483, was decided in 1954, the District was in compliance with its mandate
21 insofar as Blacks were concerned. . . . However, in light of the subsequent
22 cases interpreting what the United States Supreme court meant in 1968 in
23 Green v. [County] School Board, 391 U.S. 430, when it stated, at page 438,
24 that a dual system must be eradicated “root and branch”, it now appears that
25 all effects of the dual system which existed in 1950-51, were not effectively
26 eradicated, notwithstanding considerable progress and attenuation. What
27 effect remains is discussed elsewhere in these Findings.

28 [*Id.* at 119-120.] He further noted:

29 Although most parts of the dual Black/non-Black school system were
30 dismantled in 1951-52, and although most later decisions were made using
31 neutral policy considerations, the District was under an affirmative duty to

1 go beyond just neutral policy considerations in order to erase all effects of
the past statutory segregation. It failed to do so.

2 [*Id.* at 222.]

3 Moreover, Judge Frey found that the remaining vestiges were primarily limited to
4 elementary schools:

5 Except for Spring, no reasonable inference could be drawn that the
6 imbalances present in the junior high schools at the time of trial resulted from
segregative intent or acts on the part of the District.

7 [*Id.* at 184.]

8 Except as to Spring Junior High, a conclusion or inference that the District
9 has operated or is operating a dual or segregated junior high school system
with respect to either Black students, Mexican-American students, or both,
10 is not warranted by the evidence.

11 [*Id.* at 186.]

12 There is no dual junior high school system within the District, even though
Spring retains effects from former segregation as to Black students.

13 [*Id.* at 189.]

14 The District has never operated a *de jure* segregated or dual system with
15 respect to high schools.

16 [*Id.* at 193.]

17 There has been no evidence presented from which it can rationally or
reasonably be inferred that the District has operated a *de jure* segregated dual
18 high school system or that there is a current condition of segregation in any
high school in the District resulting from intentionally segregative State or
19 District action.

20 [*Id.* at 194.]

21 Finally, Judge Frey made it clear that most of the effects of the *de jure* violations
22 had attenuated by the time of the trial (now 42 years ago), and that the then-current racial
23 balance in most schools in the District was not the result of those *de jure* violations:

24 In summary of this section on segregation and desegregation within and/or
by the District, a reasonable conclusion to be drawn is that the District is not
25 operating a *de jure* segregated system, notwithstanding some segregative

1 intent and actions. The District made a commendable and valiant effort to
2 desegregate the dual or de jure system as to Blacks, at the time and under the
3 circumstances, including the state of the law then existing. Viewed 25 years
4 later under different circumstances, including a whole new array of legal
5 decisions, it was inadequate. However, most of the effect from the earlier
6 segregation of Black students, has attenuated during the past 25 years. As
7 stated elsewhere in these findings, it appears that some effect may remain, as
8 evidenced by the relatively large number of Black students remaining in the
9 area of Spring, Roosevelt and University Heights.

10 [Id. at 70.]

11 In the final analysis, the only vestige of the prior discrimination that Judge Frey
12 found continued to exist as of the time of trial was in the racial and ethnic makeup of
13 students at nine schools in the District, five of which no longer exist as active schools as
14 of the filing of this Petition:

15 Some effects of past intentional segregative acts by the District remain at
16 these schools: Spring Junior High, Safford Junior High, University Heights,
17 Roosevelt, Manzo, Jefferson Park, Cragin, Tully and Brichta.

18 [Id. at 223.]

19 Despite expressly relying on the *Green* case¹ and its itemization of the factors to
20 examine, Judge Frey found no vestiges of the prior dual school system remaining in any
21 of the other *Green* factors: faculty and staff assignment, transportation, extracurricular
22 activities, or facilities. Judge Frey expressly found that the disparity in academic
23 achievement was not caused by prior District conduct. [ECF 345, pp. 167-68.]

24 Pursuant to the direction of the Court, the parties met and agreed on the terms of a
25 remedial desegregation decree, entered in 1978, that specified targets for enrollment at
the nine schools and contained other provisions. [ECF 436.]

More than 10 years ago, this Court acknowledged the very limited vestiges of
segregation found by Judge Frey:

¹ *Green v. County Sch. Bd. of New Kent County, Va.*, 391 U.S. 430 (1968) (“*Green*”).

1 Judge Frey made very limited, specific findings regarding student
2 assignments and the existence of any vestiges of *de jure* segregation
3 remaining in the district.

4 [ECF 1239, p. 2.]

5 In its 2008 order on unitary status, the Court found that the District had complied
6 with the requirements of the original remedial decree and eliminated the vestiges of *de*
7 *jure* segregation in the first five years:

8 [T]o the extent practicable the student ratios established by the desegregation
9 plans were met and maintained over a five-year period of time. . . . [T]he
10 Court finds that the student assignments required under the Settlement
11 Agreement were attained. . . . The Court finds that the ethnic and race ratios
12 required under the Settlement Agreement desegregation plans were
13 implemented and maintained for 5 years, and eliminated to the extent
14 practicable the vestiges of *de jure* segregation.

15 [ECF 1270, pp. 5, 13-14.] The Court also found good faith compliance with the remedial
16 decree in the first five years:

17 TUSD made a good faith effort to implement the program changes expressly
18 required under the terms of the Settlement Agreement for the first few years.

19 [*Id.*, p. 55.] The Court, however, refused to find that the District had continued to comply
20 in good faith with the remedial decree based on conduct after vestiges had been eliminated
21 and after the District had complied with the remedial decree for five years:

22 Specifically, the Defendant failed to monitor, track, review and analyze the
23 ongoing effectiveness of its programmatic changes to achieve desegregation
24 to the extent practicable or “at least” not exacerbate the racial imbalances
25 that exist in the District.

The Court then ordered the District to comply with a “post-unitary plan” in lieu of finding
continued good faith after the first five years. [*Id.* at 56-58.] The Ninth Circuit reversed,
holding that the Court’s refusal to find good faith compliance precluded termination of
supervision and a determination of unitary status. *Fisher v. Tucson Unified Sch. Dist.*, 652
F.3d 1131, 1143-44 (9th Cir. 2011).

1 On remand, the Court appointed a Special Master, tasked with developing a plan
2 to achieve unitary status and monitoring compliance with that plan. [ECF 1350.] The
3 District objected to the plan ultimately developed:

4 The District has agreed to most of the obligations and provisions of the Draft
5 USP, but does not acknowledge or admit that vestiges of the segregated
6 system remain in the District. Furthermore, the District does not
7 acknowledge or agree that the obligations it is undertaking pursuant to the
8 Draft USP are necessary or required to achieve unitary status.

9 [ECF 1407; *see also* objections at ECF 1412.] The Court entered the Unitary Status Plan
10 (“USP”) as an order, over the District’s objection, in February 2013. [ECF 1450, *amended*
11 *to correct typographic errors*, ECF 1713.]

12 The Court, in its USP order, provided that the District was not permitted to seek
13 unitary status again until after the conclusion of the 2016-17 school year. Shortly before
14 the end of that school year, the Court ordered the District to prepare and file an assessment
15 of its compliance with the USP and ordered the Special Master to file a report and
16 recommendation on compliance and unitary status. [ECF 2025.] The District filed its
17 assessment on October 1, 2017 (ECF 2075);² the Special Master filed his report and
18 recommendation on February 27, 2018 (ECF 2096), recommending unitary status in
19 certain areas of the USP and listing specific steps for unitary status in the remaining areas.
20 The Court ruled on the Special Master’s report and the objections thereto on September 6,
21 2018, granting partial unitary status in certain areas and directing the District to undertake
22 a series of tasks, some within 90 days and others by September 1, 2019. [ECF 2123.]

23 The District filed its notices of compliance with respect to the 90-day tasks on
24 December 6, 2018,³ and with respect to the balance of the tasks on August 30, 2019.⁴ In

25 ² The Court ordered a revision to one section of that assessment (ECF 2084), which the District filed on February 1, 2018 (ECF 2092).

³ These appear in the record at ECF 2151, 2152, 2153, 2154, 2155, 2156, and 2159.

⁴ These appear in the record at ECF 2258, 2259, 2260, 2263, 2264, 2266, 2267, and 2270.

1 April 2019, the Court ordered the District to file an Executive Summary of its programs
2 under the USP by December 1, 2019 (ECF 2213). The District filed its Executive
3 Summary on December 1, 2019 (ECF 2384). In September 2019, the Court ordered the
4 District to file a Supplemental Petition for Unitary Status within 30 days after filing the
5 Executive Summary (ECF 2385). Accordingly, the District files this supplemental
6 petition.

7 Detailed Analysis

8 In the landmark case *Brown v. Board of Education of Topeka, Shawnee County,*
9 *Kansas*, 347 U.S. 483 (1954) (“*Brown I*”), the Supreme Court ruled that racial segregation
10 in public schools violated the Fourteenth Amendment; the following year, the Court
11 clarified that district courts bore the responsibility for ensuring that desegregation took
12 place with all deliberate speed. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294
13 (1955) (“*Brown II*”). In *Green*, 391 U.S. 430, the Supreme Court held that mere adoption
14 of facially neutral admission policies did not satisfy the mandate of *Brown I* and *II*, and
15 that the vestiges of the prior segregation must be eliminated. The Supreme Court
16 identified specific areas for examination to determine if vestiges had been eliminated:
17 student assignment, faculty and staff assignment, transportation, extracurricular activities,
18 and facilities. It was these factors that Judge Frey expressly considered in determining, in
19 his 1978 order, that the only vestiges of the old segregated school system that remained
20 in 1977 — 26 years after the District voluntarily ended segregation in 1951 — were in
21 student enrollment at nine schools in the District.

22 Building on its decision in *Green*, the Supreme Court noted that court control of
23 school districts was “intended as a temporary measure” and set out the requirements for
24 termination of a desegregation injunction in 1991. See *Bd. of Educ. of Oklahoma City*
25

1 *Pub. Sch., Indep. Sch. Dist. No. 89, Oklahoma County, Okla. v. Dowell*, 498 U.S. 237
2 (1991). There, the Supreme Court held that a desegregation injunction should be
3 dissolved when (a) the vestiges of past discrimination by the school district have been
4 eliminated to the extent practicable, and (b) the school board has complied in good faith
5 with the desegregation decree. *Id.* at 249-50. In considering whether the vestiges of *de*
6 *jure* segregation have been eliminated as far as practicable, the court should consider the
7 *Green* factors. *Id.* at 250.

8 The following year, in *Freeman v. Pitts*, the Supreme Court reiterated that court
9 supervision of a school district must be a temporary measure and that a court supervising
10 a school district has a dual purpose: “to remedy the violation and, in addition, to restore
11 state and local authorities to the control of a school system that is operating in compliance
12 with the Constitution.” 503 U.S. 467, 489 (1992). This is because “local autonomy of
13 school districts is a vital national tradition,” and “[r]eturning schools to the control of
14 local authorities at the earliest practicable date is essential to restore their true
15 accountability in our governmental system.” *Id.* at 490. Justice Scalia noted in his
16 concurrence that “we must resolve—if not today, then soon—what is to be done in the
17 vast majority of other districts, where, though our cases continue to profess that judicial
18 oversight of school operations is a temporary expedient, democratic processes remain
19 suspended, with no prospect of restoration, 38 years after *Brown [I]*” and “[a]lmost a
20 quarter century” after *Green*. *Id.* at 500-01 (Scalia, J., concurring). More than 27 years
21 after *Freeman*, those words bear far greater urgency.

22 Following *Freeman*, multiple circuit courts have “underscore[d] that the phrase ‘to
23 the extent practicable’ implies a reasonable limit on the duration of that federal
24 supervision. Indeed, to extend federal court supervision indefinitely is neither practicable,
25

1 desirable, nor proper.” *Coal. to Save Our Children v. State Bd. of Educ. of State of Del.*,
2 90 F.3d 752, 760 (3d Cir. 1996); accord *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269
3 F.3d 305, 318 (4th Cir. 2001) (“Implicit in the Supreme Court’s use of the term
4 ‘practicable’ is ‘a reasonable limit on the duration of . . . federal supervision.’” (quoting
5 *Coal. to Save Our Children*)); *Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty.,*
6 *Fla.*, 244 F.3d 927, 943 n.29 (11th Cir. 2001) (“The phrase ‘to the extent practicable’ is
7 not meaningless surplusage. [It] . . . ‘implies a reasonable limit on the duration of [the]
8 federal supervision’ because ‘extend[ing] federal court supervision indefinitely is neither
9 practicable, desirable, nor proper.’” (quoting *Coal. to Save Our Children*)).

10 The following sections consider each of the two elements required for unitary
11 status and termination of the injunction: elimination of vestiges and good faith.

12 **I. NO VESTIGES OF THE PRIOR DUAL SCHOOL SYSTEM REMAIN.**

13 “The vestiges of segregation that are the concern of the law in a school case may
14 be subtle and intangible but nonetheless they must be so real that they have a causal link
15 to the *de jure* violation being remedied.” *Freeman*, 503 U.S. at 496. The only findings of
16 *de jure* violations in this case are set forth in Judge Frey’s Findings of Fact and
17 Conclusions of Law, which were issued after a full evidentiary trial on the merits nearly
18 43 years ago, in January 1977. [ECF 345.]

19 Any analysis of whether any vestiges of past discrimination remain, then, must be
20 founded on a clear understanding of: (a) exactly what conduct Judge Frey found to violate
21 constitutional standards, and (b) what vestiges of that conduct Judge Frey found
22 remaining at the time of the trial in 1977. Judge Frey’s decision came 10 years after the
23 Supreme Court’s decision in *Green*, 391 U.S. 430, and Judge Frey relied on that case in
24 systematically and carefully analyzing what few vestiges remained in 1977 as a result of
25

1 the *de jure* violations he found — some of which were already at that point more than 25
2 years in the past.

3 Judge Frey made it clear that most of the effects of the *de jure* violations had
4 attenuated by the time of the trial, now 40 years ago, and that the then-current racial and
5 ethnic makeup of most schools in the District was not the result of those *de jure* violations.
6 Judge Frey found that the only vestige remaining at the time of trial was in student
7 enrollment at nine schools in the District, which he found had higher minority enrollment
8 than would have occurred in the absence of the constitutional violations.

9 While expressly acknowledging and relying on *Green*, Judge Frey found no
10 vestiges of the prior discrimination in the *Green* factor areas of teacher and staff
11 assignment, transportation, facilities or extra-curricular activities. Accordingly, since the
12 only causally-linked vestiges found by Judge Frey to exist 40 years ago in 1977 (student
13 assignment at the nine listed schools) had been eliminated by 1983, there can be no
14 vestiges of discrimination existing today that are causally linked to the *de jure* segregation
15 that is the foundation of this case. In short, this is one of the “rare cases . . . , where the
16 racial imbalance had been temporarily corrected after the abandonment of *de jure*
17 segregation,” where it can be asserted with “confidence that the past discrimination is
18 no longer playing a proximate role.” *Freeman*, 503 U.S. at 503 (Scalia, J., concurring).

19 Even were the Court to look beyond the findings of Judge Frey to other areas of
20 District operations — which it should not do — it is beyond genuine dispute that no aspect
21 of school district operations retains any vestiges that are causally linked to any *de jure*
22 segregation found to have occurred 45 to 70 years ago. A number of factors — the
23 attenuation of impact noted by Judge Frey, the change in the racial and ethnic makeup of
24 the District, the closure of schools and changes in student enrollment, and the time period
25

1 of the violations so very long ago — make it clear that there is no causal link today to the
2 limited instances of discrimination found by Judge Frey to have occurred many years
3 prior to the trial in 1977.

4 **A. Applicable Law.**

5 The only “vestiges” to be considered are those caused by the specific, original
6 constitutional violation. *See, e.g., Tasby v. Moses*, 265 F. Supp. 2d 757, 764 (N.D. Tex.
7 2003) (“[C]ourt-ordered desegregation plans were designed to remedy constitutional
8 violations; District Courts should, therefore, weigh school districts’ compliance with
9 court orders in the light of the original constitutional violation.”). For example, in
10 *Missouri v. Jenkins*, 515 U.S. 70 (1995), the district court had approved across-the-board
11 salary increases aimed at enticing nonminority students back into the district, to serve a
12 desegregation “interdistrict goal.” The Supreme Court held that this was not a proper
13 remedy:

14 The State argues that the order approving salary increases is beyond the
15 District Court’s authority because it was crafted to serve an “interdistrict
16 goal,” in spite of the fact that the constitutional violation in this case is
17 “intradistrict” in nature. “[T]he nature of the desegregation remedy is to be
18 determined by the nature and scope of the constitutional violation.” The
proper response to an intradistrict violation is an intradistrict remedy that
serves to eliminate the racial identity of the schools within the affected school
district by eliminating, as far as practicable, the vestiges of *de jure*
segregation in all facets of their operations.

19 Here, the District Court has found, and the Court of Appeals has affirmed,
20 that this case involved no interdistrict constitutional violation that would
21 support interdistrict relief. Thus, the proper response by the District Court
22 should have been to eliminate to the extent practicable the vestiges of prior
de jure segregation within the [district]: a systemwide reduction in student
achievement and the existence of 25 racially identifiable schools with a
population of over 90% black students.

23 *Jenkins*, 515 U.S. at 89-90 (internal citations omitted).

24

25

1 By instructing courts to look at whether the vestiges of past discrimination have
2 “been eliminated to the extent practicable,” *Dowell*, 498 U.S. at 250, the Supreme Court
3 has rejected the notion that school districts must do everything possible to eliminate those
4 vestiges. *See, e.g., Jenkins*, 515 U.S. at 101 (district court’s consideration of whether
5 school district had reached its “maximum potential” and integrated “to the maximum
6 degree possible” was “clearly . . . not the appropriate test to be applied in deciding whether
7 a previously segregated district has achieved partially unitary status. The basic task of the
8 District Court is to decide whether the reduction in achievement by minority students
9 attributable to prior *de jure* segregation has been remedied to the extent practicable.”
10 (internal citation omitted)); *accord, e.g., N.A.A.C.P., Jacksonville Branch v. Duval*
11 *County Sch.*, 273 F.3d 960, 973 (11th Cir. 2001) (“The Supreme Court has made quite
12 clear, however, that the Constitution does not require a school board to eliminate the
13 vestiges of past discrimination ‘to the maximum extent practicable.’”).

14 Courts have recognized that the “more easily achievable” standard of
15 desegregating “to the extent practicable,” set forth in *Freeman* and *Dowell*, was a move
16 away from *Green*’s “affirmative duty to eliminate racial discrimination root and branch.”
17 *See, e.g., Little Rock Sch. Dist. v. Pulaski Cty. Special Sch. Dist.*, 237 F. Supp. 2d 988,
18 1029 (E.D. Ark. 2002), *opinion modified on denial of reconsideration* (Oct. 11, 2002),
19 *aff’d sub nom. Little Rock Sch. Dist. v. Armstrong*, 359 F.3d 957 (8th Cir. 2004).

20 The Supreme Court has made it clear that school districts are not required to
21 eliminate all problems that may stem from racial prejudice in society, nor are they
22 required to create a school system where each school perfectly reflects the racial
23 composition of the community. “Our objective in dealing with the issues presented by
24 these cases is to see that school authorities exclude no pupil of a racial minority from any
25

1 school, directly or indirectly, on account of race; it does not and cannot embrace all the
2 problems of racial prejudice, even when those problems contribute to disproportionate
3 racial concentrations in some schools.” *Swann v. Charlotte-Mecklenburg Bd. of Educ.*,
4 402 U.S. 1, 23 (1971). “The constitutional command to desegregate schools does not
5 mean that every school in every community must always reflect the racial composition of
6 the school system as a whole.” *Id.* at 24; *accord, e.g., Monteilh v. St. Landry Parish Sch.*
7 *Bd.*, 848 F.2d 625, 632 (5th Cir. 1988) (“The constitution does not require school districts
8 to achieve maximum desegregation; that the plan does not result in the most desegregation
9 possible does not mean that the plan is flawed constitutionally. . . . The school board’s
10 constitutional duty is to cure the continuing effects of the dual school system, not to
11 achieve an ideal racial balance.” (quotation marks omitted)).

12 **B. Green Factors.**

13 **1. Student Assignment.**

14 This Court has already determined that the only vestige of the prior dual school
15 system remaining in 1978 was eliminated by 1983. After a lengthy trial and extended
16 briefing, Judge Frey reached extensive findings and conclusions, expressly considering
17 which vestiges of the prior dual school system remained at the time of trial, which took
18 place 26 years after the District voluntarily integrated and ended *de jure* segregation. The
19 only vestige remaining in 1978 was higher minority enrollment in nine District schools.

20 In 2008, the Court found that this vestige had been eliminated to the extent
21 practicable in the five years following the entry of the remedial injunction. [ECF 1270,
22 p. 7]. This should be the end of the inquiry into any alleged vestiges: Judge Frey’s
23 decision makes it clear that any other disparities present today cannot be causally traced
24
25

1 to the original *de jure* violation and are thus not vestiges of that discrimination that the
2 District must eliminate to the extent practicable to permit termination of the injunction.

3 At the very least, the Court's 2008 determination is dispositive as to elimination
4 of any vestige in this most important of the *Green* factors. Any current disparities in
5 school population are not causally related to the prior dual school system, and thus there
6 is no constitutional duty to eliminate them as a condition for termination of supervision.

7 Specifically, a school district is not obligated to battle reoccurrence of racial
8 disparities that result from residential demographic patterns that are not the fault of the
9 district. "Racial balance is not to be achieved for its own sake. It is to be pursued when
10 racial imbalance has been caused by a constitutional violation. Once the racial imbalance
11 due to the *de jure* violation has been remedied, the school district is under no duty to
12 remedy imbalance that is caused by demographic factors." *Freeman*, 503 U.S. at 494.

13 For example, in *Pasadena City Board of Education v. Spangler*, 427 U.S. 424
14 (1976), the school district had adopted a race-neutral student assignment plan to remedy
15 racial segregation, but so-called "white flight" subsequently disrupted the racial balance
16 of schools so that some were again majority African American. The Supreme Court held
17 that the district was not required to readjust student assignment procedures again to
18 combat that racial imbalance:

19 [T]he District Court approved a plan designed to obtain racial neutrality in
20 the attendance of students at Pasadena's public schools. No one disputes that
21 the initial implementation of this plan accomplished that objective. That
22 being the case, the District Court was not entitled to require the PSUD to
23 rearrange its attendance zones each year so as to ensure that the racial mix
24 desired by the court was maintained in perpetuity. For having once
25 implemented a racially neutral attendance pattern in order to remedy the
perceived constitutional violations on the part of the defendants, the District
Court had fully performed its function of providing the appropriate remedy
for previous racially discriminatory attendance patterns.

1 *Spangler*, 427 U.S. 424, 436-37 (1976). Along those lines, the fact that schools remain
2 “racially identifiable” is not (absent specific evidence) a vestige, if the schools reflect the
3 neighborhoods from which their student populations are drawn. *Taylor v. Ouachita*
4 *Parish Sch. Bd.*, 965 F. Supp. 2d 758, 768 (W.D. La. 2013).

5 Courts must look to whether alleged racial imbalances were caused by the school
6 district’s policies or, rather, were caused by external factors — a school district is only
7 responsible for addressing the former. *See, e.g., Freeman*, 503 U.S. at 494-95 (“The
8 findings of the District Court that the population changes which occurred in DeKalb
9 County were not caused by the policies of the school district, but rather by independent
10 factors, are consistent with the mobility that is a distinct characteristic of our society. . . .
11 It is beyond the authority and beyond the practical ability of the federal courts to try to
12 counteract these kinds of continuous and massive demographic shifts. To attempt such
13 results would require ongoing and never-ending supervision by the courts of school
14 districts simply because they were once *de jure* segregated.”).

15 2. Faculty and Staff Assignments.

16 Judge Frey made no finding that any vestige of the prior dual school system
17 remained in 1978 in the area of faculty and staff assignment. Thus, any disparity in the
18 racial or ethnic makeup of faculty and staff of schools today is not traceable to the pre-
19 1951 dual school system.

20 Other factors demonstrate that the current racial and ethnic makeup and
21 distribution of the teaching and administrative staff are not causally linked to the prior
22 dual school system. First, the mere passage of time — nearly 70 years have gone by since
23 the District voluntarily ended segregation in 1951 — is sufficient to conclude that any
24 causal link is no longer present. No person either hiring or being hired in 1951 is
25

1 employed by the District today; the District has for many decades had a formal policy
 2 prohibiting discrimination in hiring or placement of any employees.

3 Second, the District’s hiring process (ECF 2384, pp. 35-45) is designed to
 4 encourage diversity in teaching staff, both through targeted recruiting from past
 5 applicants and in specific outreach to teachers of color outside the District, and that
 6 process has been approved by the Court. [ECF 2217, p.7.]

7 Third, the District currently employs African American and Hispanic teachers at a
 8 rate higher than would be expected for the relevant labor market, considering the teacher
 9 demographics of the United States and the state of Arizona, as reflected in the chart below.
 10 Moreover, the trend over the past four years at the District is toward increasing diversity:

Percentage of Teachers by Race and Ethnicity⁵						
	Hispanic	White	AA	Asian	Haw/PI	Nat. Am.
United States	7.8%	81.9	6.8%	1.8%	.1%	.5%
Arizona	13.1%	80.1%	2.8%	1.7%	n.r.	1.3%
Tucson Unified School District						
2016-17	28.1%	65.4%	3.0%	1.8%	0.2%	1.4%
2017-18	29.1%	64.2%	2.9%	2.0%	0.2%	1.5%
2018-19	29.0%	63.0%	3.4%	2.8%	0.3%	1.4%
2019-20	30.0%	61.9%	3.4%	2.9%	0.2%	1.6%

17 The general population in the Tucson metropolitan area is 37 percent Hispanic and 4
 18 percent African American,⁶ further demonstrating that the racial/ethnic breakdown of
 19 teaching staff in the District is close to matching that of the community.

20 _____
 21 ⁵ United States and Arizona data is for 2011-12, the latest year for which the District could
 find data.

22 ⁶ The Tucson CCD (Census County Division) had an estimated population of 885,779 as
 23 of 2018, of which an estimated 36.9% were Hispanic and 3.8% were African American.
 24 *2018: ACS 5-Year Estimates Subject Tables, Selected Characteristics of the Native and*
 25 *Foreign-Born Populations, Tucson CCD, Pima County, Arizona*, U.S. CENSUS BUREAU,
<https://data.census.gov/cedsci/table?q=Tucson%20CCD,%20Pima%20County,%20Arizona&g=06000000US0401993570&lastDisplayedRow=22&table=S0501&tid=ACSSST5Y2018.S0501&layer=countysubdivision&vintage=2018&mode=> (last accessed Dec. 29,
 2019).

1 The District is also better than state averages for administrators: this year, African
 2 American administrators comprise 11.6 percent of the District total, while the average for
 3 the state is only 5.9 percent, and African Americans make up only about 4 percent of the
 4 Tucson area general population; Hispanic administrators comprise 38.7 percent of the
 5 District total, while the average for the state is only 31.4 percent. [ECF 2329-1, p. 91.]

6 This progress has been achieved despite substantial headwinds. As the Special
 7 Master points out in his 2016-17 Special Master Annual Report, “[a] fundamental
 8 problem confronting TUSD’s efforts to increase the diversity of its teaching staff is that
 9 there is a nationwide teacher shortage. The dwindling supply of African American and
 10 Hispanic teachers also affects administrators since virtually all administrators come from
 11 the ranks of teachers. Moreover, Arizona ranks at the bottom among the states as attractive
 12 places for teachers to start their careers.” [SMAR 2096 filed 2/27/18.] “TUSD has a
 13 difficult time competing for talent with districts that pay considerably more and that serve
 14 communities with much larger African American populations in the quality of life that
 15 goes with a large ethnic population.” [*Id.*]

16 Despite these disadvantages, and despite the national shortage of teachers, TUSD
 17 has been effective in teacher recruiting. Teacher vacancies at the start of each school year
 18 are declining at TUSD (see table below). In context, during the period of the chart, the
 19 District employed more than 2,500 teachers, so the percentages of vacancies are very low:

20

Teacher Vacancies				
Month	School Year			
	2016-17	2017-18	2018-19	2019-20
August	158	109	88	62
September	128	88	83	56
October	114	81	61	45
November	121	80	62	47
December	106	81	53	42

21
22
23
24
25

January	115	89	64	
February	96	87	56	
March	81	71	57	
April	69	51	23	
May	3	10	10	

Although a number of District schools have teaching staffs that do not mirror the District-wide racial and ethnic makeup of the teaching force, the District has made steady progress in increasing teacher diversity within schools. Over the past four years, the District has successfully persuaded more than 100 teachers to transfer to a school at which their presence improves diversity. Many schools are within one teacher of meeting the 15 percent criterion used by the District; others have teaching staffs that are clearly diverse even if not meeting the formal requirement. The District has appointed a Director who tracks HR data and geographic locations to identify potential “swap” candidates, personally contacts transfer candidates, performs surveys gauging transfer interest, and organizes and attends recruiting meetings. The District also provides a series of incentives (including monetary stipends) to encourage transfers that improve diversity.

Additionally, the District has expanded its diversity transfer program to include administrators. Fifty-two of the District’s 85 schools have a single administrator each, so “within-school” diversity of administrative staff is not possible. Of the 33 schools with more than one administrator in SY2019-20, 23 had diverse administrative teams. [ECF 2329-1, p. 31.] Thus, nearly three-quarters of District schools with multiple administrators have diverse administrative teams.

Faculty and staff assignments “made without regard to race” demonstrate that any vestige of prior discrimination has been sufficiently eliminated. *See United States v. Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d 670, 681 (M.D.N.C. 2009). A causal link between the original violation and any current disparity must be found before a

1 school district can be held responsible for eliminating any specific vestige. *See, e.g.,*
2 *Duval County Sch.*, 273 F.3d at 974 (“[The school district] is not responsible for the
3 segregative effects of external forces over which it has no control. Since the [district] has
4 demonstrated that white flight and voluntary residential isolation, and not its policies,
5 substantially caused the racial identifiability of some of its schools, they are not the
6 vestiges of *de jure* segregation and the [district] is under no constitutional obligation to
7 combat the demographic factors which produced them.” (internal citation omitted)); *San*
8 *Francisco NAACP v. San Francisco Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1067 (N.D.
9 Cal. 2005) (“Segregation alone . . . does not provide a federal court with the legal authority
10 to continue enforcing a desegregation decree. Unless the current segregation is a ‘vestige’
11 of past discrimination, a desegregation decree cannot be extended.”); *Keyes v. Congress*
12 *of Hispanic Educators*, 902 F. Supp. 1274, 1281-82 (D. Colo. 1995) (“The constitutional
13 authority of the federal courts is limited to compelling the elimination of negative effects
14 of *de jure* discrimination; it does not include the power to posit any particular affirmative
15 achievements. . . . The proposal of the plaintiff-intervenors that this court retain
16 jurisdiction and require further affirmative action in the District’s employment practices
17 . . . would go beyond remediation of past discriminatory conduct.”).

18 As stated by Judge Frey in 1978,

19 A review of the evidence indicates a general pattern in Tucson and in the
20 District similar, in many respects, to most cities. The older or earlier-
21 established residential neighborhoods near the “downtown” area, give way
22 to business or commercial development, civic centers, governmental centers,
23 apartments and substandard housing with corresponding shifts in population
24 and racial or ethnic makeup in the neighborhoods. Such is generally neither
25 caused by nor affected by school district decisions or policies. . . . To charge
the school districts with the responsibility either for creating these conditions
or with a duty to counteract them, borders on absurdity and has never been
constitutionally mandated.

[ECF 345, p. 134.]

1 In determining whether an alleged vestige is causally linked to the original
2 constitutional violation, the absence of judicial findings of such a link is probative. *See,*
3 *e.g., Keyes*, 902 F. Supp. at 1282 (“The Supreme Court’s opinion in *Missouri v. Jenkins*
4 . . . defeats the plaintiffs’ call for compelling additional action to investigate and redress
5 racial disparities in student achievements and participation in special programs for gifted
6 and talented pupils. This court has never made any findings that such differences are the
7 result of discrimination by the District.”); *San Francisco NAACP*, 413 F. Supp. 2d at 1067
8 (“The key question is whether the current segregation is the result of any past intentional
9 racial discrimination by government officials. At no time in the entire twenty-seven-year
10 history of this litigation has any party proven that the district was engaging or had ever
11 engaged in intentional racial segregation.” (citation omitted)). Likewise, Judge Frey made
12 no such findings in the area of staffing.

13 Additionally, causal links inherently weaken over time — substantial passage of
14 time is, in itself, evidence that any current imbalances were not caused by the *de jure*
15 system. The Supreme Court noted in *Freeman* that, “with the passage of time, the degree
16 to which racial imbalances continue to represent vestiges of a constitutional violation may
17 diminish.” 503 U.S. at 491. “As the *de jure* violation becomes more remote in time and
18 . . . demographic changes intervene, it becomes less likely that a current racial imbalance
19 in a school district is a vestige of the prior *de jure* system.” *Id.* at 496. *Accord, e.g., Hart*
20 *v. Cmty. Sch. Bd. of Brooklyn, N.Y. Sch. Dist. #21*, 536 F. Supp. 2d 274, 281 (E.D.N.Y.
21 2008), *as amended* (Feb. 28, 2008) (“Passage of time since the original violation makes
22 it less likely that the necessary causal link will be found to exist between the original
23 constitutional violation and any alleged racial imbalances that remain.”); *Berry v. Sch.*
24 *Dist. of City of Benton Harbor*, 195 F. Supp. 2d 971, 994 (W.D. Mich. 2002), *order*

25

1 *clarified*, 206 F. Supp. 2d 899 (W.D. Mich. 2002) (“[N]o student presently enrolled in the
2 [district] has ever attended a school practicing *de jure* segregation. . . . [T]he passage of
3 time during the implementation of a desegregation order constitutes significant evidence
4 that the remaining deficits are not the result of prior discrimination.”). Again, nearly 70
5 years have passed since the *de jure* system in the District was dismantled. Any causal
6 links that may have once existed would largely be attenuated by this point.

7 There is no vestige of the prior dual school system remaining today in the District’s
8 teacher and administrator hiring or placement.

9 **3. Transportation.**

10 Judge Frey did not find that there was any vestige of the prior segregation in the
11 area of transportation, and thus, were there any disparities today, they could not be
12 causally linked to the prior constitutional violations. But more fundamentally, there are
13 no disparities in transportation today: transportation is provided to all students —
14 regardless of race — who meet a distance criteria from their neighborhood school; the
15 District also provides transportation to students to support its Magnet and Incentive
16 programs to improve integration across the District. [ECF 2384-1, p. 11.] Transportation
17 “provided on an equal basis to any student” living a certain distance from school
18 demonstrates that any vestige in this area has been sufficiently eliminated. See *Alamance-*
19 *Burlington Bd. of Educ.*, 640 F. Supp. 2d at 681. There is no vestige of the old dual school
20 system in the District’s transportation operations today.

21 **4. Extracurricular Activities.**

22 Judge Frey found that the District had voluntarily eliminated segregation in
23 extracurricular activities in 1946, nearly 75 years ago. [ECF 345, p. 42.] And, as discussed
24 above, the Court did not find that any vestiges of segregation remained in the area of
25

1 extracurricular activities. Today, students participate in athletics, fine arts, and/or clubs
2 at all schools without regard to race or ethnicity, and there is no pattern of racial/ethnic
3 disparities in either availability or participation levels. At many schools — both racially
4 concentrated and not — African American and Hispanic students participate in
5 extracurriculars at higher rates than White students. Extracurricular participation is,
6 across the District, healthy and unitary. Courts hold that vestiges have been sufficiently
7 eliminated in the area of extracurricular activities if activities “are *available* to all students
8 within the School District regardless of race,” even if the races do not participate in them
9 equally. *Coal. to Save Our Children*, 90 F.3d at 768-69 (emphasis in original); *see also*,
10 *e.g.*, *Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d at 681; *Singleton v. Jackson*
11 *Mun. Separate Sch. Dist.*, 541 F. Supp. 904, 908 (S.D. Miss. 1981). There is not today
12 any vestige of the prior segregated school system in the area of extracurricular activities.

13 **5. Facilities.**

14 Judge Frey did not find any vestiges of the old dual school system remaining in
15 the area of facilities, and thus, were there any disparities today, they could not be causally
16 linked to the prior constitutional violations. But more fundamentally, there simply is no
17 disparity in facilities today: the District comprehensively tracks and rates the condition of
18 its school facilities,⁷ and there is no pattern of condition or repair that correlates to the
19 racial or ethnic makeup of the student population.

20 Even if there were a disparity (there is not), and even if that disparity could be tied
21 to the prior segregation (it cannot), the District clearly has eliminated any vestiges.
22 Vestiges have been sufficiently eliminated in the area of facilities where all facilities

23 _____
24 ⁷ The District reports each year on its Facilities Condition Index, Educational Suitability
25 Scores, and Technology Condition Index for each school, in its annual report. [*See, e.g.*,
ECF 2057-1, pp. 400-09 and appendices cited therein; ECF 2124-1, pp. 150-53 and
appendices cited therein; ECF 2298-1, pp. 179-82 and appendices cited therein].

1 provide adequate space for their needs, are well maintained, and are equally equipped
2 with technology, even if the buildings differ in construction and age. *See Taylor v.*
3 *Ouachita Parish Sch. Bd.*, CIV.A. 66-12171, 2012 WL 4471643, at *8 (W.D. La. Sept.
4 27, 2012). The District clearly meets this test.

5 **C. Other Factors.**

6 **1. Academic Achievement.**

7 The party advocating for continued court supervision in student achievement or
8 any other factor not specifically enumerated in *Green* has the burden of proving that any
9 disparities were caused by the prior *de jure* system. *See, e.g., Coal. to Save Our Children,*
10 90 F.3d at 776-77 (“Because the performance disparities claimed by Appellant are not
11 among (or even similar to) the *Green* factors or the vestiges identified in the 1978 Order,
12 we will not simply presume—as Appellant urges us to do—that these are vestiges of *de*
13 *jure* segregation. Appellant offers no persuasive authority for establishing a causal link
14 between present achievement disparities and past *de jure* segregation.”); *United States v.*
15 *City of Yonkers*, 197 F.3d 41, 52 (2d Cir. 1999) (“To cast the curriculum as a vestige of
16 segregation, plaintiffs must show more than that it was adopted in the time of segregation
17 and has since become outmoded. Plaintiffs have failed to show the causal link between
18 *de jure* segregation and the purported vestige.”); *accord, e.g., Sch. Bd. of the City of*
19 *Richmond, Va. v. Baliles*, 829 F.2d 1308, 1312-13 (4th Cir. 1987); *c.f. United States v.*
20 *City of Yonkers*, 833 F. Supp. 214, 222 n.3 (S.D.N.Y. 1993). In fact, “[m]ost courts of
21 appeals confronting [the] issue . . . have declined to consider the achievement gap as a
22 vestige of discrimination or as evidence of current discrimination.” *Belk*, 269 F.3d at 330
23 (collecting cases from the Second, Third, Fourth, and Seventh Circuits).

1 As the Supreme Court has stated, “[j]ust as demographic changes independent of
2 *de jure* segregation will affect the racial composition of student assignments, so too will
3 numerous external factors beyond the control of the [school district] and the State affect
4 minority student achievement. So long as these external factors are not the result of
5 segregation, they do not figure in the remedial calculus.” *Jenkins*, 515 U.S. at 102
6 (internal citation omitted).

7 Here, there is no evidence by which the plaintiffs could prove that the current
8 achievement gap is in any way linked to any specific conduct of the District in its prior
9 dual school system. The District voluntarily ended segregation in 1951, nearly 70 years
10 ago. The last vestige of the prior dual school system in the area of student assignment was
11 eliminated by 1983, more than 35 years ago. More fundamentally, there is nothing about
12 the achievement gap at the District that is any different from the achievement gap in most
13 school districts that never had a dual school system. In fact, the achievement gap at TUSD
14 is less than state and national averages.⁸ Judge Frey expressly addressed the achievement
15 gap in his decision in 1978:

16 District students, as hereinabove set forth, have historically exhibited
17 differences in performance on standardized tests as between Blacks,
18 Mexican-Americans and Anglos. Present scientific knowledge does not
19 afford satisfactory explanations for such differences, and the existence of
20 these intergroup differences in average scores on standardized tests is a
21 common finding in school districts throughout the United States, and not
22 peculiar in any way to Tucson School District No. 1. Standardized test results
23 for School District No. 1 students indicate that the intergroup differences
24 exist upon the entry of the students into the school system and continue
25 through the school career. Consistently lower test results for minority group
students do not support a reasonable inference of unequal provision or
delivery of educational services.

[ECF 345, pp. 166-67.]

⁸ [See ECF 2384-1, pp. 21-22.]

2. Advanced Learning Experiences.

1 Judge Frey made no findings that there were any disparities related to advanced
2 learning experiences (ALEs), and he certainly did not find a disparity that was in some
3 way caused by the prior dual school system. Indeed, none of the District's current ALEs
4 were even offered at the time that the prior dual school system was terminated, so it cannot
5 seriously be claimed that anything about the District's current ALE program is causally
6 related to the prior dual school system. Moreover, the District's ALE program is and has
7 been administered in a race neutral way for many years: ALEs are offered to all students
8 regardless of race or ethnicity, and although there are differences among schools in
9 particular ALE offerings, those differences are not correlated to race or ethnicity of the
10 student population of the school.

3. Discipline.

11 Judge Frey made no findings that there were any disparities in discipline that were
12 in some way caused by the prior dual school system. Vestiges have been sufficiently
13 eliminated in the area of student discipline where a discipline plan is "not racially
14 discriminatory" and is "fairly applied throughout the District," even though racial
15 disparities in discipline numbers remain. *See Hoots v. Pennsylvania*, 118 F. Supp. 2d 577,
16 611 (W.D. Pa. 2000) ("[A] numerical disparity, standing alone, does not indicate
17 discrimination."); *accord, e.g., Alamance-Burlington Bd. of Educ.*, 640 F. Supp. 2d at
18 681. The District's Code of Conduct is not racially discriminatory. There is no significant
19 disparity in discipline between Hispanic and White students; the disparity in discipline
20 between African American and White students has steadily lessened, and is currently far
21 smaller than the national average. [ECF 2384-1, pp. 47-48.] The fact that the disparity in
22 discipline is much less than the national average, and certainly smaller than in many
23
24
25

1 districts that have never been segregated by law, makes it plain that nothing in the area of
2 discipline at the District today can be causally tied to the pre-1951 dual school system.

3 **D. Conclusion: No vestiges remain.**

4 In 1992, Justice Scalia observed in *Freeman*, “[a]t some time, we must
5 acknowledge that it has become absurd to assume, without any further proof, that
6 violations of the Constitution dating from the days when Lyndon Johnson was President,
7 or earlier, continue to have an appreciable effect upon current operation of schools. We
8 are close to that time.”). 503 U.S. at 506. Twenty-five years later, we are now well past
9 that time.

10 The primary purpose of a desegregation decree is to remedy any remaining
11 vestiges of the constitutional violations that led to the decree in the first instance. It is not,
12 and cannot constitutionally be, merely an opportunity for an extended court-supervised
13 exercise in district reshaping unrelated to those remaining vestiges.

14 This case has a procedural history unlike any other desegregation case. The trial
15 in this case was conducted in 1977, many years after the particular conduct found to be a
16 violation had ended in the 1950s and 1960s. Judge Frey’s decision in 1978 already
17 conducted the analysis mandated by *Green*, to determine what vestiges of the old dual
18 school system remained in 1978.⁹ This Court has held that the only vestige remaining in
19 1977 — the student enrollment at nine schools — was eliminated to the extent practicable
20 in the five years after the original decree was implemented. The only remaining issue
21 should be whether there is any risk that the District will relapse into a segregated school
22

23 ⁹ Indeed, Judge Frey acknowledged that the District had properly and adequately ended
24 its state-mandated segregation, and integrated itself, in the early 1960s, under standards
25 in effect until the Supreme Court decided the *Green* case in 1968. Thus, his entire decision
is based on his analysis of *Green* as applied to the District, determining what vestiges (if
any) remained from the conduct he found to violate the Constitution.

1 system upon termination of court supervision. As discussed below, there simply is no
2 genuine risk of that hypothetical result.

3 **II. THE DISTRICT MEETS THE GOOD FAITH COMPLIANCE**
4 **STANDARD.**

5 “[T]he purpose of the good-faith finding is to ensure that a school board has
6 accepted racial equality and will abstain from intentional discrimination in the future.”
7 *Manning*, 244 F.3d at 946 n.33. “A history of good-faith compliance is evidence that any
8 current racial imbalance is not the product of a new *de jure* violation, and enables the
9 district court to accept the school board’s representation that it has accepted the principle
10 of racial equality and will not suffer intentional discrimination in the future.” *Freeman*,
11 503 U.S. at 498. *Accord*, e.g., *Lockett v. Bd. of Educ. of Muscogee County Sch. Dist., Ga.*,
12 111 F.3d 839, 843 (11th Cir. 1997) (“A good faith commitment to a desegregation plan
13 also demonstrates to parents, students, and the public that students will no longer suffer
14 injury or stigma. At the same time, it enables the district court to accept the school board’s
15 representation that [the school board] has accepted the principle of racial equality and will
16 not suffer intentional discrimination in the future.” (quotation marks omitted)); *Morgan*
17 *v. Nucci*, 831 F.2d 313, 321 (1st Cir. 1987) (“[W]here a court has reason to believe that a
18 discriminatory animus still taints local decisionmaking, it may be appropriate for the court
19 to retain jurisdiction for some period after neutral procedures have been implemented. A
20 finding of good faith, on the other hand, reduces the possibility that a school system’s
21 compliance with court orders is but a temporary constitutional ritual.”); *Jenkins v. Sch.*
22 *Dist. of Kansas City, Mo.*, 77-0420-CV-W-DW, 2003 WL 27385936, at *11 (W.D. Mo.
23 Aug. 13, 2003) (quoting *Manning*, *Freeman*, and *Morgan* and holding that “[t]he essence
24 of the above-cited authority is that whether a school district has evidenced good faith
25 depends on whether the school district’s record throughout the litigation demonstrates

1 that the school district has accepted the principle of racial equality”); *Smiley v. Blevins*,
2 626 F. Supp. 2d 659, 669 (S.D. Tex. 2009).

3 Therefore, in considering “good faith,” “[t]he focus is on the school board’s pattern
4 of conduct, and not isolated events.” *Manning*, 244 F.3d at 946 n.33. “Focusing on
5 isolated aberrations blurs a court’s long-term vision.” *Id.* See also, e.g., *Berry*, 195 F.
6 Supp. 2d at 991-92 (“Indeed, perfect compliance with the court’s remedial orders is not
7 required for a constitutional violator to be release from judicial oversight. . . .
8 [I]ncomplete compliance . . . , if not done in bad faith or indicative of an intent to return
9 to discriminatory practices, may not serve as a basis for retaining jurisdiction.”).

10 In fact, some courts have granted unitary status (or partial unitary status) based on
11 a finding that the district is not likely to return to discriminatory practices, without
12 specifically using the words “good faith” at all. See, e.g., *Liddell v. Special Sch. Dist.*, 149
13 F.3d 862, 868-69 (8th Cir. 1998) (finding district had achieved partial unitary status where
14 “there is no showing in the record that the [district] is likely to return to its former ways
15 with respect to the county vocational education schools”).

16 Courts also commonly look at whether a return to discrimination is likely as a
17 substantial part of a determination of good faith compliance. See, e.g., *Jenkins*, 77-0420-
18 CV-W-DW, 2003 WL 27385936, at *11 (“Plaintiffs contend that the [district’s] record
19 throughout this litigation does not evidence a good faith effort to desegregate. [But] . . .
20 [t]here has never been resistance to remedy implementation by the [district] or its
21 officials. The Superintendent, four of the nine Board members, and about 60 percent of
22 the top District officials are African-American. The Board and leadership of the District
23 have accepted the principle of equal opportunity for all students, and are endeavoring to
24 further reduce the achievement gap between African-American and white students.

25

1 Moreover, the principles of the [court-ordered educational plans] have been endorsed by
2 the District Board and Administration. . . . The Court finds that the [district] has accepted
3 racial equality and will abstain from intentional discrimination in the future. Specifically,
4 the Court finds that the [district] has demonstrated a good faith commitment to its
5 African-American students that it will endeavor to provide a quality education to students
6 of all races.”); *Berry*, 195 F. Supp. 2d at 991 (“In addition to this substantial compliance
7 with the bulk of the remedial order, no independent evidence suggests that this school
8 district, whose student population is over 90 percent African American, a majority of
9 whose board members and administrators are African American, and a high percentage
10 of whose teachers are African American, will return to intentional discriminatory conduct.
11 The testimony uniformly supports the conclusion that all students in the [district] are
12 receiving the same education, regardless of race. As a result, the failure to continue to
13 implement the Comer model after 1992 does not suggest a likelihood that the district will
14 return to its past segregative conduct.”).

15 A. **The good faith requirement is independently satisfied because there is**
16 **no risk that this District will suddenly revert to a pre-1950s dual school**
 system.

17 No reasonable person could believe that this District, with its leaders, in this city
18 and community, could return to a system of *de jure* segregation. The community is
19 majority Hispanic, the Mayor is Hispanic, the Governing Board president is Hispanic, the
20 Senior Director of Desegregation is Hispanic, the prior Director of Desegregation,
21 currently serving as District legal counsel, is African American, four of the six assistant
22 superintendents are Hispanic or African American, and the current and prior
23 superintendent are Hispanic. Having served as the pioneer school district in Arizona for
24 desegregating schools in 1951, there was virtually no risk that the District would return
25

1 to *de jure* segregation following its decision to desegregate, and that previously-
2 infinitesimal risk is even lower today.

3 **B. The overall effort by the District independently satisfies the good faith**
4 **requirement.**

5 There can be no serious dispute that the District has expended a huge effort over
6 the past seven years directed towards compliance with the USP, and the many action plans
7 and detailed orders arising from the USP, which collectively amount to thousands of
8 individual requirements. But those efforts must be judged as a whole, in light of the
9 underlying purpose of the good faith requirement articulated in *Green*: to ensure that the
10 District is not likely to revert to *de jure* segregation once court supervision is terminated.

11 Requiring particular results or performance-related tests — especially where:
12 (a) the vestiges of past *de jure* segregation have already been eliminated and (b) external
13 factors may influence results — is inappropriate. *Jenkins*, 515 U.S. at 101.

14 Just as demographic changes independent of *de jure* segregation will affect
15 the racial composition of student assignments, so too will numerous external
16 factors beyond the control of the [school district] and the State affect
17 minority student achievement. **So long as these external factors are not the
18 result of segregation, they do not figure in the remedial calculus.
19 Insistence upon academic goals unrelated to the effects of legal
20 segregation unwarrantably postpones the day when the [school district]
21 will be able to operate on its own.**

22 *Id.* at 102 (emphasis added and citations omitted). Stated differently, the good-faith
23 standard tests *the District's actions* — not the *results* of the District's actions.

24 This is not a standard of perfection or even exhaustion of possibilities. Such a
25 standard would seek not the elimination of vestiges of segregation or assurances against
a reversion to *de jure* segregation, but instead indefinite control and influence over a
school district's operations in an attempt to socially engineer against societal ills, turning

1 on its head the Supreme Court’s directive to return control of educating students to those
2 elected and controlled by the community whose children attend these schools.

3 The test espoused by the Court of Appeals would condemn a school district,
4 once governed by a board which intentionally discriminated, to judicial
5 tutelage for the indefinite future. Neither the principles governing the entry
6 and dissolution of injunctive decrees, nor the commands of the Equal
7 Protection Clause of the Fourteenth Amendment, require any such Draconian
8 result.

9 *Dowell*, 498 U.S. at 249; see also *Riddick by Riddick v. Sch. Bd. of City of Norfolk*, 627
10 F. Supp. 814, 825 (E.D. Va. 1984), *aff’d*, 784 F.2d 521 (4th Cir. 1986) (“Plaintiffs’
11 criticisms, made with the clear vision of hindsight, amount to no more than a claim that
12 the Board failed to meet a standard of near-perfection in its decision-making process. In
13 short, plaintiffs’ criticisms of the Board’s procedures do not, considered separately or in
14 combination, lead to the conclusion or even amount to a suggestion that the Board was in
15 fact acting with an intent to discriminate on the basis of race.”).

16 Again, as the Supreme Court instructed in *Swann*:

17 It would not serve the important objective of Brown I to seek to use school
18 desegregation cases for purposes beyond their scope, although desegregation
19 of schools ultimately will have impact on other forms of discrimination. . . .
20 Our objective in dealing with the issues presented by these cases is to see that
21 school authorities exclude no pupil of a racial minority from any school,
22 directly or indirectly, on account of race; it does not and cannot embrace all
23 the problems of racial prejudice, even when those problems contribute to
24 disproportionate racial concentrations in some schools.

25 402 U.S. at 22-23.

26 The District’s overall effort to comply with the Unitary Status Plan and related
27 orders makes plain that it will not revert to a system of *de jure* segregation when it is
28 declared unitary. Moreover, as shown below, the District’s significant efforts and good
29 faith compliance have resulted in remarkable progress that have kept the District on the
30 leading edge of equity and inclusion over the last 70 years.

1 Here, we are not considering the actions of a school board that, after and in spite
2 of a ruling from the United States Supreme Court requiring it to desegregate its schools
3 (*Brown I*), instead intentionally and unapologetically retained a segregated system
4 separating African American students from all other students, and only began to dismantle
5 that system when compelled by additional court orders. To the contrary, after persuading
6 the State legislature to permit desegregation, this school system desegregated on its own,
7 70 years ago, *before Brown I*. We are now considering the actions of a school board where
8 not a single member was even alive during the time the District operated a state-mandated
9 *de jure* segregated system, and where its current members inherited a system that
10 eliminated all vestiges of segregation more than 30 years ago.¹⁰

11 In the order dated September 6, 2018 (ECF 2123), this Court determined that the
12 District was in unitary status on many areas of its operations. The Court excepted specific
13 delineated areas, for which the Court specified the remaining steps needed for unitary
14 status. [ECF 2123, pp. 149-51.]

15 The District complied in good faith with the actions specifically ordered by the
16 Court, and it filed notices (including supplemental notices, objections, and responses
17 related to notices) detailing that good faith compliance.¹¹ Based on these notices and the
18 compliance addressed therein, as well as the additional evidence discussed below
19 addressing the specific areas in which this Court has not yet declared the District to be
20 unitary, the District is entitled to a declaration of complete unitary status, dissolution of
21 the injunction, and a return of the District to local control.

22
23
24 ¹⁰ A student who started kindergarten in 1950, the last year the District had segregated
schools, would now be 75 years old.

25 ¹¹ A table of the District's submissions in response to the Court's partial unitary status
plan is attached as Exhibit A.

1 1. **USP § II.E (3-Year Plus Integration Plan: Comprehensive**
2 **Magnet Plan, and Outreach and Recruitment Addendum).**

3 Section II of the USP requires that students of all racial and ethnic backgrounds
4 have the opportunity to attend an integrated school. [ECF 1713, p. 8.] Section II’s
5 requirements related generally to the *Green* factor of student assignment, although they
6 extend far beyond the requirements normally associated with that *Green* factor.

7 The Court recognized that the District was operating in unitary status with respect
8 to the entirety of § II of the USP (Student Assignment), except in regards to magnet
9 schools. [ECF 2123, pp. 15-34, 149.] In specifying the additional steps the District needed
10 to take to receive a declaration of full unitary status in § II, the Court directed the District
11 to develop and file a 3-Year Plus Integration Plan — including individual school non-
12 magnet integration plans, if any practicable, and an Outreach and Recruitment Addendum
13 — by September 1, 2019. [ECF 2123, pp. 19-34, 149.]

14 The District developed and filed that 3-Year Plus Integration Plan, which included
15 a Magnet Study, a Comprehensive Magnet Plan, Academic Improvement and Integration
16 Plans, and a Transportation Plan. [ECF 2270-1-4.] The District also prepared and filed an
17 Outreach and Recruitment Addendum for both the Magnet Program and the Advanced
18 Learning Experiences Program. [ECF 2270-5.] The Court has not yet ruled on the
19 sufficiency of these completion steps, but the District will comply with any orders issued
20 by the Court while this Petition is under consideration.

21 The record before this Court evidences the District’s commitment and capacity to
22 engage in a process of continuous improvement and integration with respect to both its
23 magnet and non-magnet schools. In fact, the District submits that it has gone beyond what
24 is required of it under *Green*.

1 The District has made notable progress in its efforts to improve integration and
2 diversity, despite several significant limitations regarding its ability to achieve desired
3 integration and diversity goals. First, state law mandates open enrollment, both: (a) across
4 District lines to other school districts, and (b) across attendance boundaries within a
5 District, subject only to certain limitations. *See* A.R.S. § 15-861.01. The close proximity
6 of other school districts with substantially different demographics serves as a significant
7 limiting factor on the effectiveness of any student assignment policies that are not popular
8 with District families.

9 Second, for more than 20 years, state law has authorized tuition-free charter
10 schools, funded by state tax dollars, within the geographic area of the District. *See* A.R.S.
11 § 15-181 *et seq.* Growth in charter schools within the District has been explosive. Again,
12 the presence of geographically close, free alternatives to District schools sharply limits
13 the ability of the District to impose student assignment policies that are unpopular with
14 parents or children.

15 Third, residential patterns across the District are highly racially concentrated
16 within particular geographic areas. The natural desire of families to enroll children in
17 schools close to home, combined with the significant cross-town traffic congestion,
18 creates strong forces, outside the District's control, toward racial concentration in many
19 District schools.

20 Fourth, and to a large degree because of the first two factors, District enrollment
21 has steadily and significantly declined over the last several years, from 48,956 students
22 in SY2013-14 to 43,875 in SY2019-20, a drop of more than 10 percent in those years
23 alone. Despite this decline, the relative percentages of the principal racial and ethnic
24 groups has remained fairly steady over the past six years: African American students
25

1 comprise 9-10 percent of the total student population, Hispanic students approximately
2 61 percent, and White students approximately 20-21 percent.

3 Finally, because the Court found a decade ago that any vestiges of any intentional
4 discrimination in the District already had been eliminated, there exists no current
5 compelling state need providing constitutional justification for remedial student
6 assignment policies based primarily on race. As a result, any student assignment policies
7 designed to increase integration and diversity must independently pass constitutional
8 muster without reference to, or reliance on, any past discrimination or ongoing Court
9 supervision.

10 The District has successfully utilized its 13 magnet schools and programs to
11 improve integration. In SY2014-15, 20 percent of magnet schools were integrated (4 of
12 19); by SY2019-20, 92 percent were integrated (12 of 13). As a result, more than 5,000
13 additional students now attend integrated magnet schools – including new magnet
14 programs at Tully ES and Mansfeld MS. Approximately half of all magnet schools (6)
15 are A or B schools as ranked by the State of Arizona, six are C schools, and only one is a
16 D school. The goal for all magnet schools is to earn an A or B school letter grade. As
17 TUSD has had success integrating magnet schools, it has recently focused more attention
18 on academic plans to improve achievement at C and D magnet schools. The results of
19 these efforts are best exemplified by the turnaround of Holladay ES from a D school in
20 SY2017-18 to a B school in SY2018-19. TUSD’s magnet schools earn national
21 recognition — in SY2018-19 TUSD was the only Arizona school district to receive
22 awards from Magnet Schools of America (including Davis ES and Mansfeld MS, each of
23 which received the Merit Award of Excellence — the highest award given.)

24
25

1 These outcomes in integration and academic achievement stem from a systematic,
2 coordinated, and institutionalized magnet program that receives substantial central and
3 site-based support. Magnet schools and programs, including magnet transportation,
4 account for approximately 20 percent of all 910(G) expenditures.

5 A comprehensive magnet plan (CMP) guides central oversight of magnet schools,
6 and each magnet school is itself guided by an individual magnet school plan (MSP). The
7 CMP and MSPs focus on the two magnet pillars: integration and academic achievement.
8 The District has institutionalized magnet schools and programs in the districtwide CMP
9 and site-based MSPs, but also in its Governing Board policy JFB (Open Enrollment and
10 School Choice) and supporting regulation JFB-R1 – R4, JFB-E1 (Open
11 Enrollment/Magnet Application), and JFB-E2 (TUSD Pipeline Magnet Schools).

12 To implement successful magnet schools and programs, the District operates a
13 Magnet Department, led by a Director and supported by central staff, along with site-
14 based magnet coordinators at each of the 13 magnet schools. The District’s chief
15 academic officer, the assistant superintendent of curriculum and instruction, supervises
16 the magnet department and magnet Director. The Magnet Department, magnet schools,
17 and other supporting departments all work together to develop integration and academic
18 achievement strategies, to monitor CMP and MSP implementation, to evaluate plan and
19 strategy effectiveness, and to revise and adjust plans, resources, goals, and outcomes on
20 a regular and continuous basis.

21 These efforts are further supported by the multi-departmental Coordinated Student
22 Assignment (CSA) Committee (members provide technical assistance in applicable areas
23 — magnet, transportation, language acquisition, two-way dual language, ALE, etc.).
24 [ECF 2270, pp. 5; ECF 2075-3, p. 6.] The District further supports magnets through the
25

1 following central support mechanisms: regional assistant superintendents (educational
2 support and liaison with schools), curriculum and instruction (educational strategy,
3 programming, professional learning, PLCs), assessment and evaluation (data analyses
4 and programmatic support), communications (marketing, outreach, and recruitment),
5 human resources (staffing, teacher recruitment, magnet job fairs), transportation (magnet
6 busing, late activity buses), finance (budget development, staffing, ongoing monitoring),
7 technology services (technology and technology learning support), student relations
8 (student behavior and discipline), facilities (building repairs and renovations),
9 deseg/equity (monitoring, compliance, budget development), grants and federal
10 programs/Title I (collaborative academic plan and budget development), planning
11 services (enrollment projections, school and classroom space analyses), and the
12 Superintendent who meets regularly with magnet, academic, and regional leadership to
13 develop overall strategy and align magnet effort with districtwide initiatives and goals.
14 [ECF 2384-1, p. 14; ECF 2270-2; ECF 2075-2, pp. 48-68.]

15 A key element of the magnet program is the free transportation the District
16 provides to approximately 4,000 students each year to improve integration at magnet
17 schools and to reduce racial concentration. [ECF 2075-3, pp. 7-8.] Close to 70 percent of
18 all students eligible for magnet transportation utilize it to overcome geography and
19 distance to attend an integrated magnet school outside of their immediate neighborhood.
20 [ECF 2384, p. 14; ECF 1686, pp. 68-69; AR 13-14, Apps. III-1, III-3, ECF 1689-9, pp. 1,
21 4-10; ECF 1918-1, pp. 70-71; AR 15-16, ECF 1958-1, pp. 87-90; AR 16-17, ECF 2057-
22 1, p. 107.].]

23 The Transportation Department has primary responsibility for implementing
24 magnet transportation. The department, led by the Director of Transportation, is overseen
25

1 directly by the chief operations officer. In addition to transportation and operations, the
2 multi-departmental CSA Committee supports magnet transportation through impact
3 analyses and strategic planning. [ECF 2075-3, p. 6.] Magnet transportation is also
4 supported by the School Community Services, Communications, and Family and
5 Community Engagement Departments, to promote magnet transportation to families. The
6 District has institutionalized magnet transportation as reflected in Governing Board
7 policy regulation JFB-R2 (School Choice: Applications, Continuance and
8 Transportation). [ECF 2075-3, pp. 5-6.]

9 The District plans, designs, and executes magnet-specific marketing and
10 recruitment campaigns each year to promote further integration at its 13 magnet schools.
11 [ECF 2075-2, pp. 76-77.] Through these campaigns, the District maintains an active
12 presence in the community by participating in events, seminars, conferences, festivals,
13 and community celebrations to educate families on school choice. [See, e.g., ECF 2270-
14 3, pp. 7, 10, 13, 17, 21, 25, 29, 34, 42, 46, 59, 65, 69, 75.] The District is selective in
15 targeting recruitment and marketing efforts to attract the ethnicity and age of students that
16 each school needs to attain a more integrated student body. [ECF 2270-5, pp. 39-50.]
17 Magnet schools also conduct site-specific recruitment, including school tours to potential
18 families and magnet information nights for prospective students and parents. [See, e.g.,
19 ECF 2270-3, pp. 7, 10, 13, 17, 21, 25, 29, 34, 42, 46, 59, 65, 69, 75.] Integration is further
20 supported by the lottery for oversubscribed magnet schools, magnet transportation, and
21 annual reviews of integration efforts that lead to revisions in MSP integration strategies.
22 [ECF 2075-2, pp. 16-17, 23-29, 42-47.]

23 The magnet department collaborates closely with the family and community
24 outreach, communications and media relations, transportation, SCS, and student services
25

1 departments to recruit students at Family Resource Centers and local events. [ECF 2075-
2 2, pp. 76-78; ECF 2270-5, pp. 39-50.] The magnet department also works with the
3 technology services department for lottery placement, the transportation department for
4 magnet and express busing, and the facilities department to ensure magnet campuses are
5 physically attractive to prospective parents. [ECF 2075-2, pp. 78-79.]

6 The District utilizes several cross-departmental strategies to support academic
7 achievement at magnet schools including but not limited to: following a continuous
8 school improvement cycle; closely monitoring benchmark assessments and adjusting
9 strategies according to identified need; and providing varying levels of professional
10 development to improve staff capabilities, skills, and impact on student achievement.
11 [ECF 2270-2.] The District provides professional learning support for magnet teachers in
12 three critical areas: using effective teacher observation-reflection cycles, designing and
13 implementing quality and effective Tier 1 instruction, and creating and implementing
14 PLCs. [ECF 2270-2, p. 12.] Each magnet school follows a detailed magnet school plan
15 that includes academic goals, strategies, budgets, and human and programmatic resource
16 allocations that are monitored throughout the year. [ECF 2270-2, p. 7.] School and magnet
17 leadership conduct frequent walkthroughs and observations to ensure fidelity to MSPs, to
18 identify and correct deficiencies, and to support magnet leadership and staff. [*Id.*]

19 Full compliance with USP requirements for magnet schools is addressed in the
20 record at the following specific locations, incorporated herein by reference: ECF 2057-1,
21 pp. 43-79 and appendices cited therein; ECF 2124-1, pp. 17-34 and appendices cited
22 therein; ECF 2075-2 and documents cited therein.

23
24
25

1 The District respectfully submits that it has complied in good faith with the USP
2 and all subsequent orders and is entitled to recognition of its unitary status in this area of
3 operations.

4 **2. USP § IV.A, F.1, I.3 (Teacher and Administrator Diversity and**
5 **Grow Your Own Programs).**

6 Section IV of the USP requires the District to seek to enhance the racial and ethnic
7 diversity of its administrators and certified staff through its practices and procedures for
8 recruitment, hiring assignment, promotion pay, demotion, and dismissal. [ECF 1713,
9 p. 15.] The District applied for unitary status in this area previously. [ECF 2075-4.]

10 The Court granted unitary status to § IV, Administrative and Certified Staff, in its
11 entirety except for §§ IV.A, F.1, I.3 (and IV.E, discussed further below). In specifying
12 what additional efforts the District needed to undertake for full unitary status in § IV, the
13 Court directed the District to file a notice and report of compliance containing a 2018-19
14 Teacher Diversity Plan (TDP), addressing topics including the attrition and Grow Your
15 Own (GYO) programs. [ECF 2123 at 38-42, 149.]. The District filed a Notice and Report
16 of Compliance: Teacher Diversity Plan, Attrition, and GYO Program Studies as ordered.
17 [2159]. In each of these reports, the District carefully tracked the Court’s order, to ensure
18 that the District complied with every remaining requirement for unitary status.

19 The Special Master recommended unitary status in the area of attrition. [ECF 2203,
20 p. 5]. The Court recognized that the “District is monitoring attrition rates which are less
21 than the national and state averages, generally: TUSD (12.7%); Arizona (24%); and
22 national (16-17%). The Hispanic and African American teacher attrition rates in TUSD
23 are substantially lower than the national average for minority teachers.” [ECF 2217, p.
24 14.]
25

1 In a subsequent order, the Court directed the District to identify a central leader to
2 find and recruit District teachers for transfer and to find and recruit African American and
3 Hispanic teachers in the District to enroll in GYO programs. [ECF 2217, pp. 8-14.]
4 Accordingly, the District filed a Supplemental Notice and Report of Compliance in
5 accordance with the terms of that order. [ECF 2221.] In a later order, the Court directed
6 the District to revise the TDP and GYO programs in a number of new and additional
7 ways, including incorporating administrators into the TDP (now renamed the Teacher and
8 Administrator Diversity Plan (TADP)). [ECF 2273, pp. 13-17] The District filed a Second
9 Supplemental Notice and Report of Compliance in accordance with the Court's latest
10 directives. [ECF 2329.]

11 As noted in each of these filings, the District has complied in good faith with the
12 USP and all subsequent Court orders regarding the TADP, attrition, and GYO programs.

13 As addressed more thoroughly in Section 2, above, the District employs African
14 American and Hispanic teachers at higher rates than would be expected — despite
15 substantial setbacks — and has drastically reduced its teacher vacancy levels. The District
16 has made steady progress in increasing teacher and administrator diversity within schools.

17 Following an organized plan, the District uses a variety of methods to attract a
18 racially and ethnically diverse workforce, including advertising vacancies in targeted
19 publications, offering recruitment incentives, and encouraging employees to pursue
20 certification. The District recently reported on its procedures for recruiting African
21 American professional staff. [ECF 2289-1.] The District continues to offer \$5,000
22 stipends for dual language teachers, teacher diversity, and Hard-to-Fill and Exceptional
23 Education positions. The District continuously evaluates the effectiveness of its efforts
24 and develops additional strategies to better identify candidates for the recruitment
25

1 incentives, including improved marketing, an online teacher survey to identify teachers
2 interested in transferring between schools, and direct personal outreach to potential
3 candidates and site administrators about recruitment incentives and transfer opportunities.
4 The District's Recruitment and Retention Advisory Committee communicates with
5 internal staff and the community to obtain feedback and ideas for recruiting and retaining
6 educators.

7 The District offers a number of GYO programs to encourage, incent, and support
8 individuals in becoming teachers at the District. GYO programs may be adopted to
9 respond generally to teacher shortages, generate particular types of teachers (e.g., math,
10 bilingual, or exceptional education teachers), encourage teachers of particular
11 underrepresented race/ethnicity, or target particular nascent teacher populations.

12 The Director for Talent Acquisition, Recruitment and Retention is responsible for
13 targeted recruitment of Hispanic and African American staff for participation in the
14 District's GYO programs, to develop teachers of color (TOC) and administrators of color
15 (AOC). The District classes these programs as either AOC or TOC programs, because of
16 the intensive recruiting effort for these programs directed to African American and
17 Hispanic candidates. At least once each semester thereafter, the Director will invite
18 Hispanic and African American staff identified as having the minimum requirements for
19 a specific program (such as a bachelor's degree for the Make The Move programs) to
20 apply for that GYO program.

21 The District respectfully submits that it has complied with the USP and the Court's
22 orders and requests that the Court recognize that the District is operating in unitary status
23 in this area of District operations.

24
25

3. **USP § IV.E (Beginning Teachers).**

1 Section IV.E.5 of the USP requires that the District “increase the number of
2 experienced teachers and reduce the number of beginning teachers hired to teach in
3 racially concentrated schools or schools in which students are ‘underachieving
4 academically.’” [ECF 1713, p. 19.]

5 In identifying the limited actions the District needed to take to receive a declaration
6 of unitary status for § IV.E, the Court directed the District to prepare and file a notice and
7 report of compliance with its directives to centralize the hiring process and create a
8 certification form to be completed whenever placing beginning teachers at racially
9 concentrated or under-achieving schools. [ECF 2123, pp. 42-45, 150.] The District filed
10 a notice and report of compliance on the centralized hiring process and a certification
11 form for placing new teachers at certain schools in accordance with the Court’s directives.
12 [ECF 2155.]

13 The Court approved the District’s centralized process for hiring teachers, except
14 its omission of the certification criteria, including mitigating strategies, which the
15 Superintendent applies when determining when to certify placing a beginning teacher at
16 an underperforming and racially concentrated school. [ECF 2217, p. 7.] The Court
17 directed the District to identify the strategies aimed at placing beginning teachers in hard-
18 to-teach schools, such as “reduced class size, reduction in the number of classes taught,
19 limiting the number of beginning teachers at any given school, and having classes co-
20 taught.” [ECF 2217, p. 7.] The District filed a supplemental notice and report complying
21 with the Court’s directives by amending the certification form and identifying support
22 strategies for beginning teachers in hard-to-teach schools. [ECF 2222.]

23 In a subsequent order, the Court directed the District to further amend the
24 certification criteria and to add further support strategies for beginning teachers. [ECF
25

1 2273, pp. 4-5, 8-9.] The District then filed a Second Supplemental Notice and Report, in
2 strict compliance with the Court's order, with another amended certification form and
3 further identifying the support strategies for beginning teachers.

4 As noted in each of these filings, the District has complied in good faith with the
5 USP and all subsequent Court orders regarding the placement of and support provided to
6 beginning teachers in the District.

7 Except in a relatively narrow exception,¹² the District does not permit a first-year
8 teacher to be hired for a teaching vacancy at any underperforming or racially concentrated
9 school. Whenever a first-year teacher is hired for such a position, the District provides
10 both developmental and sheltering support for the first-year teacher to mitigate the impact
11 of first year teaching in an underperforming or racially concentrated school. The District
12 uses a certification form to document: (a) that the conditions permitting the hiring of a
13 first-year teacher at an underperforming or racially concentrated school exist, and (b) the
14 specific sheltering strategies provided to that first-year teacher to mitigate the impact of
15 inexperienced teachers at these schools.

16 Over the past five years, first-year teachers have amounted to less than 5 percent
17 of the total teaching force of the District, reflecting the lower than average attrition rates
18 experienced by the District and the success of its efforts to recruit and hire more
19 experienced teachers for all open positions.

20 Although the Court has not yet ruled on these most recent filings, the District
21 believes they meet the requirements of the Court's orders. The District will comply with
22 any new orders issued by the Court in this area. The District has complied in good faith
23

24 _____
25 ¹² The District will only place a first-year teacher at one of these schools if there are no
other more experienced applicants for the vacant position.

1 with the USP and the Court's orders. It requests that the Court find that the District is
2 operating in unitary status in this area of District operations.

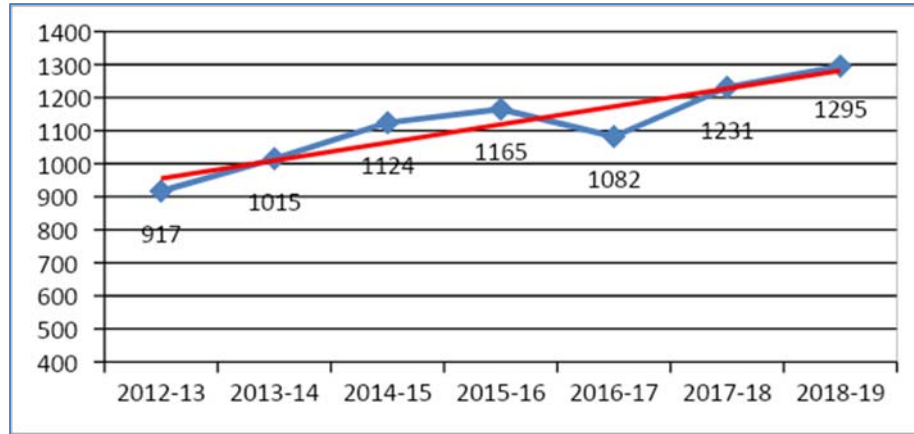
3 **4. USP § V.A (Access to and Support in Advanced Learning**
4 **Experiences).**

5 The Court directed the District to prepare and file an ALE Policy Manual meeting
6 the requirements set out in its September 6, 2018 Order. [ECF 2123, pp. 45-98, 150.] The
7 District prepared and filed the ALE Policy Manual, the ALE Progress Report, and the
8 operating plan for the District's ALE Department. [ECF 2267.] As detailed in these
9 documents, as well as in the District's annual reports, the District has complied in good
10 faith with the USP and related Court orders. And, as noted above, because quality of
11 education is not a *Green* factor, the plaintiffs have the burden of demonstrating that any
12 alleged disparities are traceable as vestiges of the District's prior *de jure* segregation, and
13 that the District has not eliminated any such vestiges to the extent practicable.

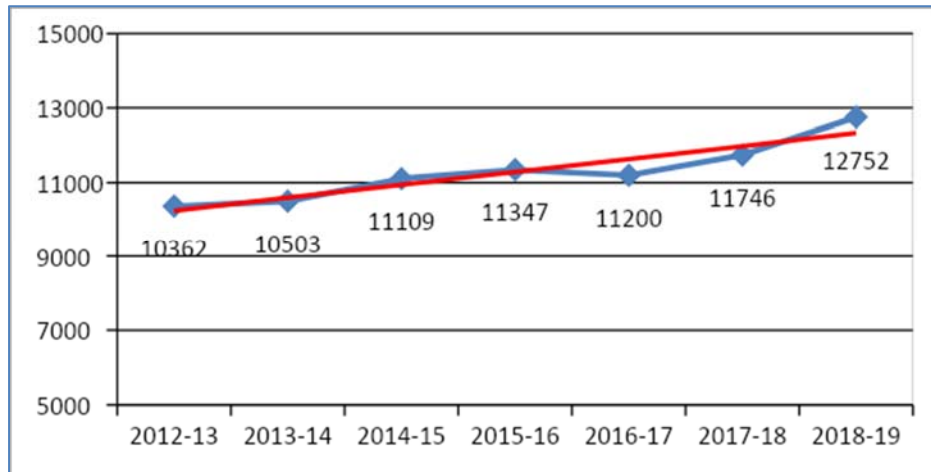
14 Additionally, as detailed throughout the filings submitted in compliance with the
15 Court's directives in this area, important measures of academic achievement — such as
16 graduation rates, dropout rates, and access to, participation in, and completion of
17 advanced learning experiences — continue to improve, due to the District's commitment
18 to equitable access to these programs. [ECF 2267-2, pp. 5-22, 34-45, 48-56, and 59-63.]
19 More African American and Hispanic students are participating in advanced learning
20 experiences than ever before, despite declining enrollment.

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

Number of African American Students Participating in ALEs with Trend Line



Number of Hispanic Students Participating in ALEs with Trend Line



One of the biggest and most impressive areas of growth has been an increase in the number of African American and Hispanic students participating in GATE classes, increasing from 301 African American students and 1,372 Hispanic students in 2016-17 to 523 African American students and 1,760 Hispanic students in 2018-19 — a 74-percent increase in African American GATE participation and a 28-percent increase in Hispanic GATE participation.

GATE Service	School year	W	AA	H	Total
Self-contained	1617	463	51	535	1,160
Self-contained	1718	483	73	531	1,204
Self-contained	1819	481	86	585	1,268
Pullout	1617	493	86	832	1,559
Pullout	1718	438	81	793	1,463
Pullout	1819	461	70	729	1,409
Resource	1617	330	91	660	1,175
Resource	1718	313	86	625	1,110
Resource	1819	399	118	807	1,443
Cluster	1617	69	20	61	160
Cluster	1718	230	156	780	1,276
Cluster	1819	370	199	906	1,631
Open access	1617	17	53	190	290
Open access	1718	32	56	206	327
Open access	1819	34	40	189	291
Pre-kinder	1617	0	0	0	0
Pre-kinder	1718	0	0	0	0
Pre-kinder	1819	14	9	32	60
ALL	1617	1,372	301	2,278	4,344
ALL	1718	1,496	452	2,935	5,380
ALL	1819	1,760	523	3,249	6,102

Relatedly, academic achievement gaps in the District continue to decrease, and they remain lower than the gaps at the state level and in comparable school districts, as shown in the charts below:

Racial disparity in passage rates for ELA on assessment tests^{13*}		
	Difference in percentage points	
District	White/African American Gap	White/Hispanic Gap
Arizona (statewide)	26	24
Chandler Unified #80	24	25
Gilbert Unified	29	18
Mesa Unified	30	28
Paradise Valley Unified	27	28
Peoria Unified School	15	17
Deer Valley Unified	26	18
Tucson Unified	24	18

Racial disparity in passage rates for mathematics on assessment tests¹⁴		
	Difference in percentage points	
District	White/African American Gap	White/Hispanic Gap
Arizona (statewide)	29	24
Chandler Unified #80	31	27
Gilbert Unified	29	19
Mesa Unified	36	30
Paradise Valley Unified	29	26
Peoria Unified School	26	18
Deer Valley Unified	30	19
Tucson Unified	25	19

Another area that exemplifies the District's success in integrating its African American and Hispanic students is University High School ("UHS"). In addition to being ranked as a top college prep school by the U.S. News and World Report, UHS is one of the most diverse exam schools in the nation.

¹³ Combined data from Fall 2018 and Spring 2019 administrations of AzMerit, Multi-State Alternative Assessment, ACT, and SAT. Arizona Dep't of Ed., AzMerit, MSAA, ACT, and SAT 2019, available at <https://www.azed.gov/accountability-research/data/> (last accessed Nov. 26, 2019).

¹⁴ Combined data from Fall 2018 and Spring 2019 administrations of AzMerit, Multi-State Alternative Assessment, ACT, and SAT. Arizona Dep't of Ed., AzMerit, MSAA, ACT, and SAT 2019, available at <https://www.azed.gov/accountability-research/data/> (last accessed Nov. 26, 2019).

1 Demographic student data from seven of the highest-rated exam schools in the
 2 country, as compared to UHS, shows the strong diversity of the UHS population when
 3 compared to other similar schools.

Student Demographic Data: SY 2019-20						
School¹⁵	White	African Am.	Hispanic	Asian	Multi-Racial	Other
Thomas Jefferson	21%	2%	2%	70%		
Dallas Talented and Gifted	37%	8%	38%	13%	3%	
Brooklyn Latin	13%	12%	12%	54%		8%
Brooklyn Tech	22%	7%	7%	61%	2%	1%
Stuyvesant	19%	1%	3%	74%	4%	
Boston Latin	47%	8%	12%	30%	3%	
Bergen Academies	38%	3%	8%	51%		1%

UHS Student Demographic Data: 2017 - 2020					
School Year	White	African Am.	Hispanic	Asian	Multi-Racial
2017-18	46%	3%	35%	11%	5%
2018-19	44%	3%	35%	7%	4%
2019-20	45%	4%	34%	12%	5%

9
 10
 11
 12 The data above shows that, averaged over three school years, approximately 55
 13 percent of UHS students are non-white. Two groups, Hispanic and White, are each over
 14 25 percent, leading to a designation of a highly diverse school in TUSD. Four percent of
 15 the population within District boundaries is African American,¹⁶ so that the UHS student
 16 population matches that demographic. Enrollment data for this school year shows that the
 17 number of African American students at UHS is at its highest ever, with an increase of
 18 13 students for the 2019-20 school year.

19
 20
 21 ¹⁵ Thomas Jefferson High School for Science and Technology, Fairfax County Public
 22 Schools, Fairfax, VA; School for the Talented and Gifted, Dallas School District, Dallas,
 23 TX; The Brooklyn Latin School, NYC Geographic District #14 School District, Brooklyn
 24 NY; Brooklyn Technical High School, NYC Geographic District #13 School District,
 25 Brooklyn, NY; Stuyvesant High School, NYC Geographic District #2 School District,
 NYC; Boston Latin School, Boston Public School, Boston, MA; Bergen County
 Academies, Bergen County Vocational Technical School District, Hackensack, NJ.

¹⁶ *ACS-ED District Demographic Dashboard 2013-17, Tucson Unified District, AZ*,
 NAT'L CTR. FOR EDUC. STATISTICS, [https://nces.ed.gov/Programs/Edge/
 ACSDashboard/0408800](https://nces.ed.gov/Programs/Edge/ACSDashboard/0408800) (last accessed Dec. 29, 2019).

1 Forty percent of the population within District boundaries is Hispanic,¹⁷ and thus
 2 the UHS student population is within 6 percent of that demographic, and it is also at its
 3 highest number ever, with an increase of 16 students for the 2019-20 school year. The
 4 other exam-based school districts listed below show, overall, far larger discrepancies
 5 between their area and student population.¹⁸

SY 2019-20 School Student Demographic Data and Area Demographic Data				
Race/Ethnicity	African American		Hispanic	
SCHOOL	Population % in Area	Population % in School	Population % in Area	Population % in School
Thomas Jefferson	11%	2%	16%	2%
Dallas Talented and Gifted	23%	8%	46%	38%
Brooklyn Latin	24%	12%	29%	12%
Brooklyn Tech	24%	7%	29%	7%
Stuyvesant	24%	1%	29%	3%
Boston Latin	23%	8%	19%	13%
Bergen Academies	25%	3%	38%	8%
University High School	4%	4%	40%	34%

13 UHS has been able to form this diverse student population because of its vigorous
 14 implementation of various strategies for access, recruitment and support of potential and
 15 current students. Those strategies are constantly reviewed, monitored, evaluated, and
 16 expanded to further increase the diversity of the school (more completely described in the
 17 ALE Policy Manual, ECF 2267-1, pp. 29-32).

18 In his recent Report and Recommendation regarding the ALE Policy Manual, the
 19 Special Master recommended that once the District implemented five specific additional
 20 policies, the Court should grant unitary status for the portion of the USP addressing
 21 Advanced Learning Experiences. [ECF 2376, p. 9.]

23 ¹⁷ ACS-ED District Demographic Dashboard 2013-17, Tucson Unified District, AZ,
 24 NAT'L CTR. FOR EDUC. STATISTICS, [https://nces.ed.gov/Programs/Edge/
 ACSDashboard/0408800](https://nces.ed.gov/Programs/Edge/ACSDashboard/0408800) (last accessed Dec. 29, 2019).

25 ¹⁸ All demographic data is from the US Census Bureau and National Center for Education
 Statistics. School enrollment verified by direct contact with each school.

1 The Special Master recommended that the District: (1) make dual credit classes
2 more available throughout the District's high schools, (2) increase the number of AP
3 classes at Santa Rita; (3) pilot an opt-out self-contained GATE program at one or two
4 schools; (4) not limit its policies and practices relating to attrition from ALE to African
5 American students; and (5) include all ALE policies and practices in the ALE policy
6 manual, even if it means they appear in more than one type of document.¹⁹

7 The District has now made dual credit classes available at all District high schools,
8 and the number of those classes continues to increase. [ECF 2267-2, pp. 58-60.]
9 Additionally, the District has initiated expansion of its dual credit courses for the 2020-
10 21 school year by implementing new courses that combine advanced placement and dual
11 credit curriculums. With this model, students can receive college credit by earning a C or
12 better in the course; they can also, if they choose, take the AP exam and possibly earn
13 additional college credits. This model will be piloted by offering two courses (AP
14 Calculus AB / Math 220 [Calculus I] and AP European History / History 102 [Intro to
15 Western Civilization II]). These courses will be offered at Pueblo and Tucson High.
16 Additionally, the district is working on an Early College opportunity for senior students,
17 beginning in the 2020-21 school year, to take courses at Pima Community College, for
18 which they would receive dual credit. Finally, the ALE Department is working with
19 various high schools regarding increased dual credit options on their campuses, including

20
21
22 ¹⁹ The Special Master also recommended that the District be able to utilize a tutoring
23 model using uncertified tutors who work under the supervision of a more highly paid
24 District teacher. As noted in the District's Progress Report on Advanced Learning
25 Experiences, the District now requires that all tutors in the District's formal tutoring
programs be certified teachers. [ECF 2267-2, p. 88.] The District is also willing to adopt
the tutoring model proposed by the Special Master, and it has initiated evaluating the
different components of this plan and the steps necessary to implement this model for the
2020-21 school year.

1 UHS (two courses), Palo Verde (one course), Tucson High (one course), Sahuaro (one
2 course), Rincon (one course), Pueblo (two courses), and Cholla (one course).

3 Additionally, the District increased its AP offerings at Santa Rita in both 2017-18
4 and 2018-19, it is working with the ALE Department to increase its offerings for the 2020-
5 2021 school year, and it will continue to strive to provide appropriate AP opportunities.

6 [ECF 2267-2, pp. 32-33.]

7 As recommended, the District will pilot an opt-out self-contained GATE program
8 at two schools during SY 2020-21. The District will pilot an opt-out program for all self-
9 contained qualifying GATE students at White Elementary School and Pistor Middle
10 School for the 2020-21 school year. Students who are already enrolled at these two
11 schools will automatically be placed in the GATE self-contained classroom at their site.
12 This pilot will apply only to students who are already attending the site, per the Special
13 Master's recommendation. These students will receive placement statement information
14 when they enroll and will be given an opportunity to opt-out through a mailer. Families
15 will be invited to talk with parents and students from the gifted program at the school in
16 which the student is enrolled.

17 The District does not limit its policies and practices relating to attrition from ALE
18 to African American students. Rather, it makes those effective policies and practices
19 available to all students.

20 Finally, the District has included all of its ALE policies and practices in the ALE
21 Policy Manual that was filed on August 30, 2019, along with the ALE Operations Plan
22 and the Progress Report on Advanced Learning Experiences. [ECF 2267 – 2267-3.]

23 The District respectfully submits that it has complied in good faith with the Court's
24 orders and requirements, and that these documents, as well as the District's annual reports
25

1 addressing this area, incorporated herein by reference,²⁰ demonstrate that the District is
2 operating in unitary status in this area (USP § V.A.).

3 **5. USP § V.C (Dual Language Programs).**

4 The Court directed the District to prepare and file a plan for expanding its dual
5 language program, including the information specifically requested by the Court. [ECF
6 2123, pp. 98-101, 150.] The District prepared and filed the expansion plan on August 30,
7 2019. [ECF 2258-1.] On September 30, the Court asked the District to file a report from
8 its TWDL expert, Ms. Rosa Molina — an internationally recognized expert on TWDL
9 implementation — updating the status of her 2016 recommendations for action and
10 expansion, including any revisions based on the Court’s concerns expressed in its
11 September 30, 2019 Order. [ECF 2295, p. 3.]

12 The District filed its supplemental notice of compliance on December 20, 2019.
13 [ECF 2401.] As requested by the Court, Ms. Molina reviewed each of the District’s
14 TWDL schools, and she opined that the District has implemented these recommendations
15 to the extent practicable, addressing balanced classroom composition, post-2nd grade
16 screeners, academic achievement being assessed in both languages, and whether certified
17 bilingual teachers are teaching in every TWDL classroom. [ECF 2401-3.] The notice also
18 identifies all TWDL schools and whether they are a single or double strand, with or
19 without a non-TWDL strand and/or a whole school TWDL program. [ECF 2401-2.] Ms.
20 Molina’s report further addresses the “program isolation” issue raised by the Court,
21 supports the District’s approach in this regard, and clarifies the recommendation for
22 expansion.

23 _____
24 ²⁰ Annual report sections addressing this area: ECF 2057-1, pp. 176-223 and appendices
25 cited therein; ECF 2124-1, pp. 50-73 and appendices cited therein; and ECF 2092-1 and
documents cited therein.

1 The District has complied in good faith with the USP and all subsequent Court
2 orders. The District's TWDL program is exemplary in nurturing a vibrant K-12 learning
3 community in which students speak, read, and write in English and Spanish and
4 participate in multicultural studies and experiences as part of an education that prepares
5 them for global communities. The structure and elements of the TWDL program are set
6 out in detail in the District's TWDL Framework, developed in conjunction with Ms.
7 Molina, which appears in the record at ECF 2258-1, pp. 7-69.

8 Accordingly, the District respectfully requests that the Court declare it unitary for
9 section V.C. of the USP.

10 **6. USP § V.E.1.b.i (ELL Action Plan for Dropout Prevention).**

11 In specifying the limited actions the District needed to take to receive a declaration
12 of unitary status, the Court directed the District to prepare and file a notice and report of
13 compliance with its directive to prepare an ELL Action Plan for dropout prevention. [ECF
14 2123, pp. 140, 151.] The District prepared and implemented the ELL Action Plan, and it
15 submitted it to the Court on December 6, 2018. [ECF 2153.]

16 In a subsequent order, the Court directed the District to revise the plan to include
17 family engagement strategies and to identify the roles and responsibilities of the
18 departments involved in the plan. [ECF 2213, pp. 11-12.] Thereafter, the Court directed
19 the District to prepare and file a supplemental notice of compliance that considered
20 whether current goals for ELL graduation and dropout rates were sufficiently ambitious.
21 [ECF 2217, pp. 5; ECF 2273, pp. 3.] As directed, the District prepared and filed a
22 supplemental notice of compliance, explaining its regular review, monitoring, analysis
23 and adjustments of its ELL graduation and dropout goals. [ECF 2310.] The District also
24 identified the portions of its annual report where this information is regularly included
25

1 and attached a related appendix to the supplemental notice. [ECF 2130.]²¹ The District
2 has complied in good faith with the USP and all subsequent Court orders regarding the
3 ELL Action Plan for Graduation and Dropout Prevention.

4 Moreover, in the most recent data available from the Arizona Department of
5 Education, the District's African American and Hispanic ELLs had lower dropout rates
6 than African American and Hispanic non-ELL students, respectively. Further, the dropout
7 rate for ELL students in TUSD is far lower than the ELL dropout rate across Arizona.
8 Similarly, the graduation rate for ELLs in TUSD is far greater than the graduation rate for
9 ELLs across the state. Additionally, African American and Hispanic reclassified ELLs
10 (those who have become proficient in English such that they are no longer classified as
11 ELL students) graduate at higher rates than African American and Hispanic students
12 who were never ELLs. [ECF 2261-1, p. 2.]

13 All of these numbers are particularly impressive because those ELLs who are not
14 proficient in English have been required to participate in state-mandated 4-hour
15 Structured English Immersion, often leaving them insufficient time in a normal school
16 day to accumulate enough credit hours and take the necessary classes to graduate within
17 four years.

18 The District's Dropout Prevention and Graduation (DPG) Committee, which
19 includes representatives from the Language Acquisition, Student Support Services,
20 Curriculum and Instruction, and Dropout Prevention Departments, regularly monitors
21 plan implementation and progress, reviews annual goals, and adjusts goals and efforts as
22 needed based on data, goals, and related information. [ECF 2261-1, p. 4.] This committee

23
24 ²¹ Compliance with USP requirements for ELL students and dropout prevention is also in
25 the record in the following specific locations, incorporated herein by 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 has helped implement several support strategies targeted at serving ELL students and their
2 families, including ELL transportation, credit recovery priority, participation in AGAVE,
3 improved Tier I instruction, English Language Development classes, literature
4 intervention services, summer school, sheltered content classes, school site-based family
5 engagement, District informational events and family center events, events sponsored by
6 the Language Acquisition Department, and targeted outreach for families of struggling
7 ELL students. Information on these support services is provided at ECF 2261-1, pp. 4-8.

8 On November 18, 2019, the Court approved the District's ELL dropout goal. [ECF
9 2363, p. 4.] The District has complied in good faith with the USP and all subsequent Court
10 orders regarding the ELL Action Plan for dropout prevention and is entitled to an award
11 of unitary status in this area.

12 7. **USP § V.E.6 (Culturally Relevant Courses and Multicultural**
13 **Curriculum Plan).**

14 Section V.E.6 of the USP provides, in part, for the District to develop and
15 implement a multicultural curriculum and culturally relevant courses to increase
16 academic achievement and engagement among African American and Hispanic students.
17 The District previously moved for unitary status in this area. [ECF 2075-5.]

18 The Court directed the District to prepare and file a plan for culturally relevant
19 courses, a related professional learning plan, and a multicultural curriculum plan. [ECF
20 2123, pp. 140, 151.] The District prepared and filed such plans. [ECF 2259] The Court
21 has not yet granted unitary status in this area. The record demonstrates the District's good
22 faith compliance with the USP in this area.

23 Total enrollment in CRCs has grown from approximately 1,250 students in
24 SY2015-16 to more than 6,000 in SY2018-19. The CRPI Department has contributed to
25 the development of an extremely successful comprehensive CRC Plan to expand the

1 availability of CRCs and culturally relevant pedagogy. Pursuant to the CRC Plan, the
2 District offers CRCs to elementary, middle, and high school students, and CRC teachers
3 continue to develop and revise CRC curriculum and review and revise curriculum maps.
4 The District has also recently expanded CRC offerings to include the first-of-its-kind AP
5 CRC offered at University High School. Working with the College Board and the ALE
6 Department, the CRPI Department and University High School created an AP Language
7 and Composition course focused on “The American Experience,” which is taught from
8 the Mexican American and African American experience. [ECF 2298-1, pp. 88-89.] All
9 UHS juniors take this course, as it is the required ELA course for this grade level.

10 Additionally, as part of the Culturally Responsive Professional Development Plan,
11 all site teachers, including CRC teachers and non-CRC teachers, receive training sessions
12 specifically focusing on content implementation of culturally responsive practices. The
13 CRPI Department also works with school sites in using a teacher mentorship model,
14 whereby experienced classroom teachers who demonstrate a high level of expertise in
15 culturally responsive practices and culturally relevant curriculum work with first- and
16 second-year CRC teachers.

17 The CRPI Department also works directly with schools to provide administrator
18 professional development whereby administrators, instructional support staff, and
19 certificated faculty receive training on culturally responsive pedagogy, including asset vs.
20 deficit thinking/theory in education, bias identification and reduction, the impact of
21 teacher expectations on students, and microaggressions in the learning environment.

22 As detailed in the Overview of Culturally Relevant Curriculum and Instruction,
23 the CRPI Department collaborates with several other District departments in primary and
24 supportive roles. [ECF 2259-1, pp. 3-5.] For example, the CRPI Department (a) trains
25

1 teachers to teach CR courses, (b) provides ongoing professional learning opportunities
2 for administrators and existing CR teachers, and (c) provides general cultural
3 responsiveness training for all teachers, administrators. District-wide culturally
4 responsive practices professional development (CRP) was developed and delivered in
5 collaboration with consultants who are experts in the field of culturally responsive content
6 integration.

7 In addition to CRCs and implementing culturally-relevant pedagogy into the
8 teaching and learning process, the District's Multicultural Department (MCD) leads the
9 District's efforts to infuse multicultural curriculum into the District's general curriculum,
10 weaving new, multicultural materials, perspectives, and voices seamlessly with current
11 frameworks of knowledge and including the practice of culturally congruent instructional
12 strategies for a more complete and accurate curriculum. The District's multicultural
13 curriculum provides a range of opportunities for students to conduct research and improve
14 critical thinking and learning skills while fostering a positive and inclusive school and
15 classroom culture. [ECF 2298-1, pp. 94-97.] The MCD, which is led by a director who
16 reports to the Assistant Superintendent of Curriculum and Instruction, has primary
17 responsibility for multicultural curriculum. A more complete description of the operations
18 of this plan and department are set out in the Multicultural Curriculum Report, appearing
19 at ECF 2259-3.

20 The MCD plays a supportive role to other academic departments by reviewing and
21 modifying curricula to ensure complete infusion and alignment of multicultural
22 curriculum resources and strategies across all courses and at all grade levels. The MCD
23 also works collaboratively with the ELA Department and teachers and faculty from
24 different departments to develop project-based lesson plan frameworks and curricula that
25

1 comply with state standards. Finally, the MCD conducts site-based professional
2 development for teachers. [ECF 2298-1, pp. 94-95.]

3 The District respectfully submits that it has complied with the USP and the Court's
4 orders regarding culturally relevant courses and a multicultural curriculum and requests
5 that the Court grant unitary status in this area of District operations.

6 **8. USP §§ V.E.7 and V.E.8 (Services to Support African American**
7 **and Hispanic Student Achievement).**

8 In specifying the limited actions the District needed to take to receive a declaration
9 of unitary status, the Court directed the District to prepare and file a Post-Unitary Status
10 Plan for AASSD and MASSD, including ELL students. [ECF 2123, pp. 121-22, 150.]
11 The District prepared and filed those departmental operating plans on December 6, 2018.
12 [ECF 2151-1 and 2151-2, respectively.] In a subsequent order, the Court ordered the
13 District to revise the operating plans according to its directives and resubmit them.
14 [ECF 2213, pp. 3-10, 17-19.] The District again revised the operating plans as requested.
15 [ECF 2265-1 and 2265-2.]

16 The AASSD and MASSD currently provide direct student services, providing
17 supplemental academic and behavioral interventions in coordination with the MTSS and
18 behavioral teams at schools. Each department also has program specialists who devote
19 time to more systemic tasks. Each has a program specialist who focuses on working with
20 the ALE Department to increase access, participation and success in ALE opportunities
21 for their respective students. Each has a program specialist who focuses on outreach to
22 the larger community (principally additional outreach services, with some supportive
23 elements for programs and events sponsored by other departments). Each has a program
24 specialist who works on college and career readiness (principally as additional academic
25 and outreach services, with some supportive elements for programs and events sponsored

1 by other organizations). A more detailed statement of the current organization and
2 operations of each of these departments, identifying each task or service as primary,
3 supplemental, supportive, or additional, appears in the record at ECF 2265-1 and 2265-2,
4 respectively.

5 Although the Court has subsequently ordered the Special Master to develop new
6 organizational structures for the Department (set out at ECF 2403), the District believes
7 that the description of these departments set out in its August 30, 2019 filing (ECF 2265-
8 1 and 2, respectively) represent the District's best judgment on the structure and
9 operations of these departments. The District will of course comply with whatever the
10 Court may order. Either way, the District respectfully submits that it has complied with
11 the Court's orders regarding the AASSD and MASSD Plans and has met the requirements
12 set out in USP §§ V.E.7. and V.E.8., as shown by the record herein, including its annual
13 reports. [*See* ECF 2057-1, pp. 275-319 and appendices cited therein; ECF 2124-1, pp. 89-
14 111 and appendices cited therein; ECF 2075-5, pp. 94-182 and documents cited therein.]
15 Accordingly, the District requests that the Court grant unitary status in these areas of
16 District operations (USP §§ V.E.7. and V.E.8.).

17 **9. USP § V.F (Maintaining Inclusive School Environments).**

18 The USP § V.F prohibits the District from assigning students to classrooms and
19 services in a manner that impedes desegregation. [ECF 1713, pp. 40-41.] The District
20 applied for unitary status in this area previously. [ECF 2075-5.]

21 In identifying the limited actions required of the District before receiving full
22 unitary status for § V.F, the Court directed the District to provide 3-year survey data on
23 students' sense of inclusiveness and to identify the strategies the District has utilized to
24 improve inclusive school environments, "which shall trigger reconsideration of unitary
25

1 status.” [ECF 2123, pp. 122-124.] The District filed a notice and report in compliance
2 with the Court’s order. [ECF 2156]

3 That survey data revealed high levels of inclusivity and civility. [ECF 2156]. There
4 is no national or state data on inclusiveness; however, there is national data on bullying
5 that, according to the Special Master, is comparable. [ECF 2195, p. 2] The national data
6 indicates that at least 23 percent of students experience bullying and 70 percent witness
7 it. In the District, less than 20 percent of students experience bullying and the differences
8 among students of different races is less than 3 percent. The data also indicates that there
9 has been a decrease in bullying over the three years studied by the District.

10 The Court subsequently ordered the District to conduct further studies in this area
11 and to develop a professional learning plan to prepare teachers to implement the District’s
12 program to create and maintain inclusiveness and civility. [ECF 2273] The District filed
13 a second supplemental notice and report on compliance in accordance with the Court’s
14 latest directives. [ECF 2328] In response, the Special Master has recommended unitary
15 status in this area. [ECF 2377, p. 6.]

16 The record shows that the District has complied in good faith with the USP and all
17 subsequent Court orders regarding maintaining inclusive school environments. The
18 District respectfully requests that the Court grant unitary status in this area of District
19 operations.

20 **10. USP § VI (Discipline).**

21 The Court ordered the District to file a report detailing progress in addressing the
22 provisions of the Court’s order regarding discipline, including the ordered completion
23 plan. [ECF 2123, pp. 140, 150.] The District prepared a Discipline Progress Report as
24 directed, and it provided a draft to the Special Master. The Special Master reviewed the
25

1 draft and offered suggestions and comments. The District then modified the Progress
2 Report to incorporate the Special Master’s suggestions. The District filed the modified
3 Discipline Progress Report with the Court. [ECF 2266.]

4 The Court also directed the District to prepare and file two related Professional
5 Learning Plans: (a) one for Inclusivity and Cultures of Civility and (b) one for Discipline.
6 The District prepared and filed the Professional Learning Plan for Inclusivity and Cultures
7 of Civility on December 6, as ordered. [ECF 2156-2.] Because of the overlap between
8 discipline prevention and inclusiveness, and the need to prepare a Discipline Professional
9 Learning Plan by September 1, the District worked with the Special Master on a combined
10 plan for professional learning in both discipline and inclusivity, which was filed August
11 30, 2019, with the District’s Notice and Report of Compliance on Discipline. [ECF 2266.]

12 The Mendoza Plaintiffs objected, the District replied, and the Special Master
13 issued a report and recommendation noting positive trends:

14 Evidence presented by the District shows positive trends for short and long-
15 term out-of-school suspension with respect to both disproportionality and
16 what the District calls the “likeliness ratio” (the difference between the
17 number of white students [and] the number of African American and Latino
18 students[]). Further, the data show that between 2014-15 and 2018-19 the
19 total number of discipline actions lessened considerably. In the case of
20 disproportionality, an issue of great concern to all of the parties, the data
21 showed no or little disproportionality for white and Latino students and
22 shows the percentage of disproportionality for black students was halved.
23 The District reports that the District’s record in this respect is considerably
24 better than the rates and proportions of discipline in the state and nation.

25 [ECF 2380, p. 2.] Nevertheless, the Special Master recommended that the District respond
to several issues. The Court has not yet ruled, but the District anticipates responding to
the Special Master’s recommendations and will comply with any subsequent orders of
the Court.

However, the District notes the following.

a. The District's data reporting has been consistent and proper, enabling accurate year-to-year comparisons, and in a manner compliant with the Court's mandates.

The USP requires the District to institute policies to develop alternative types of discipline. The District has implemented in-school-interventions (ISI) and the District Alternative Education Program (DAEP) as alternatives to short- and long-term suspensions, respectively. These are research-based best practices used throughout the United States. The District has seen many great benefits from these alternative forms of discipline, including a significant reduction in the number of days students have been suspended from school, overall discipline, and disparities.

The District initially reported discipline data in the following format:

Entire District Discipline by USP Race/Ethnicity SY 2013-2014								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enroll*	N	12318	4626	33110	2021	1158	1723	54956
	%	22%	8%	60%	4%	2%	3%	100%
In-school Discipline	N	4065	3565	10317	657	163	685	19452
	%	21%	18%	53%	3%	1%	4%	100%
In-school Suspension	N	601	643	1827	131	34	108	3344
	%	18%	19%	55%	4%	1%	3%	100%
Short-Term (out of School) Suspension	N	669	579	1709	143	17	104	3221
	%	21%	18%	53%	4%	1%	3%	100%
Long-Term (out of School) Suspension	N	45	55	214	15		11	342
	%	13%	16%	63%	4%	1%	3%	100%

*Enrollment N size includes all students who were enrolled at any given point during the school year. This number is higher than any single enrollment date (such as the 40th day) because it represents the total enrollment for the year and does not factor out students who left the school district during the school year.

In SY13-14, SY14-15, and SY15-16, this chart included four discipline categories: in-school discipline, in-school suspensions (ISS), short-term out-of-school suspensions (ST OOS), and long-term out-of-school suspensions (LT OOS). For SY16-17, SY17-18, and

1 SY18-19, the chart added the categories of in-school interventions (ISI) and the District
 2 Alternative Education Program (DAEP), as follows:

Entire District Discipline by USP Race/Ethnicity SY 2017-2018								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enroll*	N	10469	4869	31243	1842	1094	1751	51268
	%	20%	9%	61%	4%	2%	3%	100%
In-School Discipline	N	546	458	1692	124	28	116	2964
	%	18%	15%	57%	4%	1%	4%	100%
In-School Suspension (ISS)	N	91	84	247	19	5	34	480
	%	19%	18%	51%	4%	1%	7%	100%
Short-Term (out of School) Suspension	N	340	278	933	79	18	70	1718
	%	20%	16%	54%	5%	1%	4%	100%
Long-Term (out of School) Suspension	N	40	40	104	7	0	7	198
	%	20%	20%	53%	4%	0%	4%	100%
In-School Suspension	N	91	84	247	19	5	34	480
	%	19%		51%	4%	1%	7%	100%
In-School Intervention (ISI)	N	287	255	888	57	11	60	1558
	%	18%	16%	57%	4%	1%	4%	100%
ISS and ISI	N	378	339	1135	76	16	94	2038
	%	19%	17%	56%	4%	1%	5%	100%
ISS and ISI COMBINED TOTAL								2,038
Short-Term (out of School) Suspension (W/O DAEP)	N	312	261	874	75	16	65	1603
	%	19%	16%	55%	5%	1%	4%	100%
Long-Term (out of School) Suspension (W/O DAEP)	N	32	31	78	7	0	6	154
	%	21%	20%	51%	5%	0%	4%	100%
DAEP students	N	46	40	124	11	2	0	233
	%	20%	17%	53%	5%	1%	0%	100%

1 In addition, in SY18-19, the District provided a modified version of this chart, broken
 2 down by the number of disciplinary incidents, as follows:²²

Entire District Discipline by USP Race/Ethnicity SY 2018 - 2019								
		White	African American	Hispanic/Latino	Native American	Asian/Pacific Islander	Multi Racial	Total
Enrollment	N	10106	4832	30205	1823	1093	1720	49779
	%	20%	10%	61%	4%	2%	3%	100%
In-School Discipline	N-Student	587	486	1850	156	37	134	3250
	%	18%	15%	57%	5%	1%	4%	100%
	N-Incident	873	766	2222	227	48	234	4370
	%	20%	18%	51%	5%	1%	5%	100%
In-School Suspension (ISS)	N-Student	99	70	278	20	7	19	493
	%	20%	14%	56%	4%	1%	4%	100%
	N-Incident	108	71	268	24	7	22	500
	%	22%	14%	54%	5%	1%	4%	100%
Short-Term Out-of-School Suspension	N-Student	417	358	1344	123	23	101	2366
	%	18%	15%	57%	5%	1%	4%	100%
	N-Incident	557	520	1482	166	29	170	2924
	%	19%	18%	51%	6%	1%	6%	100%
Long-Term Out-of-School Suspension	N-Student	21	22	53	9	1	3	109
	%	19%	20%	49%	8%	1%	3%	100%
	N-Incident	22	22	50	10	1	3	108
	%	19%	20%	48%	8%	2%	4%	100%
In-School Intervention (ISI)	N-Student	169	155	495	46	6	46	917
	%	18%	17%	54%	5%	1%	5%	100%
	N-Incident	206	197	529	48	6	55	1041
	%	20%	19%	51%	5%	1%	5%	100%
In-School Suspension (ISS)	N-Student	99	70	278	20	7	19	493
	%	20%	14%	56%	4%	1%	4%	100%
	N-Incident	108	71	268	24	7	22	500
	%	22%	14%	54%	5%	1%	4%	100%

25 ²² Prior reports were broken down only by the number of students.

1	District Alternative Education Program (DAEP)	N-Student	22	27	92	10	1	7	159
2		%	14%	17%	58%	6%	1%	4%	100%
3		N-Incident	22	28	93	10	1	8	162
		%	14%	17%	57%	6%	1%	5%	100%
4	Out-of-School Suspension (OSS) Short- and Long-Term Combined	N-Student	438	380	1397	132	24	104	2475
5		%	18%	15%	56%	5%	1%	4%	100%
6		N-Incident	579	542	1532	176	30	173	3032
		%	19%	18%	51%	6%	1%	6%	100%

- 7
- 8 1. A student who receives a short-term suspension pending long-term hearing who later accepts a DAEP offer at or after the hearing is reported under DAEP (not short-term suspension).
- 9 2. A student who receives a short-term suspension pending long-term hearing who later receives a long-term suspension is reported under long-term suspension (not short-term suspension).
- 10 3. A student who attends ISI for one day as a restorative strategy to transition the student back into the school community after a long-term suspension or after DAEP is reported once (for the long-term suspension or for DAEP) and is not reported as a separate incident involving ISI.
- 11 4. Exclusionary disciplinary consequences **include positive alternatives to suspension (ISI and DAEP)**. There is a continuum of impact to students based on the type of exclusionary consequence used: ISI is preferred over ISS; ISS and DAEP are preferred over OSS.
- 12
- 13
- 14

15 In short, the District does report the same data that it reported in SY13-14. With
 16 the implementation of ISI and DAEP, the students who receive these alternative forms of
 17 discipline are tracked separately for the purpose of best serving these students, though the
 18 numbers are still reported to the Court and the parties each year in the annual report. To
 19 the extent anyone wants to include the ISI numbers with the ISS numbers, the data is
 20 provided to do so. In fact, for the charts provided with the District’s last two annual
 21 reports, these numbers are separately calculated to provide these totals to the reader. [ECF
 22 2133-3, pp. 8-9; ECF 2305-4, pp. 36-38.]

23 As noted by the Special Master, “[o]ne would expect, based on the history the (sic)
 24 of most districts that the rates of discipline will vary from year to year.” [ECF 2380, p.
 25

1 3.] Although, naturally, there are variations in the data, the trend shows a substantial
2 reduction in discipline within the District, including a substantial reduction in disparities
3 between White and African American students (there is no disparity between White and
4 Hispanic students). For the disciplinary categories that show increases at times (in-school
5 discipline and short term out of school suspensions), these increases are due to the fact
6 that discipline is decreasing in severity (USP goal), reducing suspensions from long-term
7 to short term and from in-school suspensions to in-school interventions.

8 There are two primary ways of measuring exclusionary discipline: (1) number of
9 suspensions; and (2) number of days suspended from school. The more important of these
10 two is the number of days suspended from school, which tracks more closely the amount
11 of time students spend outside of the regular academic environment. Thus, while at times
12 the number of suspensions may increase temporarily, the number of days spent outside of
13 the classroom is steadily decreasing.

14 Moreover, these research-based best practices not only reduce the number of days
15 students spend outside of the classroom, they also combine consequences with workshops
16 and mediations that help the students make changes to enhance academic opportunities
17 and reduce discipline (USP goal). For example, in the past, some drug offenses resulted
18 in automatic long-term suspensions (10 days or more). Now, however, some of those
19 same offenses result in a three-day suspension, with the option for that suspension to be
20 reduced to a one-day suspension if the student agrees to participate in a substance abuse
21 workshop. Similarly, fighting in the past often resulted in a three- to five-day suspension,
22 but it now results in a one-day suspension if the student agrees to participate in mediation.

23 Disciplinary figures produced by the District with its recent Annual Report show
24 just how far the District has come in reducing disciplinary actions for African American
25

1 students. While there was a 9-percent difference in discipline *rates* for African American
2 versus White students in SY2013-14, that has been cut in half to a current difference of
3 4.60 percent. In fact, discipline rates for African American students in the past two years
4 (10.39 percent and 10.93 percent, respectively) were lower than the discipline rate for
5 White students in SY2013-14 (11.56 percent). [ECF 2298-1, p. 150.]

6 The disparity in out-of-school suspensions, a particularly noteworthy disciplinary
7 action (because it limits in-person educational time), has also been dramatically reduced.
8 In SY2014-15, African American students were 3.2 times more likely than White students
9 to have a short-term suspension and 3.5 times more likely to have a long-term suspension.
10 By SY2018-19, a mere four years later, the likelihood ratio had dropped to 1.7 times for
11 short-term suspensions and 2.1 times for long-term suspensions. [ECF 2298-1, p. 151.]

12 The District's significant reduction in the discipline disparity (especially compared
13 to the national disparity), coupled with the low levels of discipline African American
14 students experience overall in the District, show that any remaining disparities in
15 discipline within the District are not connected to prior conduct by this specific school
16 district half a century ago. These significant reductions to levels far better than state and
17 national averages counsel in favor of unitary status.

18 **b. The District's data has been valid and accurate, and the**
19 **District has utilized Supportive Action Plans to contribute**
20 **to the District's success in reducing discipline and**
21 **discipline disparities.**

22 As noted by the Special Master, "[t]he issue of the validity of the data as reported
23 from school sites is of concern in most districts." Nevertheless, the District takes the
24 following steps to improve and monitor the accuracy of the data.

25 The District utilizes the Student Relations Department and school-level discipline
teams to review, analyze, and utilize discipline data to address discipline issues. As part

1 of the process, the District utilizes Supportive Action Plans (SAPs). As detailed in the
2 District's Discipline Progress Report, (ECF 2266-1), the District uses SAPs to address
3 disproportionate exclusionary discipline at the school and District levels.

4 At the school level, the Student Relations department takes action to correct site-
5 based discipline issues by implementing corrective measures, including specific
6 corrective actions developed to address specific issues at a school or SAPs developed for
7 broader issues affecting an entire school. The Student Relations Department identifies the
8 need for corrective measures through analyses of data from District's data systems
9 (including the TUSD Data Dashboard; the student information system, Synergy; and
10 other sources), from regular reviews of disciplinary incidents and reports, and from direct
11 observation in schools. These methods also contribute to the District's ensuring the
12 accuracy of data.

13 The Student Relations Discipline Review Committee meets weekly, monthly, and
14 quarterly, to review data and identify trends, patterns, and hotspots. The committee
15 thoroughly examines discipline data, incident records, and data trends — paying close
16 attention to schools with data indicating disproportionate exclusionary discipline for
17 African American students. The Student Relations Department then creates supportive
18 action plans for schools where a percentage of students receiving exclusionary discipline
19 exceeded the District's overall percentage of students receiving exclusionary discipline,
20 or where school data indicated high levels of discipline in general. In these cases, the
21 Director of Student Relations collaborates with the school principal to develop a school-
22 wide SAP to address any demonstrated deficiencies in discipline practices or in policy,
23 particularly with regard to developing strategies to reduce disproportionate exclusionary
24 discipline for African American students.

25

1 The Director of Student Relations, the site principal, the Restorative and Positive
2 Practices Facilitator (RPPF), and the site discipline team review SAPs every two weeks
3 to determine if the plan is working to address the identified issue(s), measured as:
4 successful, partially successful, or not successful. The collaborative team then revises,
5 continues, or discontinues additional strategies that are not effective or that have achieved
6 the desired impact if successfully implemented. Some schools implement and end their
7 plans after a single quarter; others continue to implement corrective measures for longer
8 periods.

9 During the 2018-19 school year, Student Relations placed eight schools on
10 Supportive Action Plans (SAPs) where a review of site practices correlated with
11 disproportionate disciplinary rates for African American students. By the end of the 2018-
12 19 school year, all eight schools were still implementing their SAP. While several schools
13 have seen a reduction in the number of African Americans being given exclusionary
14 discipline, the numbers remain disproportionate when compared to the district average
15 for all schools except Safford.

16 Between the first and fourth quarter, Secrist Middle School and Booth-Fickett K-
17 8 School saw a reduction in exclusionary discipline for African Americans from 36
18 percent (first quarter) to 18 percent (fourth quarter). Safford K-8 School saw a reduction
19 in exclusionary discipline for African Americans from 15.8 percent (second quarter) to
20 5.6 percent (fourth quarter).

21 Clearly, the District collects, records, reviews, and analyzes accurate discipline
22 data, and it continues to utilize this data to improve discipline throughout the District.

23 The District respectfully submits that it has complied with the Court's orders and
24 has met the requirements of USP § VI, as shown by the record herein, including its annual
25

1 reports and its prior assessment of compliance. Accordingly, the District is operating in
2 unitary status in this area of District operations (§ VI).

3 **11. USP § VII (Family and Community Engagement (FACE)).**

4 Section VII of the USP requires the District to adopt strategies to increase family
5 and community engagement in schools. [ECF 1713, p. 49.] The District applied for
6 unitary status in this area previously. [ECF 2075-7.]

7 The Court found “that the only remaining question relevant to awarding unitary
8 status for VII, Family and Community Engagement [(FACE)], is the implementation of
9 a district-wide strategy for family and community engagement services at school-sites
10 and an effective data gathering and tracking program.” [ECF 2123, pp. 136-137, 15-151.]
11 The Court directed the District to implement a data tracking system and greater principal
12 and teacher responsibility for school-level family and community engagement activities.
13 [ECF 2123, pp. 136-137.] The Court stated that “[t]he filing of the Updated FACE Action
14 Plan will trigger reconsideration of unitary status for the USP VII.” [ECF 2123, pp. 137].
15 The District filed a notice and report complying with the Court’s directives. [ECF 2154].

16 In a subsequent order, the Court directed the District to make further additions to
17 the FACE plan by ensuring updated FACE information on school websites and
18 newsletters. [ECF 2217, pp. 2-4.] The District prepared and filed a revised FACE plan in
19 accordance with the Court’s latest directives. [ECF 2219.] Nevertheless, the Court
20 directed the District to make additional and new changes to the FACE plan by identifying
21 the USP plans containing FACE activities by other District departments. [ECF 2386.] The
22 District filed a revised FACE plan that met this requirement. [ECF 2262.]

23
24
25

1 As detailed in each of these filings, the District has complied in good faith with
2 the USP and all subsequent Court orders regarding the family and community
3 engagement.

4 Family and community engagement activities occur in many departments, but the
5 center of planning and activity is the Family and Community Engagement (FACE)
6 Department, headed by a director, who reports to the Assistant Superintendent for the
7 Santa Cruz Region. The FACE Department's efforts focus on promoting and enhancing
8 family and community engagement in the education of District students. A
9 comprehensive statement of the family and community appears in the revise FACE Plan,
10 appearing in the record at ECF 2262-1.

11 The District's FACE efforts can be grouped into two categories: school-based and
12 district-based. The District's school-based FACE activities follow the Guidelines for
13 Family and Community Engagement at School Sites, discussed in more detail in the
14 District's FACE Plan, filed August 30, 2019. [ECF 2262-1.] The guidelines describe
15 (a) the specific activities expected at each site, (b) the roles and responsibilities of those
16 involved, and (c) the reporting requirements to track implementation and enable analysis
17 and accountability. School site councils and family engagement teams have primary
18 responsibility for designing activities to facilitate two-way communication by ensuring
19 parents, students, administrators, certified staff, classified staff, and community members
20 are represented in decision-making groups. [ECF 2262-1, p. 3.] Schools file monthly
21 reports on FACE activities with the District's FACE Department and use a District-
22 designed tracking system to identify and report on family participation in FACE events
23 at each school. The District's central FACE Department provides support and monitoring
24 of family engagement activities at school sites. [ECF 2262-1, p. 8.] Principals at each
25

1 school have primary responsibility for overseeing FACE activities at each school. These
2 principals report to the regional assistant superintendent overseeing their school. The
3 regional assistant superintendents report to the District Superintendent.

4 The District's FACE Department provides overall planning and coordination for
5 the district-based FACE activities, together with regular assessments of their
6 effectiveness. Working with Dr. Joyce Epstein and the National Network of Partnership
7 Schools, the District's FACE Department developed the Guidelines for Family and
8 Community Engagement at School Sites. [ECF 2262-1, p. 7.] The FACE Department
9 coordinates and facilitates regular meetings with support from the Title I/Grants and
10 Federal Programs staff. FACE Department staff also operate the District's four Family
11 Resource Centers (FRCs), which provide a broad range of family educational
12 opportunities in support of students' learning. Many other departments host events and
13 workshops at the FRCs. The FACE Department also operates the McKinney-Vento
14 office, which provides administrative support to homeless students eligible under the
15 McKinney-Vento Act. [ECF 2262-1, pp. 9-10.]

16 The FACE Department also works with other District departments to provide
17 guidance and support for their family engagement events and needs, including the
18 Magnet, ALE, Student Support, LAD, Health Services, Counseling, and Curriculum and
19 Instruction Departments. This support includes event coordination, use of the FRCs, and
20 provision of childcare and transportation services. As detailed in Exhibit 4 to the District's
21 FACE Plan, the FACE Department has primary or supplemental responsibilities for
22 dozens of activities. [ECF 2262-1, pp. 62-65.] For example, it has primary responsibility
23 for the Home Buyer's Expo and "Tell Me More About..." curricular workshops, co-

1 primary responsibility for workshops at the FRCs, and supportive responsibilities for
2 activities like school site-based events. [Id. at 12-15, 63-65.]

3 Other District departments undertake family and community engagement activities
4 on their own. The AASSD and MASSD Operating Plans detail the family and community
5 engagement activities undertaken by each of those departments. The ELL Dropout
6 Prevention plan contains family engagement strategies. The Magnet and ALE
7 Departments have a common Addendum addressing family engagement and outreach.
8 Each of these departments is primarily responsible for the specific family engagement
9 activities involved in those plans. In many instances, the FACE Department provides
10 support. [ECF 2262-1, pp. 12-15.]

11 The District has complied in good faith with the USP and the Court's orders. The
12 District is in unitary status in its operations under Section VII of the USP.

13 **12. USP § VIII (Extracurricular Activities).**

14 The Court, in its Order dated September 6, 2018, set out a completion plan
15 regarding extracurricular activities that required the District to complete five tasks. [ECF
16 2123, at 137:19-138:5]. The District completed all five of those — and, as it described in
17 its Notice of Compliance (ECF 2260), it also voluntarily completed additional tasks
18 requested by the Special Master that were not required by the completion plan. For
19 example, the District added a chart that included enrollment numbers, and the District
20 agreed to analyze the clubs at each school to determine whether additional central District
21 support for academic clubs was needed. [ECF 2317.]

22 As addressed in Section B.4, above, the data shows that extracurricular activity
23 participation in the District is vibrant and unitary.

24
25

1 On November 18, the Court ordered the District to prepare a Supplement to
2 Analysis of Extra-Curricular Participation in District Schools, identifying target schools
3 that are both racially concentrated and lower socioeconomic status, and to identify
4 extracurricular activities and strategies at these schools to increase participation. [ECF
5 2364.] The District prepared the Supplement in accordance with the Court's order, and
6 filed it with the Court on December 3, 2019. [ECF 2387-1.]

7 The District has worked continuously to ensure equitable access to extracurricular
8 activities. The District created the position of Director of Interscholastics to evaluate and
9 develop the District's abilities to provide equal access and opportunities to and within
10 extracurricular activities in the District. The Director also worked with a committee of
11 representatives from the Fine Arts, Student Equity, Transportation, and Guidance and
12 Counseling departments, and with principals from elementary and high schools to
13 evaluate the District's extracurricular activities programs and develop a plan to pursue
14 the steps needed to improve the equitable provision of extracurricular activities to all
15 students and to ensure good faith compliance with the USP. [ECF 2384.] The District
16 prepared the Extracurricular Equitable Access Plan, which was submitted to the plaintiffs
17 and the Special Master for review and was subsequently finalized and approved. [*Id.*] The
18 District utilized that plan to pursue and accomplish the goals of providing all students
19 opportunities to participate in extracurricular activities regardless of race, ethnicity, or
20 ELL status, and to promote diversity in extracurricular activities, bringing students of all
21 races and cultures together in positive settings of shared interest. [*Id.*]

22 The District has complied in good faith with the USP and all other Court orders
23 regarding the District's extracurricular activities, and it respectfully requests that it be
24 declared unitary for Section VIII of the USP.

25

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

13. USP § IX.A.1 (FCI Scores).

As stated above, the Court has declared that “the work set out in the completion plan for attaining unitary status related to the USP § IX.A., Facilities Plan, is finished.” [ECF 2362, p. 5.] The District respectfully requests a declaration of unitary status for USP § IX.A.

14. USP § IX.B.1 (TCI/Internet Access).

Section IX.B.1 of the USP requires the District to develop a Technology Conditions Index (TCI), which rates technology and technology conditions in schools. The District also uses a Technology Condition Index (TCI) to assess technological conditions at school sites. Under the recently revised version of that index, 45 percent of the TCI score for a school in the District is based on the technological equipment actually available for use in classrooms, and another 45 percent is based on the technological proficiency of the teachers in the school, as measured by annual tests administered by the Instructional Technology Department. The final 10 percent of the score is based on the extent to which the school’s wireless infrastructure provides adequate access to the internet for instructional purposes. The TCI scores demonstrate that there is no pattern of technology conditions that correlates to the racial and ethnic makeup of the schools.

In specifying the limited actions that were necessary for the District to receive unitary status in this area, the Court directed the Special Master to file a notice and report of compliance for the internet access in the District. [ECF 2123, pp. 139, 151.] The District submitted a report to the Special Master to enable him to file the appropriate notice. [ECF 2263.]

That report indicates that the design and installation specifications for equipment in all District schools is the same, and the entire system is oversized such that peak usage for every school in the district, measured at the busiest time of the school year, is

1 far below the capacity of the school's equipment and the school's connection to the
2 District internet hub. [ECF 2263-1]

3 The Court subsequently ordered the District to file a revised TCI with a category
4 for internet access. [ECF 2362] Accordingly, the District revised the TCI to add a
5 component for internet access. [ECF 2381].

6 The record before this Court evidences the District's compliance with the USP in
7 this area. The District is committed to maintaining and improving its facilities and to
8 allocating its technological resources equitably across all schools in a race-neutral manner
9 to prevent disparities in the quality of its physical and technological infrastructure for
10 schools and students.

11 The District respectfully submits that it has complied with the Court's orders
12 regarding internet access and has met the requirements of USP § IX.B and is thus in
13 unitary status in this area of District operations.

14 **15. USP §§ IX.B.1.iv and B.4. (Professional Learning Plan for**
15 **Teacher Proficiency).**

16 Section IX.B.4 of the USP requires the District to include in its professional
17 development for all classroom personnel training to support the use of computers, smart
18 boards, and educational software in the classroom setting. The District moved for unitary
19 status in the area previously. [ECF 2075-9.]

20 Over the past several years, the District has significantly expanded its instructional
21 technology professional learning activities for teachers and staff. The primary
22 responsibility for realizing this goal rests with the Instructional Technology Department.
23 The department is led by its director, who reports to the District's Chief Technology
24 Officer. There are five Educational Technology Integration Specialists in the department
25 who report to the Director. One ETI Specialist is assigned to each of the five District

1 regions and is responsible for coordinating and conducting teacher training within that
2 region, along with supporting teachers and administrators in their region through
3 customized training, co-facilitation of school site professional development, and support
4 for utilization of the Microsoft Educator Community.

5 Updating to Windows 10 and using Microsoft Office 365 has provided innovative
6 opportunities for teachers to engage their students while improving learning outcomes
7 and exposing students to skills they will need in the workforce. Microsoft Solutions
8 supports district-wide technology goals. Microsoft has featured the District in one of its
9 “School Stories,” which is posted on the Microsoft Educational Technology website for
10 schools around the world that are using Microsoft technology to create immersive
11 teaching and learning experiences.

12 To further support the integration of technology in the classroom at the school-site
13 level, the District uses Teacher Technology Liaisons (TTLs) for technology instruction
14 and instructional peer coaching. The International Society for Technology in Education
15 (ISTE), the foremost global organization in expanding the use of educational technology
16 in the classroom, promotes the use of instructional technology coaching as a prevalent
17 method of deploying ongoing professional learning for teachers with a specific focus on
18 the integration of technology into both the curriculum and method of instruction. All ETI
19 Specialists coordinate and support the activities of the TTLs in their respective regions.

20 A TTL is usually a teacher on campus who enjoys working with technology and
21 has expertise in the use of classroom technology. TTLs are required to attend monthly
22 meetings, where they learn or improve on technology skills, which are specifically
23 selected by the ETI Specialist team based on the current school year’s Instructional
24 Technology’s professional learning goals. The TTL’s role is to provide extra site-based
25

1 support and professional learning to their peers and staff. Specifically, TTLs will deliver
2 up to 45 hours per semester of one-on-one, small group, or online instructional technology
3 professional learning to teachers based upon teacher needs. TTLs receive a stipend and
4 specialized training for instruction and coaching at their schools. The District is one of at
5 least five school districts in Arizona, along with other districts across the country, to use
6 a similar model of TTLs to deliver instructional technology professional learning to
7 teachers.

8 In recent developments, Sabino High joined Cholla and Sahuaro High Schools as
9 a “Microsoft School.” A Microsoft School is a school dedicated to digital transformation
10 and exploring how Microsoft can support that endeavor. In addition, Cholla is now a
11 Microsoft Showcase School — the only such school in Arizona. This status is awarded to
12 schools that have demonstrated a commitment to embracing technology to transform
13 education and improve learning outcomes for students. With the support and guidance of
14 Microsoft, Showcase Schools create immersive and inclusive experiences that inspire
15 lifelong learning, stimulating development of essential life skills so students are
16 empowered to achieve more.

17 The District also competed for and successfully obtained Verizon Innovative
18 Learning School (VILS) grants for three school campuses: Lawrence 3- 8, Pueblo
19 Gardens K-8, and Mansfeld Middle Magnet School. These grants provide iPads for all
20 teachers and 6th- to 8th-grade students at these school campuses. The grants also provide
21 significant professional development for teachers and subsidize funding for an
22 instructional coach for each school campus.

23 The District continues to offer a wide variety of self-paced and instructor-led
24 courses through the Professional Learning Portal, including USP: Promethean Board
25

1 Basics User Training; Scheduling Time with a COW; USP: Using Instructional
2 Technology in the Classroom: Summer 2018; and Office 365 for Administrators,
3 SY2018-19.

4 In identifying what additional actions the District needed to take for a declaration
5 of unitary status in § IX.B.4, the Court directed the District to file a notice and report of
6 compliance with a directive to prepare a professional learning plan for teacher proficiency
7 in using technology. [ECF 2123, pp. 140, 151.] The District prepared and filed a
8 professional learning plan accordingly. [ECF 2152]. In subsequent orders (ECF 2217 and
9 2273), the Court directed the District to make certain additions and clarifications to the
10 plan. Accordingly, the District revised and restated its Professional Learning Plan for Use
11 of Instructional Technology in the Classroom. [ECF 2330.]

12 The record before this Court evidences the District's good faith compliance with
13 respect to professional learning plan for teacher proficiency in classroom technology.

14 The District respectfully submits that it has complied with the USP, and all of the
15 Court's orders, and requests that the Court declare that the District is in unitary status in
16 this area of District operations.

17 **16. USP § X.A (Professional Development for the Effective Use of**
18 **EBAS).**

19 The Court ordered that the District would be deemed unitary in this area when the
20 District is declared unitary for Sections V.E.6.a.i-ii., V.F., and VI. As shown above, the
21 District is entitled to a declaration of unitary status in these areas, and consequently it is
22 entitled to a declaration of unitary status for Section X.A.

23 **17. USP § X.B (EBAS Budgeting).**

24 Section X.B of the USP requires the District to propose a budgeting methodology
25 and process, which includes receiving input from the plaintiffs. Since the USP was

1 entered, the District has proposed, modified, and followed a methodology and process for
2 allocating funds to implement the USP, including receiving input from the plaintiffs and
3 Special Master multiple times each year. In fall and early winter 2018, the District
4 collaborated with the Special Master, plaintiffs, and budget expert to create the budget
5 development process for SY2019-20. The District finalized the process on January 8,
6 2019 and made a June 6, 2019 adjustment. [ECF 2233.] Pursuant to the process, the
7 District submitted a narrative version of the budget in February 2019 (Draft #1), a line-
8 item budget including magnet school plans in March 2019 (Draft #2), and a revised line-
9 item budget including magnet school plans with site budgets in May 2019 (Draft #3).
10 [ECF 2233-1.]

11 For each draft, the parties had opportunities to provide feedback and submit
12 requests for information (RFIs). The District considered the feedback in revising the
13 subsequent budget and responded to RFIs. After the submission of Draft #3 in May, the
14 parties held a phone conference to discuss various aspects of the budget. In early June,
15 the Special Master submitted comments and recommendations, which the District took
16 into consideration in developing the final draft budget. The Governing Board approved
17 the final draft budget on June 25, 2019. The District filed the final, approved budget on
18 July 1, 2019.

19 On September 10, 2019, the Court issued an order approving the District's 2019-
20 20 Budget, with an integration-contingency set aside of \$1,000,000, as recommended by
21 the Special Master. [ECF 2272 and 2349.] The Court also ordered the District to provide
22 additional information addressing the plaintiffs' objections, allowing continued budget
23 collaboration even while the budget was being implemented. [ECF 2349.]

24
25

1 On September 30, 2019, the District filed its identification of District programs
2 that are crossover services and proposed ratios for funding those programs between 910G
3 funds and other District funds, subject to and without waiving its stated objections.
4 [ECF 2297; ECF 2297-2.] The Mendoza Plaintiffs objected (ECF 2331), and the Special
5 Master filed an R&R (ECF 2337), recommending that the Court direct the Special Master
6 and budget expert identify a set of principles based on the agreements of the parties to the
7 extent possible. [ECF 2337, p.2.] The Court adopted this recommendation (ECF 2349),
8 and the District received a copy of these guiding principles on December 15, 2019.
9 [ECF 2402, p. 2.]

10 On December 20, 2019, the District filed a Notice and Report on Status of
11 Compliance Re Guide for 910G Funding, complying in good faith with the Court's
12 September 10, 2019 Order. [ECF 2402.]

13 While the plaintiffs and Special Master have had disagreements with how the
14 District has budgeted and spent USP funding each year, the District has complied in good
15 faith each year by working with the plaintiffs, Special Master, and budgeting expert to
16 develop and implement the budgeting process. Reasonable minds have disagreed in
17 several points regarding this multifaceted budgeting process. Far from reflecting a lack
18 of good faith, these disagreements reflect the District's good faith compliance with the
19 USP and the budgeting process, as well as the District's commitment and vision for
20 allocating all funds equitably and in the manner most likely to benefit the District's
21 students and the community to which the District and its leaders are accountable. The
22 District submits that it has complied with USP Section X.B. in good faith and is entitled
23 to a declaration of unitary status.

24
25

Conclusion

1
2 The current desegregation decree (the Unitary Status Plan) was entered long after
3 the remaining vestiges of the discrimination found by Judge Frey had been eliminated.
4 The scope of the USP goes far beyond those remaining vestiges found by Judge Frey, and
5 even far beyond the *Green* factors. But the massive scope of the USP and the thousands
6 of individual obligations and requirements in the USP and the many required Action Plans
7 cannot obscure that determination of good faith in the context of this case comes down to
8 a simple question: has the District demonstrated that it will not suddenly revert to
9 segregation, after 50 years of court supervision?

10 As a matter of law, good faith in the context of this case is **not** whether the District
11 has done all it can to comply with the decree or even all it can to promote integration. It
12 is not even whether it has done a particularly good job, or whether it has missed a number
13 of the thousands and thousands of individual requirements of the USP and implementing
14 orders. And it is most assuredly not whether it has achieved particular outcomes in racial
15 balancing of student and faculty, in parity of academic achievement or discipline, or in
16 engaging families. It is instead whether, in light of all the circumstances, there reasonably
17 remains any risk that the District will revert to a dual school system if the Court terminates
18 supervision of the District. In light of the circumstances of this case, the recent history of
19 efforts to comply with the USP and the Court's orders, the community in which the
20 District is situated, the passage of more than 50 years since the Supreme Court's decision
21 in *Green*, and the general social acceptance that *de jure* segregation is improper, there
22 simply is no remaining risk that the District will revert to a dual school system.

23 This Court has already determined that the vestiges of the old dual school system
24 — which ended in 1951 with the voluntary integration of the District — no longer remain.

25

1 Convincing evidence continues to support that determination, including the passage of
2 nearly 70 years and the pendency of court supervision of the district for more than 40
3 years.

4 While a few disparities exist, they are not linked to the prior dual school system.
5 For many decades, the District has by state law had an open enrollment system, in which
6 any student may enroll in any school, space permitting. The open enrollment system,
7 combined with state-funded charter schools, means that use of neighborhood attendance
8 boundaries has reduced impact as a tool for promoting integration. The District's
9 residential demographics and broad geographic sweep means that the current enrollment
10 patterns are largely the result of geographic and demographic factors beyond the District's
11 control.

12 Despite significant headwinds, the District has made substantial progress in
13 increasing integration and diversity in District schools. It is time for this case to come to
14 conclusion. Forty years of court supervision is enough. The District respectfully urges the
15 Court to acknowledge that it is in unitary status, dissolve the current desegregation decree,
16 and return control of the District to its duly elected local officials.

17
18
19
20
21
22
23
24
25

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

Dated this 31st day of December, 2019.

Respectfully submitted,

/s/ P. Bruce Converse

P. Bruce Converse

Timothy W. Overton

DICKINSON WRIGHT, PLLC

1850 N. Central Avenue, Suite 1400

Phoenix, Arizona 85004-4568

Attorneys for Tucson Unified School

District No. 1

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 31st 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/ P. Bruce Converse