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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S REVISED REPORT AND RECOMMENDATION ON**
2 **THE DISTRICT’S SUPPLEMENTAL PETITION FOR UNITARY STATUS**

3 **Overview**

4 On December 31, 2019, the District filed its petition for unitary status (US) for those
5 elements of the USP for which the Court had not granted partial unitary status. The Mendoza
6 plaintiffs filed their objections to the District’s proposals on March 14, 2020. No objections were
7 filed by the Fisher plaintiffs or the Department of Justice. The Special Master was given 30 days
8 initially to respond and the Court subsequently named May 12 as the deadline for the Special
9 Master’s filing. The District’s petition for unitary status has three parts: the procedural history,
10 which is largely a discussion of the legal history of the case; an argument that no legal vestiges of
11 the dual system that once characterized the District now remain; and a discussion of numerous
12 sections of the USP as to which the Court has not yet determined that the District has met its
13 obligations sufficiently to warrant unitary status. The District frames this set of arguments as
14 evidence that it has effectively met the good faith test in implementing the provisions of the USP.
15 This Report focuses on the third part of the petition in which the District makes assertions about
16 its efforts and the effectiveness of those efforts in addressing the provisions of the USP. The
17 arguments in Parts Two and Three overlap and the Special Master addresses this when it is
18 appropriate.
19
20

21 This Report and Recommendation (R&R) is not a comprehensive assessment of the
22 progress the District has made since February 2013 when the USP was adopted. The Special
23 Master has described the USP as the most extensive set of remedies in a desegregation case ever
24 and he believes that TUSD is a more equitable is a more school District and is more capable of
25 enhancing the learning opportunities outcomes of all its students than was seven years ago. But
26 this is not the place to tell that story.
27
28

1 **Section II: Student Assignment**

2 **Academic Criteria for Magnet School Status, Definition of Integration and Three**
3 **Year Plus PIP Plan**

4 Introduction

5 On December 31, 2019, the District filed ECF 2422 as a response to the Special Masters’
6 R&R relating to the three year plus PIP and magnet plans (ECF 2381). In that filing the District
7 proposed (1) new criteria for academic standards that magnet schools are expected to meet in
8 order to maintain their status as a magnet school and (2) a new definition of integration.

9 Although different in specifics, both of these proposals follow from similar proposals by the
10 Special Master. In addition, the District outlined a three-year plus plan to promote further
11 integration.
12

13 **Three Year + Integration and Magnet Plans**

14 Introduction

15 The District has done what the Court has required it to do:

- 16
- 17 1. Identify schools that are potential magnets and possible candidates for enhanced
18 integration efforts.
 - 19 2. Develop plans for all schools to foster integration and school improvement.
 - 20 3. Develop a transportation plan for integration.
 - 21 4. Propose revisions of the academic criteria that magnet schools must meet to
22 sustain their magnet status.
 - 23 5. Address the question of how best to define integration.

24 Responses to these requirements has involved a substantial effort on the part of the
25 District and, while it has done all these things required, the question is – have these responses
26 yielded workable plans and/or goals for future actions that are consistent with the intents of the
27
28

1 USP.

2 Magnet School Candidates

3 The District has developed good criteria for rating schools as potential magnets and has
4 used reasonable strategies for applying these to all the District schools. This has yielded eight
5 leading candidates. The District needs to prioritize these eight possibilities because there is no
6 way that it has the resources to implement more than one or two additional magnet schools.
7 Continuing to investigate the feasibility of all eight of these schools would require time and an
8 effort that could be better spent on other matters including whether special strategies could be
9 used to further integrate them.

11 Integration and Improvement Plans for All Schools

12 The integration plans are more or less common, as they should be. A good investment of
13 further work on these integration plans would be to focus on the eight schools identified as
14 potential magnet schools.

15 More problematic are the school improvement plans. They are, without exception, not
16 plans, but lists. They provide no direction and no priorities. While the District claims that it is
17 investing in continuous school improvement, there is no evidence in these plans that this
18 investment has affected the way schools develop and implement strategies for school
19 improvement. Consider the following weaknesses of the plans for elementary school
20 improvement. Consider the following weaknesses of the plans for elementary school
21 improvement:
22

- 23 • The proposals have no relationship to any problem identified as needing solving.

24 This is a bit surprising given that all principals and most professional staff have
25 been trained on the principles of professional learning communities (PLC). The
26 consensus view of the processes for implementing continuous improvement are
27 embedded in the PLC model being used by the District. The first steps of this
28

1 model involve identifying how well students are learning the things they are
2 expected to know. No such analyses are presented.

- 3
- 4 • Multiple “actions” are proposed with no priorities. In some schools, well over 30
5 different actions are listed.
 - 6 • Most of the “actions” proposed are generic – such as using the teacher evaluation
7 system to shape professional development. Half, if not more, of the strategies
8 proposed for each school could be exchanged for the strategies in other schools
9 and no one would know the difference.
 - 10 • There are no timelines or sequencing.
 - 11 • There are no assessments of feasibility or needed resources.
- 12

13 Transportation Plans

14 The Mendoza plaintiffs object to the District’s plans on the grounds that they lack
15 specificity. However, the Special Master sees that as appropriate at this point. The Court has no
16 reason to believe that the District lacks the capability to develop effective transportation plans.

17 Academic Criteria

18 There are two main reasons why there are academic standards for magnet schools. First,
19 families are more likely to make enrollment choices that enhance integration if magnet schools
20 provide their students with high quality education. Second, magnet schools receive substantially
21 more funding per student than non-magnet schools, and these resources should be allocated in
22 ways that improve student academic performance.

23

24 The District proposes three sets of criteria and gives schools two years to achieve those
25 criteria during which they would be required to achieve nine out of the 12 points allocated, as
26 discussed below. The criteria in use until now allowed for an annual assessment of academic
27 performance and gave schools a year to improve or make significant progress towards
28

1 improvement. The District's proposal could give magnet schools three or more years to bring
2 themselves up to the standards. Indeed, as long as the magnet schools were advancing toward the
3 goals set by the criteria, a deficient magnet school might retain its magnet status for more than
4 four years without meeting the standards. The Special Master believes this is unacceptable.

5
6 The three sets of criteria deal with: (1) A or B letter grades awarded by the state
7 Department of Education or an alternative proposed by the District, (2) the narrowing or
8 elimination of achievement gaps between white students on the one hand and African American
9 and Latino students on the other, and (3) academic progress. Two points each year for the three
10 sets of criteria could be awarded and a school could maintain its magnet status if it scored nine
11 points over the two-year cycle according to the District's proposal.

12 Letter Grade or Alternative

13
14 This Court has pointed out that the letter grade awarded by the State Department is readily
15 understood by families as a reasonable indicator of school quality. The District proposes that if a
16 school were not awarded an A or B grade it could satisfy this requirement by having a proficiency
17 grade in English language arts and/or mathematics that exceeds the proficiency rates in both the
18 subjects for all District students at the same school level (e.g., elementary, middle, K-8 and high
19 school). A school would be awarded two points for each year in the two-year cycle of assessment
20 that the magnet school met the grade standard and one point for each year that the magnet school
21 met the proficiency standard. This proposal by the District sets an indefinite and moving target
22 that magnet schools must meet if they don't meet the A or B grade standard. Families would not
23 know how schools that qualified under the proficiency rules compared with B schools.

24 Achievement Gaps

25
26 The District proposes that the difference between the proficiency rates of African
27 American and Latino students as compared to white students in math and English Language Arts
28

1 must be narrowed in a given year by at least 3% and/or eliminated within two years. Each year,
2 achieving this goal would give one half a point for each gap reduced or eliminated. Practically
3 speaking, it is unlikely that the achievement gaps would be eliminated so the maximum number
4 of points that could be attained for a school over a two-year period is two.¹ Indeed, it is unlikely
5 that an existing achievement gap of more than 3% would be achieved because efforts to improve
6 student performance tend to improve the performance of all students regardless of their race.
7 Under the District proposal, if a school made considerable improvement of African American and
8 Latino students overall within a two year cycle as a mitigating factor it would not lose magnet
9 status. This could, of course, leave the achievement gaps that existed in place.

11 Academic Growth

12 The District proposes that if the academic growth of minimally proficient students, as
13 defined by the state criteria, involved one or more years of growth or exceeded the percentage of
14 District students at the same school level, the school would receive one point per year in each of
15 two subject areas (math and ELA).

17 Analysis

18 Because of the two-year cycle proposed by the District, a school could retain its magnet
19 status for as long as four years of academic deficiency even if it did not substantially narrow the
20 achievement gaps and African American and/or Latino students were making no progress at all.²
21 If white students in a given school were not performing well, it might be easy for the school to
22 attain the nine points it needed to sustain its magnet status.
23

25
26 ¹ The most recent national study of achievement gaps shows that the achievement gaps have
27 narrowed slightly among highest achieving students, but has widened among lower achieving students.
The opposite appears to be true for TUSD.

28 ² In some schools the achievement gap exceeds 20%.

1 There are good reasons not to use the achievement gap as a measure of the quality of a
2 magnet school since achievement levels of different races depend more on their socioeconomic
3 characteristics than their school experiences. And, if African American or Latino students
4 improve their performance relative to white students because white student scores decline, this
5 might discourage white parents from enrolling in that school. However, the Mendoza and Fisher
6 plaintiffs, as well as this Court have indicated their belief that the achievement gap should be
7 sustained as a criterion for magnet status. Because schools have a limited impact on student test
8 scores, the achievement gap should be measured by taking into account the percentage of students
9 of each race who receive free and reduced meals. Preliminary analyses suggest that factoring in
10 free and reduced meals will show that the District has narrowed the achievement gaps. *See*
11 Section V for a further discussion of achievement gaps.
12

13 Recommendations

14 The two-year cycle proposed by the District should be eliminated. Schools would be
15 evaluated for quality each year. The school would have a year to make substantial progress – at
16 least half of the progress it needs to make in order to achieve a given standard. There would be
17 three sets of goals, the attainment of an A or B grade, the reduction of the achievement gap for
18 both African Americans and Latinos vis-à-vis whites to at least 5% (with one point for each), and
19 the rate of progress as defined by the District. The attainment of each criterion would be worth
20 two points. The school must attain a total of five points out of six possible. Since set one
21 involves the award of two points, one point might be awarded for a grade of C+. As noted, the
22 achievement gap should be measured by taking into account the percentage of students of each
23 race who receive free and reduced meals. The District has indicated that it would agree with this
24 proposal.
25
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28

1 **Defining Integration**

2 The most common reason for pursuing integration is to provide as many students as
3 possible the opportunity to learn with and from people different from themselves. Most research
4 on school desegregation uses a definition that yields the likelihood that students of different races
5 will interact with one another. The Special Master assumes that the parties share the conviction
6 about the positive effects of integration and does not here elaborate on the benefits of integration.
7 The definition of integration in the USP is that no school can be more than 70% of any given
8 race, (which in Tucson means Latino students) and may not be more or less than 15% of each
9 race at the four levels of school grade structures (K-5/6, 6-8, K-8, and high school – with some
10 variation in the lower grades.³ This definition of integration was opposed during the development
11 of the USP by the three persons named as expert consultants, one of whom felt so strongly that he
12 resigned as a consultant. However, the District argued for the definition now in the USP on the
13 incorrect assumption that the racial demographics of the District would make it very difficult to
14 achieve integration if any other measure were used. The consequence of using the USP definition
15 as a measure of success is that students in some schools would have a much greater opportunity to
16 engage in positive interracial interactions in schools that are not integrated than they would in
17 some schools that are “integrated.” For example, by the definition of integration in the USP, a
18 school with 39% white students, 39% Latino students, 10% African American students, and 12%
19 other races would not be integrated under the USP definition.
20
21
22

23 In its proposal, the District argues there should be no measure of integration and suggests
24 that the Court agrees by emphasizing the direction in which the District is moving. That is, it is
25 trending toward or away from integration. But how would one know that without a definition of

26 ³ To make it possible for the District to integrate schools over time, the process for integrating is
27 employed at the entry grade for each level of school and must be sustained thereafter as students move
28 through the grades in that school.

1 integration?

2 The District has recently been emphasizing the learning and developmental opportunities
3 that derive from attending schools that are integrated. But using the USP definition of integration
4 would confuse parents who are likely to pass up excellent opportunities for an integrated
5 education because some exceptionally well integrated schools would not be so described.
6 Moreover, eligibility for free transportation to integrated schools might not apply to many schools
7 that are actually integrated.
8

9 Since the District's response to the Court's direction laying out its plans going forward was
10 based on the USP's definition of integration, the District's consideration of alternative strategies
11 to promote integration in its consideration of different options were limited.
12

13 The USP defines schools that are integrated by the definition not used in any study of
14 integration. More important, the USP definition defines schools as not integrated that are
15 integrated by almost any standard. For example, a school that is 39% white, 40% Latino, 10%
16 black and 11% other would not be considered integrated in TUSD. Families that were looking for
17 the opportunity to send their student to an integrated school and were using the District's
18 definition would not choose the best integrated schools in the District. And the District would be
19 in the position of saying, as it must now, that the number of racially concentrated schools
20 approximates the number of integrated schools. This misrepresents the District and its efforts to
21 increase the number of students who have the opportunity to learn with and from students of
22 different races.
23

24 The Mendoza plaintiffs oppose a change in the definition of integration solely on the
25 grounds that it has been the definition used thus far. This means that the Mendoza plaintiffs
26 believe in their advocacy for integration that families should choose schools that are not
27 integrated over schools that are. And it also means that one could argue that the District has made
28

1 little progress in promoting integration within the District.

2 As noted, using the USP definition of integration may confuse parents who are likely to
3 pass up excellent opportunities for their students to have an integrated education because some
4 exceptionally well integrated schools would not be described as integrated. Moreover, eligibility
5 for free transportation in to integrate schools would not apply to many schools that are actually
6 integrated.
7

8 Since the District's response to the Court's direction essentially lays out its plans going
9 forward was based on the USP definition of integration, the District's consideration about
10 alternative strategies to promote integration in its consideration of different options was limited.

11 As noted, the fundamental goal of school integration is to maximize the opportunities for
12 students of different races have to learn from and with students of different races. Two main
13 factors shape these opportunities. First, the number of students of each race in the school.
14 Second, the largest percentage of students of a single race tend to shape the culture and learning
15 opportunities – both formal and informal – in a school. When the proportion of students of a
16 given race is very large, opportunities for interaction decline. But what that number is, no one
17 knows for sure in no small part because there are a number of difficult to measure influences on
18 the nature of student interactions including local history, the academic ambitions of the students
19 and their families, residential patterns etc.
20

21
22 Recommendations re Potential Magnets and Planning for Transportation and Integration

23 With respect to the identification of potential magnets and planning for transportation to
24 foster integration Special Master recommends that the District be granted partial unitary status.
25 As implied above, there is a great deal of work yet to be done to develop actionable plans for
26 school improvement throughout the District. The revision of the school plans should be done
27 collaboratively within each school, with oversight by sub-District and District leaders. This is
28

1 important not only to enrich the character of the proposals but to achieve buy-in and, to the extent
2 possible, commonality across schools with similar problems. Moreover, such action would
3 provide evidence that the district has effectively implemented the USP requirement for the
4 establishment of PLCs.

5
6 This is of course, is a terrible time to promote collaborative and careful planning that will
7 take two or three months to accomplish effectively. The District should commit to the
8 development of actionable school plans based on the PLC model and engaging PLCs. The
9 development of plans would be overseen by a special panel to be appointed by the superintendent
10 (e.g., the sub-District assistant superintendents) and advised by an external consultant to be
11 appointed in consultation with the Special Master. There is every reason to believe that the
12 District has the will and the capability to revise these plans as suggested given a substantial
13 investment thus far in training virtually every relevant person with respect to the PLC model.
14

15 The District has indicated that it would support this recommendation.

16 Recommendation re the Definition of Integration

17 No more than 70% of students of one race and, instead of the plus or -15% rule, the
18 Special Master proposes that the 15% would be changed to 25%.⁴ The District has agreed to
19 support this recommendation.
20

21 **Section III: Transportation**

22 Partial unitary status is been awarded by the Court.

23 **Section IV: Staff**

24 Unresolved issues relating to staff are: support for beginning teachers; school site
25 diversity for teachers and administrators; and grow your own programs.
26

27 _____
28 ⁴ If the number were changed from 25 to 20%, three fewer schools would be “integrated.”

Support for Beginning (first and second year) Teachers

Introduction

After a series of reports and related objections and a R&R by the Special Master, this Court directed the District to submit a second supplemental notice of compliance relating to support for first and second year teachers (ECF 2273), on September 20, 2019. The District responded on September 10, 2019 (ECF 2327). Mendoza plaintiffs objected, arguing that the information provided by the District was inaccurate and incomplete. The Special Master prepared a R&R on September 29, 2019 (ECF 2346) evaluating the issues raised by the Mendoza plaintiffs and added his own concerns. The District responded on January 31, 2020 (ECF 2423) adequately providing the information at issue.

The information provided has one minor discrepancy having to do with the number of first year appointments; the District says it made hundred and one new teacher appointments to racially concentrated or underperforming schools. The data presented show that 99 first-year teachers were appointed to the schools. There is some ambiguity in how the term first-year teachers should be defined. The Special Master, who proposed the relevant portion of the USP, meant the term to mean first-year of teaching, while the District uses the term to mean first year teaching in TUSD. Research on the effects of teacher experience and student learning most often defines first-year teachers as inexperienced and typically finds that teachers improve most in their first three years of teaching.⁵

In its September 2019 order, this Court directed the District to employ mitigating conditions (such as smaller class size) to reduce the challenges that beginning teachers had in school serving students performing below the District average and schools that are racially

⁵ Research on the factors that influence student learning in TUSD undertaken by the Special Master and his consultant found that the percentage of teachers serving three years or less has a significant negative impact on student learning.

1 concentrated.

2 All of the racially concentrated and low performing schools in the District have
3 implemented at least one mitigating practice identified in the research. The Special Master
4 contacted one of the authors of the research synthesis cited by the District and learned that it is
5 very uncommon for all of the schools in a District to adopt these conditions. However, the
6 District does not budget for implementing mitigating conditions and relies on principals to find
7 the necessary funds or to arrange different class assignments, etc. It should be noted that there
8 appears to be no research that examines the efficacy of alternative strategies for simplifying the
9 teaching responsibilities of beginning teachers, though there is considerable agreement that such
10 conditions will have a positive impact on beginning teacher effectiveness and retention.

11
12 In his R&R on August 7, 2019 (ECF 2251), the Special Master noted that the District's
13 induction program for first and second year teachers" – the Santa Cruz program" – is a state-of-
14 the-art model.⁶ Moreover, the District, pursuant to the provisions of the USP, enhances
15 mentoring support for first year teachers by 50% above the guidelines of the Santa Cruz program.

16
17 A significant proportion of the appointments of beginning teachers to racially
18 concentrated in low performing schools continues to characterize TUSD, as it does most urban
19 Districts. The District recently took steps to address this problem by requiring that initial
20 appointments begin with applications to the central office rather than being the result of candidate
21 initiative or principal recruiting at the school level. It will be important for the District to monitor
22 the implementation of this more centralized hiring program.

23 Recommendations

24 The procedures the District uses to support first and second year teachers is exemplary

25
26
27 ⁶ The so-called Santa Cruz program was initially developed at the University of California at Santa
28 Cruz but became so widely used that it left the University and now operates as a nonprofit organization.

1 The District should evaluate the efficacy of different strategies and ensure that at least the most
2 effective of strategies can be implemented where they are needed most.

3 The District should receive unitary status for the provisions of the USP dealing with
4 support for beginning teachers.

5
6 **Diversity of Teachers and Administrators at School Sites and Grow Your Own**
7 **Programs**

8 Introduction

9 This part of the report deals with the site-based diversity plans for administrators and
10 teachers and grow your own programs. In an earlier R&R, the Special Master analyzed the work
11 the District had done to retain teachers and administrative staff and found it sufficient. There
12 have been no objections to the Special Master's recommendation that the District should receive
13 unitary status for provisions of the USP related to retention.

14
15 Teacher diversity

16 In his R&R dated November 19, 2019 (ECF 2372), the Special Master made three
17 recommendations after having concluded that the District fell far short of meeting the goals of the
18 original teacher diversity plan:

- 19 1. White teachers were to be counted in assessing diversity.
- 20 2. That schools be accepted as racially diverse with respect to teachers when they
21 were within 2% of the 15 ± provisions of the USP or the second largest group of
22 teachers were 50% or more of white or Latino teachers. Since there are so few
23 African American teachers in the District, the 15% plus or minus rule would not
24 apply. Though African American teachers can be counted along with teachers of
25 other races to make up to 50%. In larger schools, if African American or Latino
26 teachers do not meet the criterion, but there are a significant number of other
27
28

1 teachers of color such as Native Americans, Asians and Pacific islanders and
2 multi-race teachers, this would satisfy the diversity requirement of the USP.

- 3 3. The initial incentives provided for in the initial teacher diversity plan should be
4 sustained even if they are not used in any particular cycle so as to provide the
5 director of talent acquisition with whatever motivators he or she might need. The
6 original 26 schools identified in the teacher diversity plan should be the target for
7 the 2021 school year with a three-year cycle beginning in 2021-22. This proposal
8 is meant to avoid excessive mobility among teachers as such mobility has a
9 negative effect on student learning.
10

11 The Special Master revised his November 19, 2019 R&R on December 13, 2019 (ECF
12 2392), but did not change either the conclusions with respect to the number of schools that had
13 not diversified sufficiently or any of the previous recommendations.
14

15 Recommendations regarding school level teacher diversity

16 The Special Master recommends that the Court adopt the recommendations being made in
17 his November 19, 2019 R&R cited above. If the District agrees to implement these
18 recommendations, it should be awarded unitary status for school level teacher diversity.
19

20 Administrative School Level Diversity

21 The Special Master determined that the 15% rule would not be workable, given the small
22 number of administrators in many schools. The Special Master proposed an alternative based on
23 the number administrators in a school. The District and the Department of Justice both opposed
24 the Special Master's proposal on the grounds that there is no evidence that the District has
25 discriminated in the appointment of administrators and both the District and the Department of
26 Justice argued that the proposal involving a particular number of administrators from different
27 races could be seen as a quota and therefore illegal. While the District opposed the Special
28

1 Master’s proposal, it agreed to abide by whatever formula Special Master in the Court approved
2 also, arguing that the 15% rule “cannot be a requirement.” None of the parties suggested an
3 alternative to the 15% rule.

4 Recommendation regarding administrator diversity at the school level

5
6 In the absence of a viable formula for determining diversity among school administrative
7 staffs, the determination of whether a school with multiple administrators is sufficiently diverse
8 should be determined on a case-by-case basis by whomever is responsible for monitoring this
9 provision. In the case of two-person teams of administrators, it should not be a rule that the
10 individuals must be of different races. While that would be desirable in principle, a team that is
11 working well and facilitating progress within the school should, in most cases, be sustained. The
12 District should be awarded unitary status for administrator diversity.

13
14 Grow your own programs

15 In his December 13, 2019 R&R, the Special Master recommended that the District
16 develop a proactive plan involving more direct and inclusive priorities for recruiting African
17 American and Latino staff for the grow your own programs. In response to the Court’s direction
18 to be more inclusive of teachers, and especially administrators of color, the District has appointed
19 a Director of Talent Acquisition who has cast a broader net for potential candidates, especially
20 teachers who might move into administrative roles. In its reporting on efforts to increase the
21 number of potential school leaders, the District reports that there has been a significant increase in
22 the number of African American and Latino applicants for the Leadership Prep Academy and that
23 those selected to participate more or less mirror the number of applicants from each of the three
24 races. However, a number of those selected do not have the credentials necessary to hold a
25 principalship or an assistant principal position, nor have they started the necessary graduate
26 program. It seems important that they know the District identifies people of considerable
27
28

1 potential for leadership, that it also provides support for completing the university work necessary
2 for state certification or leadership positions.

3 The Mendoza plaintiffs argue that while the District has done well increasing the potential
4 candidates for leadership positions, the test of its commitment to such diversity is in who actually
5 is appointed to leadership roles. It will not be possible to answer that question based on
6 appointments from the current leadership prep cadre for at least two or three more years. Not
7 only do appointments have to be made for open positions, but they should be based on the
8 particular expertise and prior experience of the leadership candidate.

10 Highly effective school principals are very important and are difficult to nurture, recruit
11 and retain. The District should have well-defined pathways to leadership positions and
12 participation and success in the Leadership Prep Academy, while perhaps desirable, should not be
13 a requirement. As a step in this direction, the Director of Talent Acquisition is proactively
14 developing files on potential administrators from among the District's teachers and lower level
15 administrators.

17 Recommendation vis-à-vis grow your own program

18 Tuition support should be provided to outstanding candidates for school or district
19 leadership so they can acquire necessary state credentials. Such support should be limited and
20 related to a realistic assessment of the potential openings for leadership. Further, full tuition
21 support does not give candidates a sufficient stake in the completion of their programs so a lesser
22 amount would be appropriate. The District agrees with this proposal. District should be awarded
23 unitary status for grow your own programs.

25 **Section V: Quality of Education**

26 *Prefatory Note: The discussion among the parties of the District's efforts to improve student*
27 *learning and student outcomes is contextualized by assumptions about the progress that has been*
28 *made. The best way to assess the progress is to look at the progress itself over time. Another*
way to think about this is whether the District has narrowed the achievement gap between white

1 *students on the one hand and African American and Latino students on the other. The Special*
2 *Master has previously noted many difficulties in considering the achievement gap, but analyses*
3 *undertaken by the Special Master and his consultant, as well as the District, show that when one*
4 *takes into account variations in student family income (because schools typically account for less*
than half of student test scores), the evidence is that the achievement gap is relatively narrow and
that it has decreased slightly over a five-year period. Those analyses are summarized in Exhibit
V-1.

5 **ALE Policy Manual**

6 Introduction

7 In his November 11, 2019 R&R (ECF 2372), the Special Master evaluated the objections
8 to the District's policies and priorities regarding Advanced Learning Experiences (ALE). Note
9 that the discussion of these issues in ECFs submitted to the Court are entitled ALE policy manual,
10 but the issues of concern to the plaintiffs and the District relate to the participation and success of
11 students in ALE.
12

13 The District filed its policy manual and describing the various ALEs on August 3, 2019
14 (ECF 2287). The Mendoza's objections to that filing was filed on September 9, 2019 (ECF 2283)
15 to which the District responded on October 7, 2019. In his November 22, 2019 R&R (ECF
16 2372), the Special Master evaluated the objections to the District's policies by the Mendoza
17 plaintiffs. There were no objections filed by the Fisher plaintiffs or the Department of Justice.
18 Since the facts of the case have not changed – although the Mendoza plaintiffs made similar
19 arguments in their objections – discussed below – the Special Master repeats and incorporates his
20 analysis from the November R&R (when editing is done for purposes of brevity that is the
21 demonstrated by ellipses).
22

23 Analysis of Mendoza 2019 Objections

- 24
- 25 1. The Mendoza plaintiffs claim that the District has ignored the Court's direction
26 that additional self-contained GATE programs be located in areas where large
27 numbers of Latino and African American students live. The Special Master and
28 the members of the Implementation Committee (IC) agree with the District that

1 most of the self-contained GATE programs are located in schools and
2 communities with relatively large numbers of Latino and African American
3 students. Moreover, the District has increased the number of schools in which
4 students can participate in GATE programs without passing the test that
5 determines eligibility for self-contained programs by locating cluster GATE
6 programs in schools with relatively large numbers of African-American and Latino
7 students and has created two self-contained programs in which tests do not
8 determine eligibility in schools with large numbers of African-American and
9 Latino students.

10
11 2. The Mendoza plaintiffs claim that the District did not undertake a study ordered by
12 the Court about whether pre-AP or GATE programs promote success in AP
13 classes. The District cites a study by the Special Master that concluded that pre-
14 AP classes have only a small effect on success in AP classes. This is not
15 surprising because these pre-AP classes are not preparation classes for AP and do
16 not map on the content of AP classes. Prior to the AP tests, schools do provide
17 test prep sessions so that students will know what to expect and have guidance
18 about making decisions when they are not certain about the answer. The District
19 cites a study of its own that shows that students who participate in self-contained
20 GATE programs do better on AP tests than those who do not. This too is not
21 surprising. Students in self-contained GATE programs are in those programs
22 because they scored well on tests of cognitive capability.

23
24
25 3. The Mendoza plaintiffs assert that the District does not adequately answer the
26 question of whether schools should be allowed to replace AP classes with dual
27 credit classes. This is the case at Santa Rita High School where there is only one
28

1 AP class. The school administrators and apparently families at Santa Rita prefer
2 dual credit classes to AP because state law says that such courses will count for
3 credit in Arizona colleges and universities. This saves students and their families a
4 considerable amount of money. Moreover, passing such courses is considerably
5 easier than scoring three or above on an AP test. But for students who wish to go
6 to college outside of Arizona, their attendance at Santa Rita limits not only the
7 college the credits they will get but likely whether they would be admitted to more
8 selective institutions.

9
10 4. Mendoza plaintiffs assert that the District did not respond to the Court's direction
11 that it undertake a study of the feasibility of opting out as a way of increasing
12 enrollment of African American and Latino students in a GATE or UHS. The
13 District points out that the Fisher plaintiffs were adamant in their opposition to
14 automatically enrolling students who were eligible to participate in courses or
15 schools where tests determine eligibility. They note that the Special Master, while
16 favoring the opt-out option, recommended that at the time that this issue was
17 considered that it was not worth contesting the Fisher's position. The Special
18 Master now feels otherwise and notes that the Fisher plaintiffs provide no evidence
19 that African American families oppose an opt-out policy. The Special Master
20 believes that an opt-out approach could be implemented in ways that allow parents
21 to immediately opt out should they wish to do so. This approach is identified in
22 the recommendations below.

23
24
25 5. An impediment to increasing the number of GATE programs has been the
26 difficulty of recruiting teachers to become GATE certified. The Mendoza
27 plaintiffs assert that the District has not studied whether increasing the stipends to
28

1 teachers would remedy this problem. The District's response is that a significant
2 number of teachers have become GATE certified recently and that is one
3 explanation for why the number of students enrolled in GATE programs has
4 increased.

5
6 6. The Special Master has recommended that the District explore the possibility of
7 using the tutoring model employed for IB students at Cholla High School. This
8 model uses IB teachers to tutor students in the courses the teachers teach and using
9 Title I funds, the school would pay teachers more than is the going rate in other
10 schools where 910 G money is used. The District responds by saying that the cost
11 of such a program of tutoring would be prohibitive. The Special Master and the
12 plaintiffs have argued that tutoring should be done by certified teachers. The
13 Special Master believes it is time to rethink that policy even though it is supported
14 by research. Robert Slavin of Johns Hopkins University, who is one of the most
15 prominent scholars who has studied tutoring has recently endorsed a different
16 approach using tutoring teams made up of teacher candidates and others who are
17 supervised by a certified teacher who teaches the course for which students need
18 tutoring. This model would cost less to implement even if the teachers who
19 supervise and train the tutors would be paid larger stipends.

20
21
22 7. The Mendoza plaintiffs assert that the District does not make sufficient
23 accommodation for GATE students to participate in dual language programs when
24 they do not speak Spanish. This Court knows that the District has chosen to
25 implement a model for dual language that requires students who have completed
26 kindergarten and first grade to speak Spanish or to take a test to qualify them with
27 a certain level of Spanish competence. Research shows this TWDL model to be
28

1 the best approach to achieving fluency in English and Spanish but it is not the best
2 model for integration. There is only one dual language GATE program –
3 Hollinger K8 (the GATE program was K-6. There was a K-8 dual language
4 program at Pistor that enrolled only six middle grade students. The dual language
5 students at Hollinger apparently chose not to transfer to Pistor’s GATE program so
6 the District moved the middle school dual language program to Hollinger and
7 facilitated the movement of those students at Pistor who chose to transfer. This
8 resulted in a noticeable increase in the number of TUSD students in dual language
9 GATE programs though the number is small (178 students).

11 8. Mendoza plaintiffs assert that the District has not undertaken a study directed by
12 the Court to examine whether creating the courses or summer programs facilitate
13 success in advanced placement at UHS where most courses are AP. The District’s
14 response to the Mendoza plaintiffs is essentially to finesse the question because
15 they do not offer a summer program to UHS entering students.

17 9. In response to concern is that out of District students at UHS reduce the
18 opportunities that TUSD students have to enroll at UHS, the District says that not
19 only are all TUSD students who meet the eligibility requirement for admission to
20 UHS admitted but that TUSD students below the cutoff line (which is defined by
21 test scores and grade point averages) are offered the opportunity to be admitted to
22 UHS based on alternative measures of their potential success in the school.

24 10. The Mendoza plaintiffs claim that the District did identify policies to reduce
25 attrition but did not focus on Latino students as it was directed to do so by the
26 Court. It seems that if the District wants to reduce the attrition of all students
27 regardless of race. The District should be congratulated for doing so rather than
28

1 criticized. The Mendoza plaintiffs did not identify policies and practices that
2 would be uniquely productive for Latino students that the district should add to its
3 interventions.

4 Recommendations from the November 22, 2019 R&R

5 In holding the District accountable for addressing the requirements of the USP, a
6 ubiquitous problem is the setting of goals. With respect to ALEs, the Mendoza plaintiffs want the
7 District to achieve parity across all races. The District appears to support the 15% rule.⁷ The
8 District's external consultant, a prominent African American researcher from Vanderbilt
9 University, recommended a 20% rule. The goals that the District should meet are not at issue but
10 the Special Master makes note of this difference of perspective because it shapes the way the
11 plaintiffs and the District interpret the success of the District policies and practices. The Special
12 Master sides with the external consultant in recognition of the many factors that influence student
13 and family choices and the student outcomes that makes it difficult to meet the 15% goal and it is
14 highly unlikely that parity could be attained.⁸

15
16
17 Dual credit courses should be more available throughout the District's high schools and
18 the number of AP classes at Santa Rita should be expanded. Families should be advised about the
19 virtual absence of AP classes and the implications of this should they be thinking that their
20 students would go to college out of state.

21
22 The District should pilot an opt-out program for all students of all races in one or two

23
24 ⁷ The 15% rule as applied in TUSD means that the participation in ALE by African American and
25 Latino students should be within 15 percentage points of the participant rate of white students (or
26 whichever racial group has the greatest participation).

27 ⁸ One of the more important constraints on participation in ALE programs is "stereotype threat."
28 This well researched but not widely recognized phenomenon involves the influence of perceived social
beliefs by individuals and groups who internalize what they see as reality. An example of stereotype
threat in this case is the perception among black students that African Americans are not likely to do well
in rigorous academic endeavors.

1 schools. This pilot would apply only to schools in which self-contained GATE is offered;
2 students would not be automatically enrolled in a GATE program in a school in which they are
3 not or are about to be enrolled. Families would immediately be notified and congratulated. At
4 the same time that they received the congratulatory letter or email, families would be given a self-
5 addressed card or email address so they could opt out. They would be invited to talk with a
6 parent from the gifted program at the school in which the student is enrolled or UHS.
7

8 The Special Master and the plaintiffs have endorsed the idea that tutors should be certified
9 teachers. Not only should they be certified teachers but, ideally, they should be certified in the
10 subject for which the student is being tutored. It has proven difficult to recruit sufficient numbers
11 of teachers to satisfy the needs for tutors among District teachers. The District should be able to
12 employ a tutoring model using uncertified tutors who work under the supervision of a more
13 highly paid District teacher. Since it is difficult to know how many tutors can be effectively
14 supervised, the District should experiment and evaluate different team sizes.
15

16 The District's policies and practices relating to attrition from ALE should not be limited to
17 African American and Latino students.

18 All ALE policies and practices should be printed in the ALE policy manual

19 When the District implements these recommendations, it should be awarded partial
20 unitary status for those portions of the USP dealing with ALE.
21

22 On January 31, 2020, the District filed (ECF 2424) indicating that it would implement the
23 Special Master's recommendations above and that it has already begun to do so in some cases
24 again asking the Court to grant partial unitary status for advanced learning experiences.

25 On February 14, 2020 (ECF 2432), the Mendoza plaintiffs filed a motion to strike the
26 District's January 31, 2020 filing on the grounds that additional briefings were not allowed
27 following the Special Masters R&R. In addition, the Mendoza plaintiffs argued that if the Court
28

1 did not vacate the District’s January filing, it should deny the District partial unitary status for
2 ALE for the following reasons citing the Courts criteria:

- 3 1. That the District must show that progress is made defined as participation and
4 completion in high enough levels to secure the benefits of college credits (this
5 applies to advanced placement courses).
- 6 2. That the rates of progress should be compared to white students and should exceed
7 the progress of white students so that “the ALE increases are not an all boats rising
8 phenomenon.”
- 9 3. That the so-called 15% rule should be used as a rule of thumb indication of
10 possible discrimination in ALE programs.

11 The Mendoza plaintiffs argue that the District failed to meet any of these three tests.

12 In its February 28, 2020 response to the Mendoza objections, the District makes three
13 arguments. First, there is no legal basis to strike the particular filing at issue. Second, the Special
14 Master did not raise issues of participation in his R&R and the District will or is doing what the
15 Special Master recommended. Third, there is no legal basis for denying unitary status on the
16 basis of academic outcomes.

17 Analysis

18 The Special Master points out that there has been a significant increase in number of
19 students participating in ALE overall: between 2012-13 and 2018-19, the numbers of African
20 American students participating in ALE has increased 41% and the number of Latino students has
21 increased 23%. For both racial groups, the sharpest rise in participation occurred over the last
22 two years after a drop in enrollment in the 2016-17 school year.

23 In their February 2020 filing, the Mendoza plaintiffs understate the level of participation
24 by African American and Latino students by using percentage points to make their argument. If
25

1 one uses percentage increases, there is a different story to be told. For example, regarding GATE,
2 the Mendoza plaintiffs say that white student participation increased by 4.6 percentage points as
3 compared to 32%; Latin American Latino participation increased by four points rather than 50%;
4 and African-American participation increased 5.6 points, rather than by 80%.

5
6 The Mendoza plaintiffs argue that much of whatever increase there was in participation
7 was in certain gifted and talented programs, those described as cluster or pullout. But those
8 versions of GATE provide students with the same level of learning opportunities no matter what
9 their race is. Cluster programs are essentially self-contained. Moreover, the District sought to
10 expand access to gifted and talented programs in lower grades, on the assumption that this would
11 prepare students to succeed in more rigorous courses in upper grades. It is true that the
12 percentage of students taking AP classes scoring 3 or above did not improve significantly. But
13 the question here should be whether the District sought to address this problem. It did assign
14 tutors to students of color who were struggling with AP courses. The District asserts that the
15 performance of Latino and African American students in TUSD is superior to that of the state and
16 nation. The Special Master has not verified this claim. A common finding of research on testing
17 is that when the number of students initially increases, the effects on performance overall is
18 negative.
19

20
21 If all boats did not rise, one might ask whether there is discrimination against white
22 students. The District did not deny support services for tutoring to white students in need and
23 whatever improvement was made in the teaching of AP courses would benefit all students. This
24 is not a zero-sum game. If whites do better, this has no negative effect on students of color. But
25 if students of color did better and whites did not, this might have a negative effect on enrollment
26 of white students, which would have negative consequences for the District, including the
27 undermining of integration.
28

1 The District and the Mendoza plaintiffs differ on the number of students who participated
2 in different approaches to ALE and thus how many programs exceeded the 15% rule. The 15%
3 rule was to be used, according to the Court, as an indicator of possible discrimination. But there
4 is no evidence introduced by any of the plaintiffs or the Special Master that there has been
5 discrimination. There is a national argument that has been going on for some time about whether
6 the tests that are used to determine the qualifications of students to participate in gifted and
7 talented programs or test-in schools like University High School are fair. Students from relatively
8 low income families are less likely to experience vocabularies of the sort used in these tests
9 and/or to have personal experiences that would allow them to contextualize problems they are
10 asked to solve. But these tests are not designed by the District and they are widely used. The
11 District modified testing for admission to UHS by using what is called a non-cognitive test for
12 those who fell short of meeting the standards of the traditional tests. And students who
13 participate in cluster programs are not tested. The District is also experimented with two schools
14 where students are tested, but the test scores do not determine who is admitted. Results of that
15 experiment are yet to be determined.

18 Recommendations

19 The District has engaged in numerous efforts to increase enrollment and success of
20 students in ALEs (*see* Exhibit A in ECF 2283). The Mendoza plaintiffs and the Special Master
21 have made no further proposals for implementing additional strategies. The fundamental problem
22 confronted by all school systems that offer advanced courses is that many students who could do
23 well in such courses choose not to do so, either because their parents believe that this will
24 discourage their children or because their students will not do as well in these more rigorous
25 courses and therefore have lower grade point averages and be less able to attend the college of
26 their choice, or because the students themselves doubt that they will benefit from courses that
27
28

1 they have been told are very difficult. This well-researched phenomenon is called stereotype
2 threat. These social myths apply to race, gender, and many other presumed influences on human
3 behavior.

4 The District is doing what it is reasonable to do to increase the enrollment of African
5 American and Latino students in ALE that has increased enrollment markedly. The District
6 should receive partial unitary status for ALE programs.
7

8 **Inclusive School Environments and Cultures of Civility**

9 Introduction

10 The Court has ordered that the District collaborate with the Special Master to determine
11 the effectiveness of current strategies promoting inclusiveness and civility and the identification
12 of possible additional research-based strategies, and to develop a professional learning plan about
13 creating inclusive and civil school environments.
14

15 Analysis

16 The District has undertaken a methodologically sound study of the extent to which
17 students of different races feel that they belong in the school and are treated fairly. That study
18 was conducted in collaboration with the Special Master who examined the results and concluded
19 that there were small differences among students of different races. The overall feeling of
20 belonging was adequate, perhaps better than in many Districts with diverse students. The District
21 also conducted a pilot study of restorative practices and how restorative practices could be better
22 implemented in TUSD. As noted, the Court directed the District to study the effectiveness of the
23 different strategies it uses to promote inclusiveness and civility. However, since all of these
24 practices are interrelated and implemented at the same time, it would be difficult to study the
25 effectiveness of each one, except in the experimental study. Such a study is not feasible since the
26 District would be denying important programs to particular students. The Special Master
27
28

1 suggested that in lieu of the empirical study of the various practices the District uses, it should
2 undertake a literature review. Such review would also identify strategies that could be used
3 augment the existing interventions, if needed. The District conducted such a study finding that
4 the available research confirms the effectiveness of the practices that it is implementing and it
5 also identified social and emotional learning (SEL) as a strategy it would undertake if additional
6 actions were needed. (Some TUSD schools are already using SEL, as does Project MORE).
7

8 The Mendoza plaintiffs object to the District's petition for partial unitary status on the
9 grounds that they did not sufficiently collaborate with the Special Master and they did not
10 undertake the study of individual elements of the current set of strategies being used to foster
11 inclusiveness and civility. The Special Master believes that his collaboration with the District
12 was adequate and, as noted, it is not feasible to undertake the study of individual practices. The
13 District's response to the Mendoza plaintiffs (ECF 2354) and the Special Master's subsequent
14 R&R (ECF 2377) address the objections raised by the Mendoza plaintiffs.
15

16 The Court also required the District to develop a professional learning plan. The District
17 has submitted a proposal about the professional learning plan for inclusiveness and civility that is
18 the same as that for discipline. The Special Master comments positively on this in the section of
19 this R&R related to discipline.
20

21 Recommendation

22 The District has met the intent of the Court order related to inclusiveness and civility and
23 should be awarded partial unitary status for the relevant provision of the USP.

24 **Culturally Relevant Courses, Related Professional Learning Plans and Multicultural** 25 **Curriculum**

26 Overview

27 The Court directed the District to prepare and file a plan for culturally relevant courses
28

1 related professional learning plan and a multicultural curriculum plan (ECF 2123). This R&R
2 addresses these responsibilities. In addition, this report deals briefly with the District's efforts to
3 implement culturally responsive pedagogy districtwide because CRP is essential to culturally
4 relevant courses as well as to implementing a multicultural curriculum.

6 Culturally Relevant Courses

7 Research undertaken by faculty members of the University of Arizona and published in
8 the premier education research journal shows that TUSD's culturally relevant courses have a
9 significant impact on student learning that transcends the content of the courses. The District has
10 increased the number of these courses by almost 400% over the last five years. As important, the
11 District has made substantial investments in teaching improvement through mentors to ensure that
12 the courses are taught with fidelity and that teachers use culturally responsive pedagogy. Indeed,
13 the level of support in this case is extraordinary. Further, the District has worked with the
14 College Board to develop an AP version of a CRC course making this course available not only to
15 UHS students, but to other students in the District and students throughout the country. In
16 addition, TUSD has the benefit of oversight by a panel of national experts who review the overall
17 content of CR courses and these commentaries are used in a broad range of courses.

19 The Mendoza plaintiffs object (ECF 2286), arguing not that the District has not done what
20 the Court asked it to do,⁹ but rather that the District did not report all of these things in its plan.
21 The District argues that it does indeed discuss these matters in the plan and the Special Master
22 concurs. The Special Master wonders if he and the Mendoza plaintiffs were reading the same
23 District description of CRC. In any event, the District should not be denied unitary status because
24

26 ⁹ One exception to this is that the Mendoza plaintiffs argue that the District did not provide a
27 "framework" that would clarify the CRC. The District argues otherwise. The Special Master believes that
28 the elements of a framework are specified in the District's filing even if the label "Framework" is not
applied to them.

1 it does not cite all of its achievements or provide extensive details of courses and activities in its
2 plan.

3 Professional Learning Plans for CRC and CRP

4 As noted, the professional learning experiences for CRC teachers are intensive, in depth
5 and job embedded. While the Court did not request a learning plan for CRP, the District has
6 created a separate department to provide such training, the Culturally Responsive Pedagogy and
7 Instruction Department headed by a Director. Previously, the Special Master has raised questions
8 about whether culturally responsive pedagogy dealt adequately with subject matter. In the last
9 few weeks, a member of the Implementation Committee interviewed the CRPI staff and reviewed
10 the training materials being used with teachers throughout the District. These training materials
11 now include content-specific strategies for culturally responsive instruction.
12

13
14 Knowing the training content is not the same, of course, as knowing whether teachers
15 actually implement what they have learned. There is an abundance of research that suggests that
16 only a small part of what is learned in professional development finds its way into the classroom
17 and one reason for this is that teachers tend to adapt what they've learned to what they already do.
18 Sometimes that works and sometimes it doesn't. The main mechanism the District has for
19 evaluating teaching is the regular observation by site level administrators. The Mendoza
20 plaintiffs also question whether administrators carry out valid assessments of teaching. If TUSD
21 is anything like most school districts, school administrators vary a great deal in their in-depth
22 knowledge of teaching, especially culturally responsive teaching, which was probably not part of
23 the curriculum when they became a teacher.
24

25 Multicultural Curriculum

26 The issues around multicultural curriculum have to do with the integration of culturally
27 relevant content throughout all of the subjects that make up the curriculum. The District has
28

1 established an in-house review panel that uses a protocol for looking at the formal curriculum to
2 ensure that it uses culturally relevant content. The Special Master is unaware of any current
3 objections by the plaintiffs to the multicultural characteristics of the curriculum and he has no
4 objections.

5 Recommendations

6 The District now has a training program for school administrators to help them evaluate
7 teaching, especially culturally responsive pedagogy. However, there is no procedure for
8 determining the accuracy of the evaluations that school administrators conduct. The District
9 should develop video examples of different levels of culturally relevant pedagogy that
10 administrators would rate using the modified Danielson teacher evaluation instrument. (This
11 instrument was modified by expert TUSD teachers and national experts on culturally responsive
12 pedagogy). Administrator ratings would be assessed by TUSD experts and these ratings would be
13 used for additional professional learning, if necessary. The District has agreed to this procedure.

14 The District should be awarded partial unitary status for CRC, CRP and Multicultural
15 Curriculum

16 **Reorganization of Student Services Departments**

17 Overview

18 On November 6, 2019, the Court ordered the Special Master to develop a plan for the
19 organization of the Mexican American Student Support Department (MASSD) and the African
20 American Student Support Department (AASSD) to include the following design principles:

- 21 1. Professional staff must have qualifications at least as substantial as those of the
22 core staff they are to support and advise.
- 23 2. Direct services should not be provided by professionals in the student support
24 departments unless there is a demonstrated unmet need requiring such direct
25
26
27
28

1 service.

2 The role of the student support departments has been at issue since the adoption by the
3 Court of the USP. The Special Master has consistently argued that the services provided by these
4 departments were either duplicative or could best be performed by the core apartments of the
5 District. However, the Fisher and Mendoza plaintiffs, as well as the Court, have made it clear
6 that they wish these departments to continue to operate. The Mendoza plaintiffs and the District
7 worked together initially to develop a plan for the MASSD but the Mendoza plaintiffs have since
8 objected to aspects of the plan submitted by the District arguing that the District revised the plan
9 to which they and the District had agreed. The District's proposal for the AASSD and MASSD
10 are quite different that there is no explanation for why they are different. And, as has been the
11 case in the past, the costs of operating the AASSD are substantially greater than the costs
12 involved with the MASSD, despite the fact there are at least six times more Mexican American
13 students than African American students in TUSD.¹⁰ The combined cost of operating the two
14 departments is almost \$2,000,000. The Fisher plaintiffs chose not to participate with the District
15 in the restructuring of the departments, but they did object to the District's plan. The Department
16 of Justice has not commented on any of the proposals.

17
18 It is important to note that none of the proposals made thus far identifying the
19 responsibilities of the two departments are justified by any evidence that these departments have
20 been effective or that there are unmet needs that could not better be addressed by other units of
21 the District.

22
23
24 In this R&R, the Special Master proposes a different approach to the organization of the

25
26

¹⁰ The Court is reminded that the Mexican American Student Support Department sees as its
27 responsibility all students who are Latino and the African American Student Department presumably
28 addresses the needs of all students identified as African Americans even though a large number of the
students are refugees or immigrants from Africa.

1 two departments from his earlier designs. This new proposal is predicated on the following:

- 2 1. The Court has set two guidelines for reorganization identified above.
- 3 2. Neither the District nor the Mendoza proposals meet these Court ordered
4 guidelines.
- 5 3. Since the last actions by the parties that have been submitted to the Court (January
6 2020), the District has developed and is implementing a major restructuring of
7 programs to strengthen the operations and oversight of student support
8 departments as well as a number of other activities relating to equity and diversity.
9

10 This will be discussed further below.

11 Both the District and the Mendoza plaintiffs aggressively criticized the Special Master's
12 December 2019 proposal for restructuring. But since the Special Master's revised proposal in this
13 R&R is significantly different than that criticized by the District and the Mendoza plaintiffs, there
14 is little purpose in assessing the criticisms of the Special Master's previous proposals.
15

16 Some of Limitations of the District and Mendoza Proposals

17 It does seem that would be useful for the Court for the Special Master to summarize the
18 limitations that he sees in the District and Mendoza proposals.

19 As noted, the District's proposals for AASSD and MASSD differ with respect to
20 responsibilities, as well as cost, without any discussion about differences in need except
21 for the support services that MASSD could provide students and families with limited
22 English facility.

23 The proposals unrealistically provide for direct services not only to individual staff
24 members, but to individual students.

25 Numerous positions in both proposals identify the qualifications necessary for
26 appointment to be less than the qualifications needed by the people they are supposed to
27
28

1 be supporting and advising.

2 There is considerable duplication of responsibilities of the departments and core units of
3 the District. Indeed, the District makes two incompatible arguments: (a) there is no
4 duplication (b) if several positions were eliminated from the support departments as the
5 Special Master initially proposed, these positions would have to be reinstated in core units
6 of the District.
7

8 Many of the positions in the Mendoza proposal involve extensive responsibilities touching
9 on numerous responsibilities of other organizational units of the District and no single
10 program specialist is likely to have these competencies. In contrast, some positions listed
11 by the District would seem to have relatively little to do.

12 In the Mendoza position descriptions, there are new initiatives being proposed that would
13 best be dealt with in the context of the budget discussions where the need for these
14 programs and the cost in comparison to other priorities could be assessed.

15
16 The Mendoza proposal is to locate the program specialists in individual schools. This
17 would almost certainly undermine the ability to direct appropriate resources to places of
18 need. This argument is developed at greater length in the Special Master's December
19 2019 R&R (*see* ECF 2403).

20 Recommendations

21 Each student support department would have:

- 22 • A director, and assistant director and an administrative assistant.
- 23 • There would be eight program specialists with the following domains:
 - 24 - Family outreach and empowerment¹¹

25
26
27 ¹¹ The Court has ordered the Special Master to provide detailed information on the role of the
28 student support departments related to family and community engagement. *See* Addendum A.

- 1 - College and career readiness
- 2 - ALE recruitment and retention
- 3 - Academic power and engagement
- 4 - Community outreach
- 5 - Social, emotional, and behavioral support
- 6 - Attendance and retention
- 7 - Virtual learning

8
9 Up to 15 part-time positions to serve as tutors, event organizers, CRC student mentors and
10 whatever other needs could be met by such individuals.

11 Six of the domains listed above are those that have been identified by both the District and
12 the Mendoza plaintiffs although the specific responsibilities for these positions varies between the
13 two proposals. Given the major reorganization underway, it seems appropriate to allow the
14 District to define the specific functions of each of the program specialists. The District and the
15 Mendoza plaintiffs also urged that there be a program specialist for CRC. The Special Master
16 strongly opposes this on the grounds that the current ongoing support for CRC may be the most
17 robust support for any limited curriculum initiative in the country.

18
19 Two of the program specialists proposed by the Special Master would have new
20 responsibilities – reducing absenteeism and enhancing opportunities for virtual learning.
21 Research undertaken in TUSD by the Special Master and his colleagues on the influences on
22 student achievement has shown that the single most important school-related predictor of low
23 performance is high absenteeism. This is not surprising – if you’re not in school, you’re unlikely
24 to be learning. Absenteeism is also a strong predictor of dropping out and failure to graduate.
25 Recent experiences of districts throughout the country trying to promote distance learning has
26 shown that there are significant inequalities that exist among students in many districts, teacher
27
28

1 training with respect to technology is inadequate, and there are large differences in access to both
2 hardware and software. Of course, the Coronavirus related problems for low income students is
3 likely to diminish some, though experts differ in their estimates of future. But there is no
4 question that improving the capacity of districts to enhance students' capabilities to make
5 effective use of technology-based learning will be a bigger part of the future than it has been in
6 the past. Moreover, the information technology division within the District is significantly
7 understaffed and could use all the help it can get, as well as an enhanced capability to focus on
8 equity.
9

10 The USP provides that the superintendent can determine the organizational structures for
11 the various programs and activities of the District. As noted, the specific duties of these positions
12 would be determined by the District in consultation with the plaintiffs but not determined by the
13 plaintiffs or the Special Master. It follows that the domains of these positions could also be
14 changed should the evidence dictate. The assignment of responsibilities would be based on
15 evidence that there are needs being unmet that the program specialists are competent to address.
16 The qualifications of the professional staff that fill the program specialist positions must be at
17 least as substantial as those professionals they are intended to support. Pay for these positions
18 should be substantial enough to recruit and retain highly qualified personnel.
19

20 The student support departments would be housed in the proposed new Department for
21 Equity and Diversity to be headed by an assistant superintendent who reports directly to the
22 superintendent. The directors of the two departments will report directly to the assistant
23 superintendent who will be a member of the superintendent's cabinet and thus engaged in all
24 important discussions about how best to meet the needs of African American and Latino students.
25

26 **ELL Action Plan for Dropout Prevention**

27 The District responded the Courts April 10, 2019 order (ECF 2213) on August 30, 2019,
28

1 arguing that it has satisfied the Court's requirements. On September 11, 2019 (ECF 2332), the
2 Mendoza plaintiffs objected, arguing that the District's dropout rates were unclear and that the
3 District had provided no evidence that it was monitoring and taking appropriate action to reduce
4 the dropout rate further as was required to do in the ELL action plan (ECF 2261). TUSD
5 responded on September 18, 2019 (ECF 2336) indicating that by anchoring the dropout rates for
6 ELL to the dropout rates for non-ELL students, the goal is clear. The Special Master agrees with
7 the District and notes further that this is an ambitious goal and that the dropout rate for ELL
8 students in the District is quite low. Indeed, there is no criticism by the Mendoza plaintiffs, or the
9 Special Master, of the dropout goals, no objections about what the District has done, and no
10 suggestions about or what it needs to do to further lower the ELL dropout rate. In 2018-19 there
11 were no African American dropouts and only one-tenth of 1% of Latino ELL dropped out.¹²
12

13
14 With respect to the Mendoza claims that the District does not describe how it monitors
15 and acts upon evidence relating to the dropout rate for ELLs. The District's response to this
16 concern is that it has spelled out in its annual report how it monitors and responds to evidence
17 about DLL dropouts. Special Master notes that the Court did not direct the District to spell out in
18 its filings how it monitored dropout or graduation rates.

19 Recommendations

20
21 In its plan for ELL dropout prevention, the District should identify the office or offices
22 responsible for monitoring and addressing any problems with respect to ELL dropouts. The
23 District should otherwise be awarded partial unitary status for those sections of the USP related to
24 ELL dropout prevention.

25
26 ¹² The Court is reminded that TUSD counts African students as African Americans by agreement
27 of the parties under the USP when the USP was developed. Special Master supported this at the time but
28 has since decided that this was an incorrect decision because the experiences of African American students
in those students who are from Africa are very different and these differences affect the full range of
student outcomes.

1 **Dual Language**

2 The USP provides that, “The District shall build and expand its dual language programs
3 ... including by encouraging new and current certified staff with dual language certifications to
4 teach in such programs by focusing recruitment efforts on appropriately certified teachers.”

5 There are three major problems in expanding the number of dual language programs.

- 6
- 7 1. The model of dual language programs that has been chosen by the District is called
8 two-way dual language (TWDL). While this model is the approach most likely to
9 result in fluency in Spanish and English, the success of the program depends on
10 having three more or less equal groups of students: students who are fluent in
11 English, students who are fluent in Spanish, and students who are bilingual.
12 Moreover, students must enroll in kindergarten or the first grade or pass a test of
13 Spanish capability or transfer from another TWDL program. The District worked
14 successfully to change state policy as it applies to TUSD so that the state
15 requirement that ELL students take four periods of immersive Spanish can be
16 waived. This may allow the District to satisfy the requirement of this particular
17 model as it applies to Spanish speakers. The question here is whether there is an
18 adequate number of students who are bilingual in each of the programs. Beatrice
19 Arias, a professor at Arizona State University and consulted for the Mendoza
20 plaintiffs, concluded that only two of the 11 dual language programs are
21 “balanced” with respect to the three groups of students noted above. No data on
22 the number of students in each group in each program was provided either by the
23 District or the Mendoza plaintiffs.
24
 - 25 2. It has been difficult to recruit and retain bilingual teachers. This is a national
26 problem. The District has aggressively addressed this problem by providing
27
28

1 financial incentives and paths to bilingual certification. The District says that all
2 of its dual language programs are staffed with appropriately certified teachers or
3 teachers who are on their way to certification.

- 4
- 5 3. Nine of the 11 dual language programs are racially concentrated with 80% or more
6 Latino students. Because these schools serve students who are predominantly from
7 low income families, achievement test scores are on average low (four of the 11
8 schools are B schools, the others are C or D). This, and the distances that would
9 need to be traveled for many white and African American students discourage
10 enrollment that could lead to more integrated opportunities for the students
11 involved.

12 The Mendoza plaintiffs have two objections to the District's dual language efforts:

- 13
- 14 1. All of the teachers in these programs are not fully certified as bilingual.
15 2. Most of the programs do not have "balanced" enrollment that is ideal for TWDL
16 programs.

17 The Special Master believes that the District has taken strong initiatives to ensure that its
18 teachers in dual language programs are certified as bilingual teachers. All staff in these programs
19 are either certified as bilingual or are in the process of being so. The location of most of these
20 programs in the southwest quadrant of the District suggests that there is not much the District can
21 do to change the racial characteristics and language facility of enrollments in these dual language
22 schools. Well-balanced enrollment is desirable in the schools, they also serve as neighborhood
23 school. As suggested, it seems futile to require dual language schools to be linguistically
24 balanced. The likely result of such a requirement would be to eliminate some existing dual
25 language programs.
26

27 To increase the number of students who have access to good dual language programs, the
28

1 District added grades in some schools, worked to change state policy, added a new program at
2 Bloom Elementary (which is now integrated), undertook a comprehensive study of existing
3 programs and addressed weaknesses, and, strengthened the competency of bilingual teachers as
4 noted. In understanding the limits on interest in dual language programs among families in
5 TUSD, it is important to recognize that the program at Bloom has attracted relatively few students
6 thus far and in this current year did not attract enough students to continue to fill classes in its
7 third grade because, among other reasons not known, a number of second grade participants at
8 Bloom did not continue. The District says that it is not uncommon to have such mobility, but that
9 response rather begs the question. Is there enough demand in the District to populate additional
10 programs that have balanced – much less integrated – student bodies? A more optimistic view of
11 the future of the Bloom program is that the kindergarten and first grade cohorts this year are the
12 largest ever over the last four years and the first grade enrollment this year grew by 35% over the
13 kindergarten group from the previous year. Enrollment in the second and third grades should tell
14 the story about the school’s future attractiveness and inform decisions about further expansion.

15
16
17 Roskruge is a K-8 magnet school. Its enrollment is 81% Latino and 10 percent Native
18 American.¹³ The Special Master notes the Native American population because Roskruge has
19 served as the 6 to 8th grade “neighborhood” school. The District wants to make Roskruge a no
20 boundary school offering only the TWDL model. The Court has indicated that the District can
21 determine whether or not to maintain the school’s magnet status. So far as one can tell, the
22 predominantly Latino and Native American communities that feed students into the school at all
23 levels are opposed to the loss of magnet status and to any restrictions on enrollment that are
24 imposed as a result of the TWDL requirements for balance and Spanish fluency beyond the first
25

26
27 ¹³ Only three percent of Roskruge students are African American.
28

1 grade.

2 Recommendations

3 TUSD should be awarded unitary status for dual language.

4 Given its location, its poor academic performance and its racial composition, the Special
5 Master believes that Roskruge will not be integrated in the foreseeable future. This reality,
6 coupled with the strong feelings on the part of the families who send their children to Roskruge,
7 leads the Special Master to recommend that the District offer two alternative tracks for dual
8 language. The first track would be the TWDL model; the second track is what the school does
9 now with respect to dual language, though it is clear that the school needs to improve
10 academically.
11

12 **Section VI: Discipline**

13 Introduction

14 There appear to be four concerns expressed by the Mendoza plaintiffs and the Special
15 Master over the last year or more about the District's progress and its fulfillment of court ordered
16 directives:
17

- 18 1. The accuracy and completeness of the data on student discipline over time.
- 19 2. Whether the District has provided information in ways that allow comparisons
20 from year to year.
- 21 3. The adequacy of the site to provide guidance to staff about what works in the
22 administering of discipline.
- 23 4. After progress in reducing the amount of discipline actions, the trends, especially
24 with respect to suspensions, trended up in 2018-19.
25

26 The Fisher plaintiffs have been particularly concerned about whether African American
27 students are treated fairly in the administration of discipline given the disproportionality in the
28

1 extent to which black-and-white students are disciplined.

2 This Section also addresses the Court’s requirement that the District develop professional
3 learning plans for discipline and for inclusiveness and civility.

4 Accuracy and Completeness of the Data¹⁴

5 The District has instituted an extensive process of review to try to identify errors and
6 inaccuracy in the reporting of discipline from school to central offices. The District asserts that
7 these reviews include comparisons of schools with similar student populations. This is an
8 important step and the Special Master has no knowledge about how this step is carried out,
9 though he has no reason to believe it is not used.

10
11 One exception to the completeness of the data reported to the central office has to do with
12 school-level identification of teachers who require additional support, either because they seem to
13 be “over-disciplining” or inappropriately disciplining their students. The District acknowledges
14 the absence of such information believing it is the responsibility of the school- level disciplinary
15 committees to address these problems. The rationale for this procedure is the belief that if
16 individual teacher names were reported to the central office, their peers would be reluctant to
17 identify teachers who needed additional support. The Special Master believes this makes sense.
18 However, consequences of this procedure are that the District has no idea of the extent to which
19 this problem exists, what schools do to remedy this problem, or which of the remedies are
20 effective. Since part of the street wisdom of discipline is that a student who is a problem in one
21 classroom may not be a problem in another because of differences in the capability of teachers to
22 deal with particular issues. Because the way that some teachers mishandle potential discipline
23
24

25
26 ¹⁴ The Special Master has been involved in numerous discussions at the national level with respect
27 to discipline equity and served on the School to Prison Pipeline Task Force of the Southern Poverty Law
28 Center. Has never been in a discussion where the accuracy of the data was not an issue, nor has he ever
seen this concern fully resolved.

1 problems is a critical concern and may be one of the major reasons for disparity and discipline
2 actions applied to students of different races, this is an issue that the District needs to address.

3 *See* recommendations.

4 Consistency in Reporting the Data Over Time

5 The Special Master believes that this issue has now been resolved. The Mendoza
6 plaintiffs cite as justification of their concerns judgments made by the Special Master in 2018.

7 *See* the District's most recent explanation of its practices in ECF 2266.

8 The What Works Practices File

9 The Court ordered the District to develop such a file based on a Recommendation by the
10 Special Master. The idea is to provide all staff with a readily accessible source of information
11 about how best to handle particular actions that teachers and principals believe warrant
12 disciplinary action. The early development of this file provided information about procedures.
13 The file, which the District describes as a work in progress, provides access to websites like that
14 dealing with PBIS and a small number of vignettes and stories from sources in TUSD. Could this
15 file be improved? Of course, and the District agrees.¹⁵ The Special Master consulted with a
16 national expert on discipline, who indicated that such files were uncommon.
17

18 The Recent Increase in Disciplinary Actions

19 No one disputes the data. The District asserts that the reason for this upturn in the trends
20 is that the code of conduct specifying offenses and related disciplinary actions calls for
21 suspensions for alcohol use and possession, vaping and other drug offenses and fighting was
22 changed. Drug, vaping and alcohol offenses increased substantially in Tucson. The District
23 argues that it is not the number of offenses that is important, it is the number of days that students
24

25
26
27 ¹⁵ The Special Master has spoken with the person responsible for the file who expressed
28 considerable interest in further expanding its character and content, including interactive scenarios.

1 are out of school and therefore fall behind academically. In lieu of suspensions, the District now
 2 gives students who would've been suspended for drug and alcohol offenses and certain types of
 3 fighting the option of participating in what amounts to counseling sessions in efforts to remedy
 4 reasons why the students engage in inappropriate behavior. Table V-1 below compares the
 5 number of days suspended out of school over the last two full school years by race.
 6

7 **Changes in Total Day Suspended Out-of-School 2017-18 to 2018-19**

	1718	1819	Percentage Change
8 W	7232	5802	- 19.77
9 AA	6971	4957	- 28.89
10 Hisp	23662	19267	- 18.57
11 NA	2191	2081	- 5.02
12 API	264	236	- 10.61
13 MR	1879	1454	- 22.62
Total	42199	33797	- 19.91

14 This Table shows that the number of days suspended out of school was reduced for
 15 students of all races, with the percentage decrease being greatest for African American students.
 16 The District believes that the interventions it has taken to reduce the incidence of misbehaviors
 17 has had an affirmative effect on the level of student actions requiring disciplinary action. Given
 18 the strange conditions of the current school year, it is not possible to provide definitive evidence
 19 of the District's assertions about ongoing recidivism. However, while recidivism rates are quite
 20 low into USD students who participate in workshops are 20% less likely to repeat drug and
 21 alcohol offenses and 40% less likely to repeat a fighting offense.
 22

23 Fairness in the Administration of Discipline

24 One of the concerns about school discipline nationally is whether there is a disparity in
 25 meting out penalties for essentially the same offense to students of different races. This
 26 "disproportionality" most often characterizes differences between the discipline experienced by
 27 white students on the one hand, and black students on the other. The Special Master and the
 28

1 Implementation Committee are limited in their ability to examine whether this occurs in TUSD
2 because of federal laws relating to student privacy. But the Department of Justice can pursue this
3 question. The representatives of the Department of Justice (intervenor plaintiffs) have examined
4 an unscientific sampling of cases involving offenses that allow District staff discretion in the
5 sanctions it awards – such as fighting and aggression. While the Department of Justice
6 representatives examined instances involving students of all races and, while they have not
7 undertaken a systematic statistical analysis, they report finding no pattern of unfair or unequal
8 penalties for similar offense for students of different races. That is there appears to be no
9 evidence of discrimination in TUSD.
10

11 Combined Professional Learning Plans for Discipline and for Inclusiveness and Civility

12 The District combines its court-ordered professional learning plans for discipline and
13 inclusiveness and civility on the reasonable assumption that the knowledge and skills related to
14 the prevention and remediation of discipline problems are similar to those that promote
15 inclusiveness and civility. The absence of discipline problems and a climate of inclusiveness and
16 civility are mutually reinforcing. The District does identify programs that are particularly
17 relevant to civility and responsiveness though, as noted, it is unlikely that the District could have
18 problems with discipline and sustain learning climates of inclusiveness and civility – and vice
19 versa.
20

21
22 In addition to the learning resources identified in the District’s learning plan for discipline,
23 the District has developed and is continuing to improve its best practices file for discipline that
24 facilitates job-embedded learning.

25 Recommendations

26 The District should develop a procedure for reporting the number of teachers that school-
27 level discipline committees believe require support to improve their administration of discipline.
28

1 This Report should not include the name of the teachers, but should include the problems
2 identified, the nature of the intervention and the estimate of its success. This information should
3 be used in training teachers and administrators as well as developing a set of common
4 interventions that could be adapted by each school depending on the need. The District has
5 agreed to implement this recommendation.
6

7 The District should receive partial unitary status for Section VI of the USP.

8 **Section VII: Family and Community Engagement (FACE)**

9 Introduction

10 The development and implementation of the FACE plan has involved a combination of 14
11 filings from December 2018 to December 2019. The most recent R&R by the Special Master was
12 submitted on November 18, 2019 (ECF 2391) and was followed by a Court order is dated
13 December 31, 2019 (ECF 2386).¹⁶ In the Court order of December 2019, the District was directed
14 to clarify the relationship between the student support departments (AASSD and MASSD) and
15 how FACE is dependent on other departments for its effectiveness.
16

17 Discussion

18 Since that time, the District has been implementing a major research-based change in how
19 family and community engagement is handled at the school site level and proposed a major
20 reorganization to create a Department of Equity and Diversity headed by an assistant
21 superintendent who will report directly to the superintendent. FACE will be housed in this new
22 department, as will the student support departments. This should greatly facilitate the interaction
23 between the student support departments and FACE, a major concern of the Mendoza plaintiffs.
24

25 While it is too early to know if these changes are going to have the effect the District
26

27 ¹⁶ Neither the Fisher plaintiffs nor the Department of Justice have weighed in on the role of FACE.
28

1 intends, they represent major commitments. The school site activities are to be overseen by five
2 staff members who will assist principals and carry out formative (improvement oriented)
3 evaluation. The school site activities were designed by the most prominent national consultant on
4 family engagement and the District has joined a national network of school Districts housed at the
5 Johns Hopkins University in order to learn from others and to share best practices.
6

7 The Court was concerned not only with the relationship between FACE and other
8 organizational units of the District, but between the student services department and other units of
9 the District. In some way or another, family, and community engagement affects and is affected
10 by most of the organizational units of the District. Drawing organizational charts to demonstrate
11 this is not productive because not every issue influenced by the actions of professionals in other
12 departments. An illustration of this may be found in footnote 3 of the Mendoza objections in
13 which they list the interactions that are dependent on one another. But they leave out of their list
14 the two most important ones: curriculum and instruction and student relations (which deals with
15 discipline). Organizational charts are most useful in describing vertical relationships – who
16 reports to whom, for example.
17

18 A concern raised by the Special Master and the Mendoza plaintiffs was that the District
19 developed a matrix demonstrating relationships among organizational units that was so large that
20 it could only be represented on more than one page with very small font that was virtually
21 unreadable. But this also confirms that in schools, everything is related to everything else.
22

23 Listing all of the potential interdependencies in complex organizations that are loosely
24 coupled leads to massive matrices or unreadable organizational charts. Moreover, relationships
25 may vary, and usually do, depending on the problem to be addressed. In effective organizations,
26 interrelationships are shaped by what the organizational behavior literature calls “the law of the
27 situation” – what makes sense to solve a given problem.
28

1 Recommendation

2 The Court should award the District partial unitary status for family and community
3 engagement activities. The Court directed the Special Master to clarify relationships between the
4 student services departments and FACE. *See* Addendum A.

5 **Section VIII: Extracurricular activities**

6 Introduction

7 The Special Master submitted a R&R on October 30, 2019 (ECF 2351) dealing with
8 extracurricular activities following the District's report and the objections by the Mendoza
9 plaintiffs in which he addressed these objections. On November 11, 2019 (ECF 2387), the Court
10 adopted the Special Master's report, but required the District to:
11

- 12 1. Identify target schools with lower socioeconomic status, which are also racially
13 concentrated, to identify extracurricular activities and strategies that could be
14 implemented in the schools to increase participation.
- 15 2. Use a particular reporting format recommended by the Special Master to describe
16 participation by race and all the District schools. The District has done that in its
17 report on compliance dated December 3, 2019.

18 The District collected the specified data and reported it to every school so that principals
19 could compare activities at their schools with others. The data on racially concentrated and lower
20 social economic schools are provided in Exhibit VIII-1 which also identifies what schools are
21 doing to identify possible other activities. The District also provided families with an opportunity
22 to identify activities they would like to see at the schools their children attended.

23 Exhibit VIII-2 identifies the racial composition of extracurricular activities at all school
24 and includes the sources of funding. It was submitted to school principals before the beginning of
25 the second term that began in January.
26
27
28

1 Recommendation

2 The District has complied with the order of the Court with respect to extracurricular
3 activities and should be awarded unitary status for Section VIII of the USP.

4 **Section IX: Technology and Facilities**

5 Professional Learning Plan for the Use of Technology

6 The District has made a considerable investment in hardware and software so that teachers
7 and administrators might use technology to improve administration and instruction. There is no
8 reason to believe that there was any discrimination in the allocation of hardware and software.
9 Indeed, the first schools to receive the upgrades and technology were racially concentrated and
10 those performing below the District average.
11

12 As is the case of most school Districts, the technology is underutilized. The District has
13 developed several strategies to address this problem.
14

15 On September 10, 2019 (ECF 2273), the Court ordered the District to place greater
16 emphasis on the use of technology for instructional uses and indicated that the Special Master
17 should work with the District accordingly. This R&R addresses two issues raised by the
18 Mendoza plaintiffs: first, that the primary tool for evaluating teachers use of technology does not
19 deal adequately with technology facilitated instruction; second, that the District's plan for
20 evaluating teacher technology liaison – teachers who provide support to their colleagues in the
21 same school – is unclear and presumably inadequate. (*See* ECF 2340, dated October 10, 2019).
22 On November 21, 2019 Special Master submitted a R&R (ECF 2375), concluding that:
23

- 24 1. The District had made good progress in developing professional learning
25 opportunities related to technology, but that more was needed, especially in fields
26 other than math and science and how technology can be used to develop students'
27 capacity for complex problem-solving.
28

1 2. While the evaluation of TTLs focus is on what they do when they work with
2 teachers. It does not deal with the effectiveness of such training Special Master
3 noted that such an assessment would be particularly difficult.

4 To address this problem of evaluating TTLs and teachers, the District has assigned five
5 technology integration specialists to spend time in classrooms using a revised technology
6 integration observation tool (TIOT) that deals not only with what technology is used, but what the
7 learning goals involved are – for example, developing skills of collaboration. The technology
8 integration specialists will be able to provide on-site observation of all teachers within a three
9 year period. Their findings will be used for purposes of professional development. In addition,
10 the TTLs will be identifying needs that teachers have for further learning on an ongoing basis.
11 School administrators have an opportunity to evaluate teachers’ use of technology and they are
12 being trained to do so.

13 The District’s revised TIOT was reviewed by the Special Master in January 2020. He
14 communicated to the District that this revision was a significant improvement but still lacked the
15 complex problem-solving goal. This goal is important because students will be entering a society
16 as young adults in which they will be asked to engage in complex problem-solving (e.g., the
17 applications of artificial intelligence.

18 On February 2, 2020 Mendoza plaintiffs objected to the revised TIOT as having
19 inadequate focus on instruction. The District responded by including in its filing examples from
20 the tool (*see* Exhibit IX-1). The District believes that these examples show that it is has been
21 responsive to the Special Master’s concerns about technology in instruction and a reasonable case
22 could be made that it has, if one reads between the lines. However, specificity of evaluation goals
23 is important, especially when the goals and the tasks involved lack clear and unambiguous
24 meaning.

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Recommendations

1. The District should make one additional modification of the TIOT to include the use of technology to develop student capacity for complex problem-solving and the utilization of artificial intelligence. *See* Exhibit IX-1 for updated TIOT yet to be amended.
2. The District should continue to expand the learning opportunities for teachers to include content for all of the core subjects being taught by the District.

The District has agreed to these recommendations and should be awarded partial unitary status for these aspects of the USP.

Respectfully submitted,

/s/
Willis D. Hawley
Special Master

Dated: May 19, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2020, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master