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12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,  
 16 Plaintiffs,  
 17 v.  
 18 United States of America,  
 19 Plaintiff-Intervenors,  
 20 v.  
 21 Anita Lohr, et al.,  
 22 Defendants,  
 23 Sidney L. Sutton, et al.,  
 24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS’  
 OBJECTIONS TO THE SPECIAL  
 MASTER’S REPORT AND  
 RECOMMENDATION ON THE  
 DISTRICT’S SUPPLEMENTAL  
 PETITION FOR UNITARY STATUS  
 (DOC. 2468)**

Hon. David C. Bury

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 28

1 Maria Mendoza, et al.,

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et  
7 al.,

8 Defendants.

Case No. CV 74-204 TUC DCB

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**INTRODUCTION**

1  
2           Mendoza Plaintiffs herewith submit their Objections to the Special Master’s Report  
3 and Recommendation on the District’s Supplemental Petition for Unitary Status (Doc.  
4 2468) (“SP R&R”).

5           As a preliminary matter they note that the Special Master does not address the legal  
6 arguments advanced by the District in its Supplemental Petition and rebutted by the  
7 Mendoza Plaintiffs in their Opposition to TUSD Supplemental Petition for Unitary Status.  
8 (Doc. 2439, “MP Supp. Pet. Opp.”) Instead, he offers his view that “TUSD is a more  
9 equitable...District and is more capable of enhancing the learning opportunities outcomes  
10 of all its students than [it] was seven years ago.” (SP R&R at 2:25-26.) To that the  
11 Mendoza Plaintiffs offer two responses: (1) One would hope that would be the case after  
12 the USP had been in place for more than seven years and given that over \$400 million in  
13 910(G) money has been spent in the District since 2013; and (2) What the Special Master  
14 has referenced is not the test that must be applied by this Court to determine whether  
15 TUSD has attained unitary status. Mendoza Plaintiffs therefore respectfully invite the  
16 Court’s attention to their discussion of the governing legal test and their showing in their  
17 Opposition to the TUSD Supplemental Petition for Unitary Status (Doc. 2439 at 1:1-13:6)  
18 that TUSD has yet to meet that test, and expressly incorporate that discussion herein.

19           As discussed more fully below, to the extent the Special Master premises his  
20 recommendations on a definition of integration other than that set forth in the USP and an  
21 approach to assessing the closing of the achievement gap at odds both with the language of  
22 the USP and how that subject has been addressed throughout the pendency of the USP,  
23 those recommendations must be rejected by this Court.

24           What emerges from a reading of the SP R&R is that a major impediment to more  
25 successfully integrating many TUSD schools, including many that are racially  
26 concentrated, is their poor academic performance. Therefore, in the non-magnet school  
27 integration plans that the Court directed the District to prepare in its September 2018 Order  
28 (Doc. 2123, “Sept. 2018 Order”, at 149:17-19), the District repeatedly states with respect

1 to such schools: “[a]s an underperforming school, recruiting targeted students [to further  
2 integration] is currently not practicable. The primary integration strategy for the school is  
3 to focus on academic achievement.” (*See, e.g.*, the Integration and Academic Achievement  
4 Plan for 86% Latino Grijalva Elementary School, Doc. 2270-3, at 52-55.)

5 In its Order dated 6/4/20, Doc. 2471, the Court addressed certain of the Mendoza  
6 Plaintiffs’ objections to those plans and recommendations by the Special Master that also  
7 inform the SP R&R. That Order together with the Special Master’s findings and  
8 recommendations in the SP R&R provide further evidence beyond that discussed in the  
9 MP Supp. Pet. Opp. that TUSD has yet to eliminate the vestiges of its past discrimination  
10 to the extent practicable and that its supplemental petition for unitary status must be  
11 denied.

12 Additionally, as detailed below, there are multiple areas of the USP for which the  
13 Special Master at least in part recommends an award of partial unitary status based not on  
14 a finding of adequate implementation of the USP and a history of good faith compliance,  
15 but, rather, on a TUSD promise to develop plans or take actions to correct its inadequate  
16 USP implementation.<sup>1</sup> (*See e.g.*, SP R&R at 16:16-19 (re teacher diversity), 47:26-48:7 (re  
17 corrective action plans for teachers/administrators administering discipline  
18 disproportionately).) Mendoza Plaintiffs object to these recommendations because an  
19 award of unitary status cannot be based on the future development of plans or on  
20 unrealized promises to eliminate the vestiges of past race discrimination to the extent  
21

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22 <sup>1</sup> Mendoza Plaintiffs hasten to add that they address here only the development of plans or  
23 commitments that are directed at securing TUSD compliance with the USP in areas in  
24 which it has not eliminated the vestiges of past race discrimination to the extent  
25 practicable. They recognize that, as contemplated in the Order Appointing Special Master,  
26 “the formulat[ion of] a new post unitary status plan to guide the District in maintaining  
27 constitutional compliance after the release of court supervision” and following an award of  
28 unitary status is appropriate. (Order Appointing Special Master (Doc. 1350) at 3:5-7; *see*  
*also, e.g.*, 11/6/19 Order (Doc. 2359) at 3:22-28 (ordering development of plans to guide  
AASSD and MASSD post-unitary status); 6/4/20 Order (Doc. 2471) at 2:9-25, 17:27-18:5  
(describing Court’s prior order concerning development of 3-Year PIP to guide the  
District’s operation of “magnet programs and other integration options for non-magnet  
schools” post-unitary status, and ordering the filing of addendums for the 3-year PIP  
Magnet Project Priorities Plan and Non-Magnet Priority Improvement Action Plans).)



1 practicable and to fully implement the USP. Rather, the District must implement those  
2 plans and commitments before it may be released from court supervision.

3 Indeed, in reversing this Court’s 2005 award of unitary status, the Ninth Circuit  
4 held the following:

5 There is no authority for the proposition that a failure to demonstrate past  
6 good faith can be cured, and federal jurisdiction can be terminated, if a plan  
7 that merely promises future improvements is adopted. To the contrary, it is  
8 only ‘[a] *history* of good-faith compliance’ that ‘enables a district court to  
accept [a school district’s] representation that it has accepted the principle of  
racial equality and will not suffer intentional discrimination in the future.’

9 *Fisher v. Tucson Unified Sch. Dist.*, 652 F.3d 1131, 1140 (9th Cir. 2011) (emphasis in  
10 original). Accordingly, as detailed below in connection with specific areas of the USP,  
11 this Court should decline to adopt recommended awards of unitary status with respect to  
12 areas where the Special Master recognizes that further USP implementation efforts are  
13 required, yet recommends an award of partial unitary status on the basis that TUSD will  
14 develop recommended plans or has promised to take further action to fully implement the  
15 USP.

16 Mendoza Plaintiffs’ objections to the Special Master’s R&R are set forth below:<sup>2</sup>

17 **ARGUMENT**

18 **I. USP SECTION II– STUDENT ASSIGNMENT**

19 **A. The Court Should Again Reject the Recommendation to Change the**  
20 **Definition of Integration From That of the USP and Reject the**  
21 **Recommendation to Adopt a 25% +/- Standard**

22 Mendoza Plaintiffs recognize that the Court addressed this issue in its 6/4/20 Order.  
23 They present the argument and objections below both because the SP R&R remains a  
24 matter of record to which they must respond and because the record in this case establishes  
25 that the definitions of “highly diverse” being proposed by the Special Master and the  
26 District ought not be endorsed by the Court.

27 <sup>2</sup> Mendoza Plaintiffs do not assert objections to those portions of the R&R relating to  
28 culturally relevant courses, multicultural curriculum, ELL action plan for dropout  
prevention, and extracurricular activities.



1 As he did in his 2016-17 Annual Report (Doc. 2111), the Special Master  
2 recommends that the definition of integration be changed from the USP definition (no  
3 single racial or ethnic group exceeds 70% of a school's enrollment and no racial or ethnic  
4 group varies from the district average for that grade level by more than +/- 15%)<sup>3</sup> to no  
5 single racial or ethnic group exceeds 70% of a school's enrollment and no racial or ethnic  
6 group varies from the district average for that grade level by more than +/-25%. (SP R&R  
7 at 12:17-18.)

8 The Mendoza Plaintiffs strenuously objected to the Special Master's proposal when  
9 he first made it (*see* Motion to Strike the Portions of the Special Master's 6/12/2018  
10 Response to Objections to 2016-17 Annual Report (Doc. 2111) Containing Findings and/or  
11 Discussion Relating to a "25% Plus/Minus" Standard to Assess Integration, Inclusive of  
12 Table II-1 Thereto, filed with the Court as Doc. 2112) and they do so again.

13 Given the Special Master's assertion that the Mendoza Plaintiffs oppose his  
14 proposed change in the USP definition of integration "solely on the ground that it has been  
15 the definition used thus far"<sup>4</sup> (SP R&R at 10:24-25), they add that their objection is not  
16 based on obstinance but, rather, is asserted because the standard against which the  
17 District's implementation of the USP is to be measured should not be changed more than  
18 seven years after the USP was approved by this Court. In other words, what the Special  
19 Master is proposing is what they believe to be an inappropriate "moving of the goal posts"

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20 <sup>3</sup> In a footnote (SP R&R at 9, n.3) the Special Master says that "to make it possible for the  
21 District to integrate schools over time, the process for integrating is employed at the entry  
22 grade for each level of school and must be sustained thereafter as students move through  
23 the grades of that school." Mendoza Plaintiffs believe the Special Master is erroneously  
24 applying to all schools the approach the parties agreed would be used to assess if magnet  
25 schools were progressing toward integration. That integration is to be sought at all grade  
26 levels is confirmed by the USP provision stating that the District shall provide free  
27 transportation to all District students enrolled in schools that are racially concentrated  
28 when such transfers increase the integration of the receiving school. (USP Section III, A,  
3.) In this regard Mendoza Plaintiffs note that the Special Master errs when he suggests in  
the R&R that if a school is defined as "integrated", its students are eligible for free  
transportation to that school. (SP R&R at 10:7-8.) That is not the case under the USP. (*Id.*)

<sup>4</sup> Mendoza Plaintiffs are puzzled by the Special Master's suggestion that in opposing a  
change in the USP definition of integration they are advocating that "families should  
choose schools that are not integrated over schools that are." (SP R&R at 10:25-27.) That  
is not their position.

1 very late in the game.<sup>5</sup> Again, Mendoza Plaintiffs believe the Court recognized this in its  
 2 6/4/20 Order and understand the Court’s position to be what it previously asserted in the  
 3 Sept. 2018 Order: the “USP definition for an Integrated school is the only relevant  
 4 definition” and that “it [will] not base any ruling in this Order [relating to implementation  
 5 of the USP] on any standard defining integration other than +/- 15%.” (Sept. 2018 Order  
 6 at 16, n.5.)

7 *1. Racially Concentrated Schools and the Three-Year PIP*

8 In the Sept. 2018 Order, the Court also stated that it is “relevant whether schools are  
 9 more or less trending toward integration or racial concentration...with every percentage  
 10 decrease in racial concentration and percentage increase towards integration being a good  
 11 thing.” (*Id.*) Mendoza Plaintiffs agree. However, while every percentage decrease in  
 12 racial concentration may be a good thing, the fact remains that with the exception of  
 13 magnet schools, **every** school that was racially concentrated at the time the USP was  
 14 adopted (and is still open), remains racially concentrated (and one school, Banks, that was  
 15 integrated at the time the USP was adopted, is now racially concentrated). (*See* Exhibit A,  
 16 chart entitled Racially Concentrated Non-Magnet Schools SY 2011-12 vs. SY 2019-20.)

17 This fact is of particular consequence in light of the Court’s directive in its Sept.  
 18 2018 Order that “[o]n a school-by school basis, the District shall identify the non-magnet  
 19 strategies, if any, that would improve integration at that school and adopt school specific  
 20 integration plans. Priority shall be given to creating Integrated schools and integrating  
 21 Racially Concentrated schools.” (Sept. 2018 Order at 31:24-27.) In that regard, Mendoza  
 22 Plaintiffs are concerned that prioritization of integration efforts in TUSD’s racially  
 23

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24 <sup>5</sup> Mendoza Plaintiffs similarly object to the recommendation (SP R&R at 39, n. 12) that  
 25 the Fisher Class be redefined to exclude “students who are from Africa”. Not only would  
 26 such a change, even if its parameters could be clearly delineated, involve revising a myriad  
 27 of data points used throughout the pendency of the USP; there is no rationale provided –  
 28 nor do Mendoza Plaintiffs request one given that they oppose the recommendation – for  
 the distinction the Special Master apparently makes between students from Africa and  
 students from Mexico, Central America, and South America who along with other  
 members of the Mendoza Class self-identify as Hispanic or Latino or students whose  
 families came to the United States from elsewhere and self-identify as white or “Anglo”.

1 concentrated schools may not have been carried forward in the 6/4/20 Order. (*See* Doc.  
2 2471 at 5:28-6:8.) They object to the SP R&R to the extent it fails to recommend the  
3 revision of plans to enhance the integration potential of TUSD’s racially concentrated  
4 schools.

5           2.       *Objection to Recommendation of a 25% +/- Standard*

6           Mendoza Plaintiffs are unsure to what the Special Master is referring when he says  
7 that a consultant resigned because he disagreed so strongly with the USP definition of  
8 integration and that the USP definition of integration is not used in any study of  
9 integration. (SP R&R at 9:12-13 and 10:13-14.) What they do know, however, is that Dr.  
10 Leonard B. Stevens, to whom the Mendoza Plaintiffs understand the Special Master is  
11 referring, submitted a report to this Court in which he stated that in his expert opinion a  
12 15% +/- standard was the best desegregation standard to be used in this case (as opposed to  
13 the 20% +/- standard for which the District then was advocating) and documented the  
14 extent to which that standard had been used in other school desegregation cases and by the  
15 Office of Civil Rights in its 1995 audit of TUSD. (*See* Supplemental Report on Student  
16 Assignment Issues in Tucson Unified School District Number One (“TUSD”) by Leonard  
17 B. Stevens, Ed.D., October 22, 2007, Doc. 1256-2.)<sup>6</sup>

18  
19  
20 <sup>6</sup> The portion of the USP definition that may not be included in the unidentified studies to  
21 which the Special Master makes reference is that part of the definition (that he does not  
22 recommend be abandoned) which says that no single racial or ethnic group may exceed  
23 70% of a school’s enrollment. At the time the USP was negotiated, all parties agreed that  
24 given the large percentage of Latino students in the District a “cap” was required because  
25 without it a 15% +/- permissible range would lead to schools that all would consider  
26 racially concentrated meeting the definition of integrated. For example, given that the  
27 elementary school enrollment of TUSD was 59% Latino in 2019-20 (*see* Exhibit B, TUSD  
28 Enrollment, 40<sup>th</sup> Day 2019-20 (“2019-20 Enrollment”), a copy of which was recently filed  
with the Court as Doc. 2470), a 15% +/- permissible range, without other limitations,  
would result in a school that was 74% Latino meeting the integration standard. Mendoza  
Plaintiffs can imagine that the consultants to whom the Special Master refers believed that  
the 70% cap should be lower both for purposes of defining integration and identifying a  
school that is “racially concentrated” but it is hard to conceive of them having objected to  
some cap together with the requirement that no racial or ethnic group in a school vary from  
the District average by more than +/- 15% given the discussion and references in Dr.  
Stevens’s expert report.

1           Mendoza Plaintiffs further note that there is nothing in the record (and the Special  
2 Master references nothing) on which to base a finding that the 25% +/- range he  
3 recommends is a more commonly accepted definition of integration than the 15% +/- range.  
4 Moreover, use of the 25% +/- range based on 2019-20 enrollment figures would lead to  
5 unwarranted results, permitting, for example, a school like Holladay with only 11 white  
6 students but 49 African American students, and 118 Latino students to be declared  
7 “integrated”. (See Exhibit B Enrollment.) They therefore object to the recommendation  
8 that the District be permitted to apply a standard other than 15% +/- and most particularly,  
9 25% +/-.

10           **B. Outstanding Objections to the Special Master’s Recommendations**  
11           **Concerning Individual School Integration and Academic Achievement**  
12           **Plans**

13           The Court responded to a number of what would have been Mendoza Plaintiffs’  
14 objections to the SP R&R relating to individual school improvement and integration plans  
15 in its 6/4/20 Order so they will not be stated here. They nonetheless set forth certain of  
16 those objections below not only to have them on the record but also because they hope that  
17 setting them out here will inform the District’s further revision of those plans as ordered by  
18 the Court and thereby minimize the need for future objections.

19           It is unclear to the Mendoza Plaintiffs that the Special Master’s recommendation  
20 that the new plans be “based on the PLC model and engaging PLCs” (SP R&R at 12:8)  
21 will sufficiently address the deficiencies he enumerated in the plans (with which they  
22 agree), specifically, that actions are proposed with no priorities, that most of the proposed  
23 actions are generic, that there are no timelines or sequencing, and that there are no  
24 assessments of feasibility or needed resources. (SP R&R at 5:3-11.) They therefore object  
25 to the recommendation to the extent it does not include an explicit statement that the  
26 District should be required to address all deficiencies identified by the Special Master.  
27  
28

1 1. Objection to Failure to Address Inadequacies in the Integration  
2 Portions of the Plans

3 The Mendoza Plaintiffs discussed the inadequacies in the integration portions of the  
4 individual school plans in their Response to TUSD Notice of Filing of Three-Year Plus  
5 Integration Plan and Outreach and Achievement Addendum (Doc. 2270), filed as Doc.  
6 2275 ("Response to 3-Year PIP"). Rather than repeat that extensive discussion here, they  
7 respectfully invite the Court's attention to Doc. 2275 at pages 8 to 15.

8 In particular, it does not appear that the outreach and recruitment strategies to be  
9 implemented by the various schools have been appropriately vetted or correlated to their  
10 perceived potential for integration. Thus, for example, Lineweaver, a "B" school which  
11 the District has determined has a "high" potential for integration lists only the following in  
12 its plan section on Marketing Outreach and Recruitment Strategies for Integration:  
13 "Lineweaver currently participates in all GATE and ALE outreach and recruitment  
14 strategies." (Doc. 2270-3 at 80.) By contrast, Robison, a "D" school that the District has  
15 determined has a "low" potential for integration because, as an "underperforming school,  
16 recruiting targeted students currently is not practicable" (Doc 2270-3 at 118) has a far  
17 more robust strategy for integration than Lineweaver. Among the actions Robison plans to  
18 implement are the following, among others: "Kindergarten Round-Up in the spring; Visit  
19 local daycares, talk with the director and drop off flyers; Attend Broadmoor-Broadway  
20 neighbor meeting three times a year, address the audience, share all the great things  
21 happening at Robison, and speak to families and community members; Attend district  
22 recruiting throughout the year; Schedule basketball games with schools within and outside  
23 the district [allowing the principal] to network with the school and advertise our school."  
24 (*Id.* at 118.) Thus, it appears that the District can revise the school plans by adapting  
25 strategies already identified by some of its schools to those whose current plans must be  
26 improved.

27 A significant portion of the Mendoza Plaintiffs' discussion of the inadequacies in  
28 the integration portion of the individual school's integration plans was directed to the  
inadequacies in the transportation components of those plans and the accompanying

1 Transportation Plan. Once again, this Court has addressed many of those identified  
2 inadequacies in its 6/4/20 Order. In light of that Order, this Court should overrule the  
3 Special Master’s implicit recommendation that the District be awarded partial unitary  
4 status with respect to the integration portion of its individual school plans as well as his  
5 explicit recommendation that it be awarded partial unitary status “[w]ith respect  
6 to...planning for transportation to foster integration...” (SP R&R at 11:23-24.)

7 2. Objection to Suggestion That TUSD Focus its Integration Efforts on  
8 the Schools Identified as Potential Magnet Schools

9 The Special Master conflates his discussion of the integration of non-magnet  
10 schools and the District’s plans to expand the number of magnet schools by suggesting that  
11 the District should focus its integration efforts on the schools identified as potential magnet  
12 schools. (SP R&R at 4:13-15.)<sup>7</sup> This ignores the Court’s recognition that the “USP does  
13 not call for integrated magnet schools; it requires district-wide integration.” (Sept. 2018  
14 Order, Doc. 2123, at 31:13.) Moreover, of the nine schools on the list of preferred magnet  
15 choices, three (Cragin, Steele, and Whitmore) (Doc. 2270-1 at 11) already are integrated.  
16 (Doc. 2270-3 at 4.) Certainly, those schools should pursue strategies to maintain their  
17 status as integrated schools but there is no reason that they should be the primary focus of  
18 an initiative intended to increase the number of integrated schools in the District. (Nor is  
19 there a strong reason to designate them as magnet schools since one of the major purposes  
20 of the magnet school effort is to add to the number of integrated schools in the District by  
21 using their “magnetism” to move a school from non-integrated to integrated status.) By  
22 contrast, it appears that another school on the list of preferred magnet choices, Tolson  
23 (Doc. 2270-1 at 11), a racially concentrated “B” school (Doc. 2270-3 at 135-26), would  
24 have an enhanced likelihood of becoming integrated were it to become a magnet school  
25 because it was rated as having only a “moderate” potential for integration absent a change  
26 in its status. (The same apparently is true for Sahuaro High School. (Doc. 2270-1 at 11.))

27 \_\_\_\_\_  
28 <sup>7</sup> The SP R&R references eight such schools (SP R&R at 14) but in fact there are nine.  
(Doc. 2270-1 at 10.)



1 Mendoza Plaintiffs therefore suggest that to the extent the Special Master was focusing on  
2 growing the number of integrated schools through the process of creating magnet schools,  
3 Tolson and Sahuaro, to the extent they meet other magnet school designation standards,  
4 would have been more appropriate recommendations.

5 **C. This Court Should Overrule Certain of the Special Master's**  
6 **Recommendations Relating to the Magnet Schools**

7 The District addressed a number of the Mendoza Plaintiffs' objections to the student  
8 achievement standards for magnet schools that had been set forth in TUSD's August 2019  
9 Comprehensive Magnet Plan (Doc. 2270-2; "CMP") when it filed its Response to the  
10 Special Master's Report and Recommendation with Respect to the Three-Year Plus PIP  
11 and Magnet Plans (Doc. 2422; "CMP R&R Response"). Additionally, apparently in  
12 response to a suggestion from the Special Master, it changed one component of those  
13 standards in a way that is not permissible, that the Special Master now has recommended  
14 be sustained by the Court, and that the Court has apparently accepted at least with respect  
15 to the magnet schools.

16 In the August 2019 CMP, TUSD proposed to assess the achievement gap based on  
17 the relative academic performance of **all** of its white, Latino, and African American  
18 students. However, in the CMP R&R Response, it states that it will consider the relative  
19 performance only of those white, Latino, and African American students who qualify for  
20 free and reduced lunch. (*Compare* Doc. 2270-2 at 5 and Doc. 2422 at 5-6.) The Special  
21 Master recommends that the Court approve this change. (SP R&R at 8:8-11, 23-25.) And  
22 notwithstanding that the Mendoza Plaintiffs have had no opportunity to address the  
23 recommendation on its merits<sup>8</sup>, the Court apparently has permitted the District to use that

24 <sup>8</sup> In their Motion to Strike TUSD Response to Special Master Report and  
25 Recommendation Re: Three-Year Plus PIP and Magnet Plan (Doc. 2430), the Mendoza  
26 Plaintiffs stated that they did not understand the newly stated proposal to assess success in  
27 closing the achievement gap only with reference to students who qualified for free and  
28 reduced lunch and that they needed to obtain additional explanation from the District.  
(Doc. 2430 at 2:25-3:1.) Unfortunately, the Court ruled before any explanation was  
provided. Some additional explanation and data was provided in connection with the SP  
R&R. Mendoza Plaintiffs therefore request that the Court treat so much of this Objection  
as relates to the achievement gap as a motion to reconsider the achievement gap portion of



1 approach for its magnet schools going forward (6/4/20 Order, Doc. 2471, at 9:14-15) even  
2 as the District remains subject to the dictates of the USP and even as the Court also noted  
3 that that permission “is not determinative of challenges, if any, made to the application of  
4 this approach in other contexts for assessing unitary status.” (Doc. 2471 at 9, n.7.)

5       Mendoza Plaintiffs do indeed have a strong objection to basing any assessment of  
6 the District’s success in closing achievement gaps on analyses that look only at the  
7 academic progress of those of its students who qualify for free and reduced lunch. Given  
8 the Court’s Order, they will set forth those objections here but also further elaborate on  
9 them in their objections to the Special Master’s recommendations relating to USP Section  
10 V, Quality of Education.

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24 its 6/4/20 Order pursuant to LRCiv. 7.2 (g) based on new facts, specifically the SP R&R,  
25 the SP R&R Addendum A, charts and the underlying study on which Addendum A is  
26 based provided to the Mendoza Plaintiffs in May 2020 by the Special Master, that could  
27 not have been brought to the Court’s attention sooner particularly given the procedural  
28 posture of the case: a notice of compliance to which no formal response was permitted and  
a motion to strike that identified new issues, including the proposed change in how the  
achievement gap would be measured, that had not yet been addressed, as to which the  
Mendoza Plaintiffs then had insufficient information, and as to which they had had no  
opportunity to respond.

1                   1.       Objection to Limiting an Assessment of Progress in Closing the  
 2                                    Achievement Gap to Only Those Students who Qualify for Free and  
 3                                    Reduced Lunch

4                   As an initial proposition it must be remembered that the pending lawsuit to which  
 5                   the SP R&R pertains was brought on behalf of **all** African American students in the  
 6                   District and **all** Mexican American/Latino students in the District. (USP, Section I, A, B,  
 7                   1.) There are no subclasses, and certainly no subclass of African American or  
 8                   Mexican/Latino students who qualify for free and reduced lunch. Moreover, all  
 9                   provisions of the USP require the District to engage in activities to improve the educational  
 10                   outcomes for **all** of its African American and Latino students, not just those who qualify  
 11                   for free and reduced lunch. (*See, e.g.*, USP, Section V, E, 1, a: “The objective of this  
 12                   Section is to improve the academic achievement and educational outcomes of the District’s  
 13                   African American and Latino students, including ELL students, using strategies to close  
 14                   the achievement gap and eliminate the racial and ethnic disparities for these students in  
 15                   academic achievement,... [and] access to Advanced Learning Experiences...”)

16                   As with the Special Master’s proposed change in the definition of integration, this  
 17                   recommendation would impermissibly amend the USP and also would be at variance with  
 18                   the practice and reporting that has informed assessment of the District’s progress since the

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19                   <sup>9</sup> As noted in the SP R&R (Doc. 2468 at 8:12, 18:25-19:4), this limitation on how the  
 20                   achievement gap is to be defined and applied also impacts the Special Master’s analysis  
 21                   and assessment of TUSD’s progress in implementing the USP Section V provisions  
 22                   relating to quality of education -- and is equally impermissible and objectionable in that  
 23                   portion of the R&R, as Mendoza Plaintiffs further demonstrate below.

24                   On Sunday, June 14, 2020, the Special Master provided the parties with a new  
 25                   recommendation concerning the criteria to be applied to assess the academic performance  
 26                   of magnet schools. That proposal continues to focus only on the achievement gap among  
 27                   students who qualify for free and reduced lunch in its discussion of the achievement gap  
 28                   but also suggests that closing the achievement gap no longer should be included among the  
 criteria applied to magnet schools. Mendoza Plaintiffs object to that suggestion. They will  
 separately address their concerns about the Special Master’s new recommendation in  
 communication with him. They continue to include their objection to the  
 recommendations in the SP R&R relating to the achievement gap here because those  
 recommendations remain of record and before the Court, because the Court already has  
 addressed the specific recommendation relating to how the achievement gap is to be  
 measured in its 6/4/20 Order, and because they continue to believe that assessment of  
 progress in closing the achievement gap should continue to be included among the  
 measures to assess magnet school performance, albeit not as now defined by the Special  
 Master.

1 USP was approved in 2013. For example, the periodic assessments of magnet school  
2 progress look at the achievement gap as it applies to all students attending the school, not  
3 to a subset consisting only of those who qualify for free and reduced lunch. (*See, e.g.*, the  
4 pages from the 2017-18 Mansfeld Middle School Quarterly Reports relating to the  
5 achievement gap, attached as Exhibit C.)<sup>10</sup> Similarly, the report the District provided to  
6 members of the African American community it invited to a dinner meeting in January  
7 2020 provided comparison data on African American student achievement for **all** African  
8 American students in the District not just those who qualified for free and reduced lunch.  
9 (*See* Doc. 2450-2 at 30, 31, 34-37.) Further, in its Annual Reports, the District has  
10 regularly been reporting on the achievement gaps at its magnet schools as they apply to all  
11 students attending the magnet schools, not just those who qualify for free and reduced  
12 lunch. (*See, e.g.*, TUSD 2018-19 Annual Report, Appendix II-13 and TUSD 2016-17  
13 Annual Report, Appendix II-25.)

14 Additionally, were the District permitted to measure its progress in closing the  
15 achievement gap only by assessing the relative achievement of its white, Latino, and  
16 African American students who qualify for free and reduced lunch, an important and  
17 compelling measure of its actual progress (or lack thereof) would be overlooked. In  
18 addition to the charts included in Addendum A, the District created charts that  
19 disaggregate the AzMerit scores for students who do not qualify for free and reduced  
20 lunch. (*See* AzMerit math and ELA scale score charts attached jointly as Exhibit D at 1,  
21 2)<sup>11</sup> Those charts reveal that the achievement gap for Latino students who do not qualify  
22 for free and reduced lunch remained essentially unchanged in both math and ELA during

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23 <sup>10</sup> The school report also suggests a practical reason why the achievement gap assessment  
24 should not be limited to differences among white, Latino, and African American students  
25 who qualify for free and reduced lunch. The report notes that meaningful comparisons can  
26 be difficult when there are small numbers of some groups of students in particular grades.  
Were the number of students being compared further reduced by eliminating those who do  
not qualify for free and reduced lunch, meaningful comparisons at the individual school  
grade level in a magnet school (or any school) would become still more difficult.

27 <sup>11</sup> These were provided to the Mendoza Plaintiffs by email dated May 28, 2020 in  
28 response to a request to the Special Master that he provide all data on which he relied in  
preparing the SP R&R.

1 the years reported while the gap for African American students increased.<sup>12</sup> Therefore,  
 2 were TUSD permitted to report and measure progress looking only at its students who  
 3 qualify for free and reduced lunch, its failure to close the achievement gap for the African  
 4 American and Latino students who are part of a cohort comprising approximately 30%<sup>13</sup> of  
 5 the District's students would be unremarked and potentially unaddressed.

6 Mendoza Plaintiffs respectfully suggest that the District should be directed to  
 7 measure academic performance of its African American and Latino students and assess  
 8 progress in closing the achievement gap in its magnet schools pursuant to the goals set  
 9 forth in its August 2019 CMP (Doc. 2270-2 at 5) which look at all students in the school  
 10 (not just those who qualify for free and reduced lunch) and achievement gaps as compared  
 11 to performance throughout the District and within the school. Mendoza Plaintiffs note  
 12 that as written the goals state that a school need only ascertain the size of such gaps (if  
 13 any), whether gaps have been narrowed or eliminated, and that there has been  
 14 improvement in proficiency rates for African American and Latino students but do not  
 15 state any actual goals. By contrast, the CMP R&R Response states a goal: that gaps must  
 16 be narrowed by 3% within one year and eliminated within two. Mendoza Plaintiffs believe  
 17 that this addition or something similar should be made to the August 2019 CMP when  
 18 TUSD revises measures of student achievement for its magnet schools pursuant to this  
 19 Court's 6/4/20 Order.

20 2. Objection to Failure of the SP R&R to Make Clear Findings Relating  
 21 to the District's Commitment and Capability to Engage in a Process  
 22 of Continuous Magnet School Improvement

23 It is unclear to the Mendoza Plaintiffs whether the Special Master included magnet  
 24 school plans in his discussion of school improvement plans (SP R&R at 4 *et seq.*) because  
 25 the District's Three-Year Plus Integration Plan and Outreach and Recruitment Addendum

26 <sup>12</sup> Consistent with the Mendoza Plaintiffs' observation, footnote 1 of the SP R&R (at 7)  
 27 appears to acknowledge that the achievement gap has widened in TUSD among what the  
 28 footnote refers to as "higher achieving students."

<sup>13</sup> Mendoza Plaintiffs derive this percentage from the statement in Addendum A (at 3) that  
 70% of the District's students qualify for free and reduced lunch.

1 filing (Doc. 2270) to which the discussion is addressed did not include individual magnet  
2 school plans.

3 As the Mendoza Plaintiffs demonstrated in their Response to the 3-Year PIP (and  
4 have repeatedly stated in their budget process comments relating to individual magnet  
5 school plans), there are significant deficiencies in those plans. (See Doc. 2275 at 4:15-  
6 6:3.<sup>14</sup> Mendoza Plaintiffs understand the Court in its 6/4/20 Order to have directed the  
7 District to follow the same approach to magnet school plans as it ordered be followed with  
8 non-magnet school plans. (6/4/20 Order, Doc. 2471, at 16-17.) They therefore repeat the  
9 same objection that they addressed to the recommendation concerning those non-magnet  
10 school plans:

11 It is unclear to the Mendoza Plaintiffs that the Special Master's recommendation  
12 that the new plans be "based on the PLC model and engaging PLCs" (SP R&R at 12:8)  
13 will sufficiently address the deficiencies he enumerated in the plans, specifically, that the  
14 actions are proposed with no priorities, that most of the proposed actions are generic, that  
15 there are no timelines or sequencing, and that there are no assessments of feasibility or  
16 needed resources. (SP R&R at 5:3-11.) They therefore object to the recommendation to  
17 the extent it does not include an explicit statement that the District should be required to  
18 address all identified deficiencies.

19 Further, they object to the recommendation to the extent it fails to expressly require  
20 revision of the 2020-21 magnet school plans that were recently provided to the plaintiffs  
21 and the Special Master as part of the budget process.

22  
23  
24 <sup>14</sup> In the Response to the 3-Year PIP, Mendoza Plaintiffs referred to the 2019-20 Holladay  
25 MSP to illustrate the deficiencies to which they objected. As part of the 2020-21 budget  
26 process, they recently received a copy of the Holladay MSP for 2020-21. A copy is  
27 attached as Exhibit E. As can be seen from a review of that document, particularly pages 6  
28 and 7, it suffers from precisely the same deficiencies as the 2019-20 exemplar.  
Significantly, deficient as the non-magnet school improvement plans may be, they provide  
more information about student achievement with respect to which improvement is to be  
implemented and measured than does this magnet school plan. (Compare Exhibit 5 with  
Doc. 2270-3 at 7 (a page from the Banks Elementary School plan).)

1 In the Sept. 2018 Order, the Court referenced the Special Master’s recommendation  
2 that “unitary status [relating to the magnet school requirements of the USP] not be ordered  
3 until the District demonstrates effective use of [the walk-through protocol (“WTP”) and  
4 systematic assessment of student outcomes] processes and procedures over time” (Doc.  
5 2123 at 18:20-25) and stated that it “shall consider the WTP in the context of reconsidering  
6 unitary status of the Magnet program....” (*Id.* at 19:3-4.)

7 Therefore, the Mendoza Plaintiffs also object to the Special Master’s R&R to the  
8 extent it fails to include findings on whether and to what extent the WTP has led to  
9 effective assessment of the magnet schools and whether the District has demonstrated the  
10 capability to engage in a process of continuous improvement with respect to those schools.  
11 (Mendoza Plaintiffs respectfully suggest that were the Special Master to address these  
12 topics, his findings would be negative given his findings about school improvement plans  
13 and the Mendoza Plaintiffs showing in their Response to 3-Year PIP.)

## 14 **II. USP SECTION III – TRANSPORTATION**

15 Mendoza Plaintiffs object to the finding of the Special Master that partial unitary  
16 status has been awarded by the Court (SP R&R at 12:22) without also finding and  
17 addressing the Court’s additional holding that it was “retaining jurisdiction for the purpose  
18 of considering unitary status for Magnet Programs<sup>15</sup> and Advanced Learning Experiences  
19 (ALE) Programs.” (Doc 2123 at 149:20-22.)

20 Mendoza Plaintiffs demonstrated in their Response to 3-Year PIP (Doc. 2275 at  
21 9:18-15:3), and this Court has agreed (in its 6/4/20 Order at 13-16), that the District has  
22 not fully complied with the Court’s Sept. 2018 Order relating to a Transportation Plan and  
23 the transportation components of its individual school integration plans. Further, in the  
24 Response to the 3-Year PIP (*id.* at 15:4-19:8) they also demonstrated that the District had  
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26 <sup>15</sup> Mendoza Plaintiffs understand this reference to encompass the order that TUSD  
27 develop individual integration plans for its non-magnet schools inclusive of a  
28 transportation component and a Transportation Plan given discussion earlier in the Sept.  
2018 Order and the immediately preceding decretal paragraphs relating to the Magnet  
Program as well as discussion in the 6/4/20 Order (Doc. 2471 at 4:4-5:9).

1 not complied with the Order that it “develop sustainable transportation plans to support on-  
 2 going and future...student achievement programs planned for the District.” (Sept. 2018  
 3 Order at 37:23-25), which they incorporate herein by reference. Mendoza Plaintiffs note  
 4 that the Court addressed many of the issues raised in their submission in its most recent  
 5 Order. (*See* 6/15/20 Order, Doc. 2474, at 22:9-25:5.)

6 Mendoza Plaintiffs therefore object to the failure of the SP R&R to recommend that  
 7 unitary status be withheld for the Magnet Programs and ALE Programs until the District  
 8 has complied with the relevant portions relating to transportation in the Sept. 2018 Order  
 9 (and now, of course, the 6/4/20 and 6/15/20 Orders as well).

### 10 **III. USP SECTION IV – ADMINISTRATIVE AND CERTIFICATED STAFF**

#### 11 **A. Objection to Failure to Address TUSD’s Continuing and** 12 **Disproportionate Placement of Beginning Teachers at Racially** 13 **Concentrated Schools and Schools Performing Below the District** 14 **Average**

15 Unfortunately, in his recitation of “[u]nresolved issues” relating to administrative  
 16 and certificated staff (SP R&R at 12:24-25), the Special Master omits reference to the  
 17 USP’s requirement that TUSD avoid placing beginning teachers at racially concentrated  
 18 schools or schools achieving below the District average –a USP obligation to which this  
 19 Court has given repeated attention. (*See, e.g.*, 9/10/19 Order (Doc. 2273) at 7:11-14.) The  
 20 Special Master’s only reference to this obligation (which consists solely of a general  
 21 statement that the placement of a “significant portion of beginning teachers to racially  
 22 concentrated [and] low performing schools continues to characterize TUSD”) occurs in his  
 23 discussion of support for beginning teachers (*see* SP R&R at 14:17-22).<sup>16</sup> Mendoza  
 24 Plaintiffs object to this significant omission and any implication that TUSD already has  
 25 been or should be granted unitary status in this area.

26 \_\_\_\_\_  
 27 <sup>16</sup> The Special Master apparently accepts this state of affairs; however, to do so ignores  
 28 the compelling difference between TUSD and “most [other] urban Districts” (SP R&R at  
 18-19) which are not subject to a court order requiring that the issue be addressed and have  
 not been provided significant additional funds to be able to do so.



1           Mendoza Plaintiffs discussed the District’s consistent and disproportionate  
2 placement of beginning teachers at racially concentrated schools and schools performing  
3 below the District average in both their opposition to TUSD’s Supplemental Petition for  
4 Unitary Status (Doc. 2406), filed as Doc. 2439, and their objections to the Special Master’s  
5 2016-17 Annual Report, filed as Doc. 2101. Rather than repeat that discussion here, they  
6 respectfully invite the Court’s attention to Docs. 2439 (at pages 17-18) and 2101 (at 19).  
7 They do, however, point out that since the adoption of the USP, the District has  
8 consistently placed between 70% and 80% of beginning teachers at racially concentrated  
9 schools or schools performing below the district average, including in the 2019-20 school  
10 year when TUSD again placed 75% of its beginning teachers at these schools (which  
11 notably comprised only 58.8% of all TUSD schools). (*See* Doc. 2439 at 17:7-16.)

12           Perhaps the District’s lack of progress in this area should not be surprising given  
13 that as a result of its hiring practices, at the time of this Court’s Sept. 2018 Order (Doc.  
14 2123) over five years after the USP’s adoption, TUSD did not have (and had not sought)  
15 the capacity to avoid placing beginning teachers in racially concentrated schools or schools  
16 performing below the District average. (Sept. 2018 Order (Doc. 2123) at 44:9-12.)  
17 Accordingly, in the Sept. 2018 Order, this Court ordered TUSD to centralize its hiring  
18 practices to obtain the capacity to comply with this USP obligation, and required the  
19 implementation of a certification process and mitigation strategies where teacher  
20 placements at racially concentrated and low-performing schools are unavoidable. (*Id.* at  
21 44:25-45:17.)<sup>17</sup>

22           Notably, as reported by the Special Master, while the District now represents that  
23 there are mitigation strategies to be implemented when beginning teachers are placed at  
24 racially concentrated schools and schools performing below the District average, it has not  
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26 <sup>17</sup> In this regard, Mendoza Plaintiffs believe the Special Master may misunderstand or  
27 misstate the District’s efforts where he writes that the “District took steps... by requiring  
28 that initial appointments begin with applications to the central office....” (SP R&R at  
14:19-21.) The District didn’t require the development of the referenced centralized  
process - this Court did.

1 provided a budget for those strategies. Instead, it “relies on principals to *find* the necessary  
2 funds....” (SP R&R at 14:6-8; emphasis added.) Mendoza Plaintiffs are greatly concerned  
3 about TUSD’s failure to fund mitigation measures because some of those measures, for  
4 example, (1) reduction in the number of classes taught by beginning teachers, (2) co-  
5 teaching, and (3) reduction in class sizes, plainly have costs that a principal is unlikely to  
6 be able to “find” in an existing school budget. (*See* Doc. 2423-2 (detailing mitigation  
7 strategies at specific schools, some of which implement more than one of the cited  
8 strategies).) If principals can “find” the funds, racially concentrated schools and schools  
9 performing below the District average must reduce spending elsewhere in their budgets,  
10 without the plaintiffs or this Court having any understanding of the nature of those  
11 reductions or whether they may adversely impact the very students mitigation measures are  
12 intended to help.

13           Because, as the Special Master recognizes, the District only recently centralized its  
14 process to have the capacity to comply with the USP provisions concerning beginning  
15 teacher placements, and because TUSD has not funded the implementation of measures  
16 directed at mitigation of the consequences of such placements at racially concentrated and  
17 low-performing schools, the District is not ready to be released from Court supervision in  
18 this area. (*See also e.g.*, Order dated 9/10/19 (Doc. 2273) at 5:15-18, 13:13-19 (reciting  
19 TUSD’s noncompliance with this Court’s 9/6/18 Order and USP beginning teacher  
20 provisions); *Fisher*, 652 F.3d at 1140 (only a history of good faith implementation enables  
21 a court to accept representations that intentional discrimination will not occur in the  
22 future.) Therefore, Mendoza Plaintiffs object to any implicit suggestion TUSD has been  
23 awarded partial unitary status in this area, implicit recommendation that TUSD should be  
24 awarded unitary status, or implicit suggestion that a history of good faith compliance with  
25 these USP provisions is not required.

1           **B. The Special Master’s Own Findings and Statements Demonstrate That**  
 2           **TUSD Cannot be Awarded Unitary Status With Respect to Teacher and**  
 3           **Administrator Diversity**

4           1.       *Objection to the Special Master’s Recommendation for a New and*  
 5           *Unilaterally Developed Method of Determining Teacher Diversity*  
 6           *That Deviates From the Negotiated Teacher Diversity Plan, This*  
 7           *Court’s Order, and the USP*

8           Notwithstanding that the parties negotiated and agreed upon the terms of the teacher  
 9           diversity plan which, by express order of this Court (*see* 3/25/16 Order (Doc. 1914) at 2:6-  
 10          8), measured diversity at school sites using the standard set forth in the USP (*compare*  
 11          original Teacher Diversity Plan, TUSD Annual Report for 2015-16, Appendix IV-27 (Doc.  
 12          1962-1) *with* USP Section IV, E, 2), the Special Master now recommends that the Court  
 13          adopt a new definition of teacher diversity that he unilaterally developed.<sup>18</sup> (*See* SP R&R  
 14          at 15:20-16:2.) Much like the Special Master’s recommendation for a new definition of  
 15          “integration,” Mendoza Plaintiffs do not think it is appropriate, over seven years after the  
 16          USP’s adoption and four years after this Court’s 3/25/16 teacher diversity Order, to “move  
 17          the goal posts” by redefining diversity at school sites in conflict with this Court’s Order,  
 18          the USP, and the teacher diversity plan, and therefore object to it.<sup>19</sup>

19          <sup>18</sup> Separately, the Special Master recommends that in measuring teacher diversity “White  
 20          teachers [are] to be counted in assessing diversity.” (*See* SP R&R at 15:19.) Mendoza  
 21          Plaintiffs do not believe that this Court needs to adopt that recommendation because the  
 22          teacher diversity plan already requires that white teachers be included in measuring  
 23          diversity, and this Court already has ruled that these teachers are to be taken into account.  
 24          (*See* 4/22/19 Order (Doc. 2217) at 8:17-20 (“To have done otherwise would have made no  
 25          sense... .”) Additionally, while Mendoza Plaintiffs certainly agree that the District should  
 26          be hiring more teachers who are Native American, Asian and Pacific Islanders, and multi-  
 27          race, the numbers of such teachers cannot be counted to determine if the District has met  
 28          the requirements of the USP which is not, as the Special Master writes, a “diversity  
 requirement” (SP R&R at 16:2) but, rather, an express remedy to address disparities  
 involving the numbers of African American and Latino personnel at individual schools and  
 district-wide. (USP, Section IV, E, 2.)

<sup>19</sup> Mendoza Plaintiffs further believe that the Special Master’s new definition is confusing  
 and unworkable. For example, beyond expansion of the “plus or minus 15%” standard set  
 in the USP and teacher diversity plan, the Special Master sets out additional standards that  
 would apply to “larger schools” – an undefined term. In “larger schools”, an unspecified  
 “significant number” of teachers of colors would satisfy diversity requirements. (*See* SP  
 R&R at 15:21-16:2.)

2. *Objection to the Special Master’s Recommended Award of Unitary Status in the Area of Teacher Diversity, With Respect to Which he Finds That the “District Fell far Short of Meeting” Goals, Contingent on a New Promise to Implement the USP*

Mendoza Plaintiffs briefed the issue of the District’s lack of progress in implementing the teacher diversity plan in their opposition to TUSD’s Supplemental Petition for Unitary Status and respectfully invite this Court’s attention to that discussion. (See Doc. 2439 at 18:3-19:6.) They do, however, point out that they agree with the Special Master that the data reflects that the District “fell far short” of meeting the teacher diversity plan goals. (SP R&R at 15:17-18.) Indeed, by the end of the 2018-19 school year and into the 2019-20 school year, TUSD had diversified ten out of 26 target schools (38.5%) – the very number of target schools that were diversified at the beginning of the 2016-17 school year, following the diversity plan’s adoption. Notably, the number of diversified target schools in 2018-19 and 2019-20 falls short of meeting what the teacher diversity plan identified as the “initial objective” of 13 diversified schools by the beginning of 2016-17 – nearly four years ago.<sup>20</sup> (Doc. 2439 at 18:3-19:6.) In light of the District’s total reversal of the small progress it once made in implementing the teacher diversity plan by the end of the 2016-17 school year (see Doc. 2439 at 16-22 (14 of 26 target schools were diversified)), Mendoza Plaintiffs object to the Special Master’s recommended award of unitary status.

Mendoza Plaintiffs also object to the Special Master’s recommended award of unitary status “if the District agrees to implement these [teacher diversity] recommendations” (SP R&R at 16:16-18) because it impermissibly makes unitary status contingent on promises of future action to address TUSD’s inadequate implementation of the teacher diversity plan and the USP. *Fisher*, 652 F.3d at 1140.

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<sup>20</sup> Tellingly, the District fell so short of meeting teacher diversity plan goals that the Special Master recommends that the original 26 target schools continue to be the targeted schools for the coming school year. (See SP R&R at 16:3-10.)

3. *Objection to the Special Master's Recommended Award of Unitary Status in the Area of Administrator Diversity on the Basis of the "Absence of a Viable Formula for Determining Diversity"*

1  
2  
3 Unfortunately, the Special Master makes a wholly unsupported recommendation  
4 that the District be awarded unitary status in the area of administrator diversity, without  
5 having conducted any assessment of TUSD's diversification of administrators in its  
6 schools. Instead, he effectively throws up his hands, finding the "absence of a viable  
7 formula for determining diversity" and recommending that "whomever is responsible for  
8 monitoring this provision" should nonetheless, and with little guidance, determine on a  
9 "case-by-case basis" whether site-level administrative staff is diverse. (*See* SP R&R at  
10 17:6-10.) Mendoza Plaintiffs respectfully state that they believe the Special Master is the  
11 individual "responsible for monitoring this provision." If his reference is intended to be to  
12 a District employee, he has failed to make a recommendation that would provide that  
13 individual with essential direction.

14 They assume that the Special Master's recommendation reflects that he no longer  
15 pursues his initial approach of recommending a race-based "target number of  
16 administrators" to promote diversity (*see* Special Master's 12/13/19 Report and  
17 Recommendation (Doc. 2392) at 5:2-9) after parties raised concerns about its  
18 constitutional soundness (*see* Department of Justice 12/19/19 Opposition to R&R (Doc.  
19 2399) at 2:17-19). However, while Mendoza Plaintiffs understand why the Special Master  
20 may have not pursued his initial approach, they are not aware of any authority suggesting  
21 that unitary status is appropriate where there is a purported "absence of a viable formula  
22 for determining diversity."

23 Mendoza Plaintiffs respectfully suggest that the parties (or this Court) are capable  
24 of developing a workable way of measuring administrator diversity at sites (given that  
25 some schools have only one or two administrators) without prescribing race-based target  
26 outcomes. Accordingly, Mendoza Plaintiffs object to the Special Master's  
27 recommendation that TUSD be awarded partial unitary status in this area and respectfully  
28

1 request that this Court order the development of an appropriate measure to assess  
2 administrator diversity.

3 4. *Objection to the Absence of Consideration of any Grow Your Own*  
4 *Program (“GYOP”) Other Than the Leadership Prep Academy*  
5 *(“LPA”) or Identification of Actual 2019-20 LPA Participation*

6 As an initial matter, Mendoza Plaintiffs highlight this Court’s recognition in its  
7 4/22/19 Order, issued just over a year ago and six years after adoption of the USP, that  
8 “[o]ver the past six years, the District has indiscriminately grown as many White  
9 administrators as it has grown administrators of color... Over a four-year period,  
10 participation in its Leadership Prep Academy has been almost 50/50.” (4/22/19 Order  
11 (Doc. 2217) at 12:15-20.) Indeed, Mendoza Plaintiffs respectfully invite the Court to  
12 review their discussion in the MP Supp. Pet Opp. at 37:4-13 in which they highlight this  
13 Court’s statements reflecting that it has had to repeatedly issue directives to ensure TUSD  
14 implements teacher GYOPs and that GYOPs grow teachers and administrators of color as  
15 envisioned in the USP. In light of the above, Mendoza Plaintiffs object to the absence of  
16 any discussion in the SP R&R of any teacher GYOPs or any administrator GYOPs other  
17 than the LPA. They further respectfully suggest that, given the District’s long-standing  
18 failure to operate GYOPs as intended in the USP, TUSD cannot now be released from  
19 Court supervision, regardless of whether TUSD “selected” a greater total number of racial  
20 minorities to participate in the LPA program in 2019-20.<sup>21</sup>

21 With respect to the 2019-20 LPA on which the Special Master bases his  
22 recommended award of unitary status, Mendoza Plaintiffs believe further information is  
23 needed because TUSD has yet to report actual participation in the program. TUSD only  
24 has reported an increase in African Americans “selected” to participate in the program.  
25 (See Doc. 2425 at 4-5.) Further, the SP R&R highlights that some “of those selected do  
26 not have the credentials necessary to hold a principalship or assistant principal position,

27 <sup>21</sup> In this regard, Mendoza Plaintiffs note that the percentage of Latinos selected to  
28 participate in the LPA has actually decreased. (*Compare* TUSD Notice of Compliance re  
Diversity for Teachers and Administrators (Doc. 2425) at 5:3 (30% Latinos in 2019-20)  
with TUSD Annual Report for 2018-19 (Doc. 2298-1) at IV-40 (36% Latinos in 2018-19).)



1 nor have they started the necessary graduate program.” (SP R&R at 17:25-27.) The  
 2 record fails to provide necessary information on the number and racial breakdown of  
 3 selected applicants without necessary credentials, or the extent to which the lack of  
 4 credentials (or enrollment in programs that would lead to those credentials) affects the  
 5 realistic prospect that these individuals may eventually obtain administrator positions.

6 Mendoza Plaintiffs believe that what is needed is: (1) actual 2019-20 LPA  
 7 participant data, exclusive of participants who have withdrawn from the program, if any,  
 8 (2) a racial/ethnic breakdown of participants who do not have necessary credentials and  
 9 have not started related graduate programs, and (3) an explanation of the extent to which  
 10 such lack of credentials impede the realistic prospect of obtaining administrator positions  
 11 within TUSD.<sup>22</sup> For these reasons, Mendoza Plaintiffs object to the Special Master’s  
 12 omissions concerning GYOPs, and his recommendation that TUSD be awarded partial  
 13 unitary status in this area. Additionally, Mendoza Plaintiffs object to the recommendation  
 14 to the extent it turns on a promise by the District of future action rather than demonstrated  
 15 implementation of the USP.

#### 16 **IV. USP SECTION V – QUALITY OF EDUCATION**

##### 17 **A. The Court Should Decline to “Contextualize” its Analysis of the** 18 **District’s Performance of its USP Quality of Education Obligations** 19 **Based on the Analysis of the Achievement Gap Contained in the SP** 20 **R&R**

21 The Special Master begins his discussion of TUSD’s obligations under USP Section  
 22 V, Quality of Education, by stating that such discussion is “contextualized by assumptions  
 23 about the progress that has been made”. (SP R&R at 18:27.) He then undertakes to look at  
 24 progress based on an analysis of the achievement gap that he summarizes in Addendum A.

25 <sup>22</sup> Mendoza Plaintiffs note the Special Master’s recommendation that the District be  
 26 awarded unitary status in this area conditioned on the promise by the District to provide  
 27 tuition support to “outstanding candidates for school or district leadership so they can  
 28 acquire necessary state credentials.” (SP R&R at 18:18-19.) Not only is nothing said about  
 how the District is to determine who is an “outstanding” candidate, the recommendation  
 also is silent on the objective of the Leadership Prep Academy which is to “develop[] and  
 implement[] the leadership program for African American and Latino administrators.”  
 (USP, Section IV, B, 3,(g).)



1 He finds that the gap (limited to a study of students who qualify for free and reduced  
2 lunch) is relatively narrow and has decreased slightly over a five-year period. (*Id.* at 19:2-  
3 4.) As stated above in their discussion of the standards against which magnet schools are  
4 evaluated, Mendoza Plaintiffs object to the recommendation that only students who qualify  
5 for free and reduced lunch are to be included in analyses of the District’s progress in  
6 closing the achievement gap. Mendoza Plaintiffs incorporate that objection and the above  
7 discussion of that objection here. In addition, they set out below additional reasons why  
8 the Court should overrule the Special Master’s findings, decline to contextualize its  
9 analysis of the District’s implementation of USP, Section V in the manner he recommends,  
10 and decline to permit the District to assess progress in closing the achievement gap by  
11 looking solely at the academic achievement of students who qualify for free and reduced  
12 lunch.

13 1. *Objection to the Analysis and Findings About the Achievement Gap*  
14 *Contained in Addendum A*

15 The Special Master concludes his examination of the achievement gap in TUSD  
16 with the finding that the “district has been able to provide equitable education to all  
17 students that has resulted in an achievement gap that does not widen<sup>23</sup> by ethnicity over  
18 time.” (Addendum A at 4.) Apart from the fact that the Special Master is in fact referring  
19 **only** to the achievement gap as it relates to students who qualify for free or reduced lunch  
20 (*see* discussion below), Mendoza Plaintiffs have a much more important objection to that  
21 finding: the Special Master cites as an achievement by the District and his “relatively  
22 positive findings about the achievement gap” (*id.*) a study that establishes that in the five  
23 years under review, the “equitable education” TUSD provided was “equitable” in that it  
24 failed all of its low performing white, Latino, and African American students equally.

25 The white, African American, and Latino students who in grade 4 were “minimally  
26 proficient” -- that is, they were in the lowest category of the AzMerit four category ranking

27 \_\_\_\_\_  
28 <sup>23</sup> The goal of course is not to avoid widening the achievement gap but, rather, to narrow  
it.

1 -- still were in that lowest category in grade 8. (5 Year Achievement Gap Analysis in  
2 Tucson Unified School District (“Gap Study”), attached as Exhibit F, at 7, 9, 10, 12,  
3 referencing both math and ELA scores.)<sup>24</sup>

4 Most significantly for the purposes of this litigation, in which the plaintiff classes  
5 consist of **all** African American and **all** Latino students, there is indeed an achievement  
6 gap. (Exhibit F at 1-2.) As stated by TUSD in the Gap Study: “The gap [between white  
7 students on one hand and African American and Latino students on the other] is evident in  
8 4<sup>th</sup> grade and persists to 8<sup>th</sup> grade.” (*Id.* at 1; emphasis added.) Indeed, in both ELA and  
9 math, between 4<sup>th</sup> and 8<sup>th</sup> grades, the gap increased for Latino students. (*Id.* at 2.) Thus,  
10 the District’s own analysis confirms that the District has failed to narrow, much less close,  
11 the achievement gap.

12 In Addendum A, the Special Master notes that the achievement gap is greater  
13 among students who are not eligible for free and reduced lunch than among those who are.  
14 (Doc. 2468-1 at 3.) He then says nothing more about this gap that exists for a group  
15 comprising about 30% of the students enrolled in TUSD schools. (*Id.*) Yet, TUSD is under  
16 an obligation to reduce the achievement gap as it relates to all of its students, not just those  
17 on whom the Special Master focuses his attention.

18  
19  
20 <sup>24</sup> The charts included in Addendum A, Exhibit 4, and Exhibit F seem to suggest  
21 improvement because they all show an upward trajectory. However, that is because the  
22 scale scores automatically increase from one year to the next (Exhibit F at 6), not because  
23 the students being tested are improving in relative proficiency.

24 Mendoza Plaintiffs also question certain of the methodology applied in the Gap Study.  
25 The study relies on a sample of 1,956 students who were in fourth grade in the 2014-15  
26 school year and who remained in the school system through eighth grade in 2018-19.  
27 However, an additional 1,258 fourth grade students who were enrolled in 2014-15 left the  
28 TUSD system sometime between fourth and eighth grade. This resulted in a high attrition  
rate of 37%. Attrition was higher among white (49%) than among African American  
(42%) and Latino (37%) students. (Gap Study, Exhibit F, at 5.) As a result, conclusions  
about an “achievement gap” may be confounded by differences in achievement levels as  
between departed students and students who remained. TUSD presumably had access at a  
minimum to the fourth grade achievement levels for the entire population. Assuming that  
is so, fourth grade achievement scores of departed versus remaining students should have  
been compared to assess the degree to which the results in the analysis might have been  
biased.

1           Moreover, when one looks at the achievement gap for that 30% who do not qualify  
2 for free and reduced lunch (Exhibit D at 1, 2), one sees that the achievement gap for  
3 African American students as compared to white students in math increased significantly  
4 between school year 2014-15 and school year 2018-19 and also increased for Latino  
5 students. Additionally, in ELA, African Americans in this cohort went from slightly  
6 outperforming white students in school year 2014-15 to underperforming white students  
7 (and therefore to a significant achievement gap) in year 2018-19. The achievement gap  
8 for Latino students appears to be virtually unchanged or perhaps slightly less at the end of  
9 the period as compared to the beginning. However, both at the beginning of the period  
10 studied and at the end, Latino students in this cohort significantly underperformed their  
11 white peers.

12           Mendoza Plaintiffs also object to the Special Master’s finding that the achievement  
13 gap for the African American and Latino students who qualify for free and reduced lunch  
14 “appears smallest in the most recent year measured.” (*Id.*) To the contrary, a review of the  
15 charts in Addendum A (which appear in more magnified form in Exhibit D at 3, 4)  
16 indicates that while the Special Master’s finding may apply to African American students  
17 who qualify for free and reduced lunch, the ELA achievement gap between such white and  
18 Latino students has increased even as the math achievement gap appears unchanged.

19           Most significantly, however, for purposes of assessing the District’s progress in  
20 implementing its obligations under Section V of the USP, and as documented above,  
21 TUSD not only has failed to narrow the achievement gap for its African American and  
22 Latino students; in the case of its Latino students, that gap has increased.

23           **B. The Court Should Reject the Recommendation that TUSD be Awarded**  
24           **Partial Unitary Status for ALE Programs**

25           Mendoza Plaintiffs also object to the SP R&R to the extent it fails to give adequate  
26 attention and weight to the measures this Court has long said would guide its assessment of  
27 the District’s implementation of the USP quality of education requirements, particularly  
28 with respect to ALEs: participation, including completion, and the “Not Less Than 15%

1 Rule". (*See, e.g.*, Order dated 10/15/17, Doc. 2084 "ALE Order", at 17:11-18:7; Sept.  
2 2018 Order at 50:9-28.)<sup>25</sup>

3 *1. Objection to Findings Relating to the "Not Less Than 15% Rule"*

4 Mendoza Plaintiffs object to the recommendations of the R&R (SP R&R at 24:6-  
5 16) to the extent they suggest the Court should no longer apply the "Not Less Than 15%  
6 Rule" and note that in the past the Special Master explicitly recommended adoption of  
7 precisely that test. (*See* Special Master's Report and Recommendation Re: Advanced  
8 Learning Experiences, Doc. 2041, at 5:25-27 and ALE Order, Doc. 2084, at 5:6-14.)<sup>26</sup>

9 The Special Master finds that the "District and the Mendoza Plaintiffs differ on the  
10 number of students who participated in different approaches to ALE and thus how many  
11 programs exceeded the 15% rule." (SP R&R at 28:1-2.) But that is not the issue addressed  
12 by the Mendoza Plaintiffs in their Supp. Pet. Opp. (Doc. 2439 at 20:3-19 and n. 12.) As  
13 demonstrated therein, the Mendoza Plaintiffs' difference with the District was susceptible  
14 of ready resolution because it simply involved a review of Appendix V-3, Exhibit G, and a  
15

16 <sup>25</sup> In the SP R&R, the Special Master asserts that the Mendoza Plaintiffs argue for "parity  
17 across all races." (SP R&R at 24:7-8.) Mendoza Plaintiffs therefore again state that is not  
18 their position (*see, e.g.*, MP Supp. Pet. Opp., Doc. 2439, at 21, n.16). However, they do  
19 assert that the tests this Court previously has set to assess the District's progress in  
20 implementing Section V of the USP must be met. Mendoza Plaintiffs understand as the  
Court reiterated in its most recent Order (6/15/20 Order, Doc. 2474, at 7-8, n.4), that the  
"Rule" does not set forth a rigid test but is, rather a rule of thumb. Nonetheless, as the  
Court stated in that same footnote, it is a "measure of success" that was proposed by the  
District.

21 <sup>26</sup> The Special Master cites no changed circumstances that might arguably support a  
22 change in his recommendation. Mendoza Plaintiffs do note that the Special Master  
23 incorrectly states how the rule is to be applied and suggest that this lack of clarity in how  
24 the rule works may have influenced his current recommendation. Footnote 7 (SP R&R at  
25 24) states that the "15% rule as applied in TUSD means that participation in ALE by  
26 African American and Latino students should be within 15 percentage points of the  
27 participant rate of white students (or whatever racial group has the greatest percentage)."  
28 But the rule works as follows: The District determines the percentage of African  
American and Latino students enrolled at a particular grade level, for example, elementary  
grades 1-5. To meet the test ALE enrollment may not be less than the percentage that is  
15% below the grade level enrollment percentage. Thus, the District's ALE 40<sup>th</sup> Day  
Enrollment Supplementary Goals Summary included in its 2018-19 Annual Report as  
Appendix V-3, a copy of which is attached as Exhibit G, reports in its first entry that the  
percentage of African American students enrolled in grades 1-5 is 9.65%, making its  
enrollment percentage goal for self-contained GATE for grades 1-5 8.20%, and that it  
failed to meet that goal because enrollment was less than that percentage at 6.77%.

1 count of the number of ALEs that the District itself reported had not met the “Not Less  
2 Than 15% Rule.” Simply put, Mendoza Plaintiffs believed the District has incorrectly  
3 counted the entries in its report. But the real issue was the District’s failure to have  
4 provided any explanation for its failure to have met the stated enrollment goal with respect  
5 to either 13 of 28 or 19 of 32 (depending on which count was correct) of the ALEs on  
6 which it reported.

7 The Mendoza Plaintiffs also object to the Special Master’s undertaking to provide  
8 that missing explanation by discussing the question of whether tests for entry to schools  
9 like UHS are fair. (SP R&R at 28:6-28.) In the first instance, UHS is not an ALE  
10 enrollment in which is subject to the “Not Less Than 15% Rule.” (See ALEs listed on  
11 Exhibit G.) Additionally, the District itself has never suggested that the rule should not be  
12 applied to ALEs like self-contained GATE that have qualifications for entry.

13 Further, the Special Master ignores a significant number of ALEs to which the “Not  
14 Less Than 15% Rule” also applies. In particular, he fails to make any findings related to  
15 the fact that even as the District has made progress in recruiting Latino students to enroll in  
16 pre-AP advanced and pre-AP honors classes, it has made no comparable progress with its  
17 African American students. (Exhibit G at 2.) Perhaps of greater consequence in assessing  
18 TUSD’s implementation of its ALE obligations, African American enrollment in middle  
19 school courses for high school credit not only fails to meet the “Not Less Than 15% Rule”  
20 (*id.* at 3); the percentage of African Americans enrolled in these courses in 2018-19 was  
21 lower than the reported percentage in SY 2012-13. (*Id.*)

22 2. Objections to Other Findings Relating to Participation in ALEs

23 i. Participation Gap

24 Mendoza Plaintiffs object to the Special Master’s finding (SP R&R at 26:26-27)  
25 that they understated the level of participation by African American and Latino students in  
26 TUSD’s GATE programs when they compared white, African American and Latino  
27 enrollment in those programs to each group’s total enrollment in the District, that is looked  
28 to see, for example, what percentage of all Latino students in TUSD are enrolled in GATE

1 programs as compared to the percentage for all white students and how those percentages  
2 have changed over time. Their findings, which are set forth in the MP Supp. Pet. Opp. at  
3 20:21-22:3, indicate that a higher percentage of white students are enrolled in the GATE  
4 programs than is true for Latino students and that the difference has grown over time.

5 This demonstrates the on-going persistence of the participation gap to which the  
6 Court made reference in its ALE Order (Doc. 2084 at 15:4-8) and referenced in the 6/15/20  
7 Order (Doc. 2474 at 7:14-15). This is not a matter, as the Special Master seems to suggest  
8 (SP R&R at 27:20-27), of Mendoza Plaintiffs arguing for discrimination against the  
9 District's white students or that there is a zero-sum game in which Mendoza Plaintiffs are  
10 suggesting that when white students do better academically (or in this case, participate in  
11 ALE programs in greater numbers than they had in the past) there is a negative effect on  
12 African American and Latino students. Rather, as this Court also observed in the ALE  
13 Order, it raises the issue of whether the District's strategies to increase ALE access and  
14 participation by African American and Latino students are sufficient (Doc. 2084 at 15:9-  
15 13), inclusive of those set forth in the strategy assessment matrix that, in that Order, the  
16 Court directed the District to prepare. Mendoza Plaintiffs respectfully suggest that  
17 revitalized MASSD and AASSD departments as well as effective parental engagement and  
18 outreach strategies (all discussed below and for which they have argued for many years)  
19 would help to address this participation deficit and further suggest that the District cannot  
20 be awarded unitary status in this area until it has demonstrated its ability to use these  
21 resources and strategies effectively.

22 ii. UHS Enrollment

23 Mendoza Plaintiffs object to the failure of the R&R to address enrollment at UHS,  
24 which for this full school ALE is the measure of ALE participation (rather than the Not  
25 Less Than 15% Rule). In the MP Supp. Pet. Opp. Mendoza Plaintiffs demonstrated that  
26 the District's strained effort to demonstrate that it has satisfactorily integrated UHS is  
27 unavailing (*see* Doc. 2439 at 22:13-24:3). This Court already has recognized that the  
28 District has additional work to do in this regard, directing the District to "prioritize the



1 integration of UHS...” in the 6/4/20 Order (Doc. 2471 at 6:4-5) and holding in the 6/15/20  
2 Order that “enrollment at UHS continues to fall below the ALE Action Plan enrollment  
3 goals...” (Doc. 2474 at 20:22-23.)

4 The Special Master asserts that stereotype threat explains the disparities in  
5 enrollment/participation at UHS and in other ALEs. (SP R&R at 28-19-29:7.)<sup>27</sup> However,  
6 he fails to address the ways in which TUSD’s recruitment and retention strategies under  
7 the USP were intended to overcome or reduce that threat. Specifically, with respect to  
8 UHS, he neither discusses whether the Court-ordered implementation of a CRC AP course  
9 at UHS and a summer program for seventh and eighth grade students who have qualified  
10 for admission to UHS (Sept. 2018 Order at 86: 21-25) have addressed this threat and, if  
11 not, whether there is something in the manner in which the District has implemented these  
12 initiatives that could be modified to do so.

13 Because the Court provided explicit direction to the District in the 6/15/20 Order  
14 concerning actions to be taken to improve the recruitment and retention of African  
15 American and Latino students at UHS, Mendoza Plaintiffs will not discuss their other  
16 objections to the SP R&R as they relate to UHS here.

17 3. Objection to Findings Relating to Successful Completion of ALEs

18 As noted above, the Court has been clear in holding that for the purpose of  
19 assessing TUSD’s performance of its USP obligations relating to ALEs  
20 “participation...includes completion, defined as the number of students passing ALE  
21 courses and number of students taking and passing requisite certification tests necessary  
22 for African American and Latino students to secure the benefits of participating in ALE  
23 programs.” (ALE Order, Doc. 2084, at 17:17-21.)

24 Mendoza Plaintiffs object to the Special Master’s findings relating to completion of  
25 ALEs. While his finding that “the percentage of students taking AP classes scoring 3 or

26 \_\_\_\_\_  
27 <sup>27</sup> In referencing this assertion, Mendoza Plaintiffs do not concede that stereotype threat is  
28 as pervasive as the Special Master suggests or that it is the reason why the District has not  
been more successful in recruiting African American and Latino students to enroll in ALEs  
including UHS.



1 above did not improve significantly” may be accurate for Latino students [and is, itself a  
2 problem], the data relating to African American students is of even greater concern.  
3 According to the information in the ALE Policy Manual (Doc. 2267-1 at 55), both the  
4 number of AP exams taken and the percentage of exams in which scores of 3 or above  
5 were achieved declined for African American students between 2014 and 2019 (from 71  
6 and 51% to 60 and 41%). Given the decline in the number of tests taken, the observation  
7 by the Special Master that “when the number of students initially increases, the effects on  
8 performance overall is negative” (SP R&R at 27) does not explain the disappointing results  
9 for African American students.

10       Mendoza Plaintiffs also object to the finding that the District adequately addressed  
11 the problem as he had identified it (that is, absence of significant improvement rather than  
12 actual decline) because it had assigned tutors to students of color who were struggling with  
13 AP courses. (*Id.*) Given the lack of significant progress for Latino students and the decline  
14 in progress for African American students, Mendoza Plaintiffs believe that the finding of  
15 adequacy should be rejected by the Court, and believe that it was in the Court’s 6/15/20  
16 Order at 15:15, n.13. Mendoza Plaintiffs additionally object because the Special Master  
17 failed to find that there were other strategies available to the District that it apparently has  
18 failed to implement. As discussed in the Mendoza Plaintiffs’ Response to TUSD Notice of  
19 Filing of ALE Policy Manual (Doc. 2283 at 13:1-13), these include expanding the AP  
20 Summer Boot Camp and doing more to “ ‘develop[e] school-wide cultures where  
21 academic excellence is valued and celebrated.....’” (Sept. 2018 Order, Doc. 2123, at 77:2-  
22 3, quoting ALE Order, Doc. 2084, at 18:14-15.)

23           4.       *Objection to the Omission of a Recommendation that TUSD Conduct*  
24                   *a “Relatively Easy” Outlier Analysis to Assess the Effectiveness of*  
25                   *Strategies to Foster Inclusive School Environments and Cultures of*  
26                   *Civility*

26       Mendoza Plaintiffs understand and accept the Special Master’s finding that the  
27 study that this Court repeatedly ordered be conducted of the effectiveness of strategies to  
28 foster inclusiveness and civility is difficult or “not feasible to undertake” as a result of

1 multiple such strategies being simultaneously implemented. (SP R&R at 30:11-15;  
2 9/10/19 Order at 17:22-24.) However, absent from the SP R&R is any discussion of the  
3 “Outlier Analysis” the Special Master discussed in his November 25, 2019 report and  
4 recommendation. (Doc. 2377 at 3:15-4:5.) In that report and recommendation, the Special  
5 Master noted that such an analysis is “relatively easy” and can guide the District in  
6 “develop[ing] and understanding ...the challenges that it needs to anticipate if it expects  
7 positive outcomes from any particular intervention or set of interventions.” Significantly,  
8 the Special Master highlighted that this analysis can identify schools to serve as models for  
9 other schools, and identify staff who can facilitate professional development. (*Id.*) The  
10 Special Master further noted that the District did not conduct such a study (although its  
11 study of a pilot restorative practices program had some outlier analysis characteristics). (*Id.*  
12 at 3:19-24.)

13         Mendoza Plaintiffs object to the Special Master’s failure to recommend that an  
14 outlier analysis be conducted on the effectiveness of the District’s inclusiveness and  
15 civility strategies, particularly in light of this Court’s repeated directives that the District  
16 assess the effectiveness of such strategies. They accordingly also object to the Special  
17 Master’s recommendation that the District be awarded unitary status in this area.

18         **C. The Court Should Reject the Recommendation That Partial Unitary**  
19         **Status be Awarded for Culturally Responsive Pedagogy**

20         The Special Master finds that the District does not yet have a procedure in place to  
21 assess the accuracy of on-site administrators’ evaluations of teachers’ competence in  
22 actually engaging in culturally responsive pedagogy (SP R&R at 8-9) but nonetheless  
23 recommends that partial unitary status be awarded based on his statement that the District  
24 has agreed to an assessment process that he then describes in general terms. (*Id.* at 9-15.)  
25 As set forth above, unitary status cannot be awarded based on a plan that has yet to be  
26 formulated by the District. *Fisher*, 652 F.3d at 1140.

27         Further, that the existing professional development plan for teachers is inadequate is  
28 demonstrated by the District itself. According to its Gap Study, Exhibit F, prepared in

1 February 2020, “Teachers need increased professional development about how families in  
 2 poverty make choices in order to be sensitive to environments that the majority of TUSD  
 3 students experience on a regular basis. A body of research indicates that ‘implicit’ or  
 4 subconscious bias affects student achievement in how teachers communicate expectations  
 5 to students. This training would also give insight to teachers on how to keep expectations  
 6 high for all students rather than basing expectations on outside factors such as a student’s  
 7 home life or what is commonly referred to in TUSD as the ‘probecito syndrome’” (Gap  
 8 Study, Exhibit F, at 17.)<sup>28</sup> And, as discussed more fully below in the section relating to  
 9 MASSD, between 2018-19 and 2019-20, the District increased the number of program  
 10 specialists in that department who provide direct services to students from three to eight  
 11 presumably because there were an insufficient number of school-based personnel who  
 12 could design culturally responsive behavioral and academic interventions for their  
 13 students.

14 **D. The Recommendations for the Student Support Services Departments**  
 15 **Will not Result in the Effective, Responsive Departments Both Classes**  
 16 **Seek**

17 *1. Objection to the Recommendation That the Structure and Activities of*  
 18 *the Two Departments be Virtually Identical*

19 Mendoza Plaintiffs object to the Special Master’s recommendation that the structure  
 20 and responsibilities of the African American and Mexican American student services  
 21 departments be virtually identical. The Special Master notes that the existing proposals for  
 22 the MASSD and AASSD departments are not the same and that the District’s proposals for  
 23 the departments “differ with respect to responsibilities” (SP R&R at 34:10-11 and 35:19-  
 24 20) but nonetheless recommends that they be virtually identical. Yet, the whole purpose  
 25 of having different student services departments rather than one omnibus TUSD Student  
 Services Department is to fashion departments that will be responsive to the specific

26 <sup>28</sup> The Gap Study also comments on the drop in proficiency reported for all students as  
 27 they make the transition to sixth grade and with specific reference to higher performing  
 28 African American and Latino students first notes that the transition from fifth to sixth  
 grade may be difficult and then recommends a structural change inherent in which would  
 be “greater emphasis on culturally responsive practices”. (Exhibit F at 19.)

1 challenges facing and services most needed by the particular racial/ ethnic student  
 2 populations being served even as the departments pursue their common goals of improving  
 3 student achievement and reducing disparities for the students they serve across a range of  
 4 dimensions.<sup>29</sup> Further, the Mendoza Plaintiffs understood the Court to be anticipating  
 5 different plans for each department when it wrote that the Special Master should “identify  
 6 student-support service priorities for *each* department.” (Order dated 11/6/19, Doc. 2359,  
 7 at 3:24; emphasis added; *see also* Order dated 4/10/19 (Doc. 2213) at 7:11-12 (“differences  
 8 between AASSD and MASSD are legitimate and stem from the differing needs between  
 9 the two minority communities.”).)

10 2. *Objection to the Finding That it is Unrealistic for the Departments to*  
 11 *Provide Direct Services to Individual Staff and Students*

12 The Mendoza Plaintiffs and the District have repeatedly reiterated that direct  
 13 services are an important component of the services provided by the two departments.  
 14 (*See, e.g.*, TUSD Objections to Special Master Report and Recommendation Regarding the  
 15 Revisioning of Student Support Departments (“TUSD SSD Objections”), Doc. 2411, at  
 16 2:24-3:3 and MASSD 2018-19 Operating Plan developed collaboratively by Mendoza  
 17 Plaintiffs and the District (“Collaborative MASSD Plan”), Doc. 2151-2, at 4-5.)<sup>30</sup>

18 \_\_\_\_\_  
 19 <sup>29</sup> For example, it may be very important for MASSD staff to utilize bilingual skills  
 20 (English/Spanish) in working with students and their parents, which requires hiring staff  
 21 who are bilingual in English/Spanish. AASSD’s approach may instead require interpreters  
 22 to work with parents, given the large number of African languages/dialects that are spoken  
 23 by African refugee students and their parents. The objective may be the same but the  
 24 approach will be different.

25 <sup>30</sup> The District subsequently revised the Collaborative MASSD Plan in ways that the  
 26 Mendoza Plaintiffs believe significantly reduced its effectiveness. (*See* Mendoza  
 27 Plaintiffs’ Supplementary Response to TUSD Notice of Filing of Revised MASSD and  
 28 AASSD Operating Plans (“Revised Plan Response”) Doc. 2287.) They therefore continue  
 to reference the Collaborative MASSD Plan as a contrast to what the Special Master is  
 recommending particularly because that Collaborative MASSD Plan was reviewed by an  
 expert panel including Dr. Nolan Cabrera, the primary author of the study of the efficacy  
 of TUSD’s Mexican American studies courses referenced in the SP R&R at 31:7-9, and  
 Dr. Francesca Lopez who has provided training and consultation to the District relating to  
 culturally responsive pedagogy. (Doc. 2151-2 at 21-22 of 39.) Further, notwithstanding  
 the fact that the Special Master refers to the Collaborative MASSD Plan as the “Mendoza  
 proposal” (*e.g.*, SP R&R at 36:8), it was in fact the product of a joint effort by the District  
 and the Mendoza Plaintiffs, presented to the Governing Board at its July 24, 2018 meeting,  
 and in place until unilaterally modified in the form of Doc. 2265. (*See* MASSD

1 In response to the Court’s concern that there be no duplication of services between  
2 the departments and school staff (Order dated 11/6/19, Doc. 2359 at 4:6-8), the District,  
3 which in this instance is in the best position to be able to identify such duplication were it  
4 to exist, has flatly stated that there is none. (TUSD SSD Objections, Doc. 2411 at 7-9.)  
5 Mendoza Plaintiffs have accessed the portions of the TUSD website relating to the Native  
6 American and Asian Pacific American Student Services Departments and note that the  
7 description of their personnel and activities suggests that those departments also provide  
8 direct services. Therefore, it appears that the District has determined, consistent with the  
9 Mendoza Plaintiffs’ understanding of the existing needs in the District, that all of its  
10 student services departments have an important role to fill in providing culturally  
11 responsive direct services to the students whose academic achievement and well-being it is  
12 their specific responsibility to support.

13 3. Objection to Findings Concerning the Qualifications of the MASSD  
14 and AASSD Personnel

15 Mendoza Plaintiffs object to the Special Master’s finding (SP R&R at 35:3-4) that  
16 the Mendoza “proposal” (a/k/a the Collaborative MASSD Plan) does not meet the Court’s  
17 requirement that “all staff shall be at least equally qualified in comparison to their on-site  
18 professional peers.” (Order dated 11/6/19 at 4:8-9.) The Mendoza Plaintiffs were very  
19 mindful of the Special Master’s concern in this regard when the Collaborative MASSD  
20 Plan was drafted. They therefore worked with the District to set job qualifications that  
21 meshed directly with the services the person holding each particular position in the  
22 MASSD was to provide and were mindful of the level of expertise of the personnel with  
23 whom the staff member would be working. (See Doc. 2151-2 at 3-13.) Tellingly, one of  
24 the Mendoza Plaintiffs’ criticisms of the revisions the District made to the Collaborative  
25 MASSD Plan was that it redefined job responsibilities in the department in a manner that  
26 led to a disconnect between qualifications and responsibilities. (See Revised Plan

27  
28 Collaborative Plan, Doc. 2151-2, at 1: “this Operating Plan was implemented and used,  
beginning with SY2018-19.”)

1 Response, Doc. 2287 at 4:16-6:7.) Mendoza Plaintiffs recognize that some updating of the  
 2 Collaborative MASSD Plan may be warranted (and is indeed anticipated in the Plan itself,  
 3 Doc. 2151-2 at 16-17)<sup>31</sup>; however they believe that the approach therein to the definition of  
 4 job responsibilities and related qualifications meets the directive of this Court.

5 4. Objection to Findings Concerning the Scope of the Positions and  
 6 Activities in the Collaborative MASSD Plan

7 It is difficult to determine to what the Special Master is referring when he states that  
 8 the positions in the Collaborative MASSD Plan “involve extensive responsibilities  
 9 touching on numerous responsibilities of other organizational units of the District and no  
 10 single program specialist is likely to have those competencies” and that in the position  
 11 descriptions “there are new initiatives being proposed that would best be dealt with in the  
 12 context of the budget discussions where the need for these programs and the cost in  
 13 comparison to other priorities could be assessed” (SP R&R at 36:8-15) because he  
 14 provides no examples. However, based on their understanding, the Mendoza Plaintiffs  
 15 object to both those findings.

16 The short answer to the second of the two findings, beyond the fact that the only  
 17 “new initiatives” the Mendoza Plaintiffs see in the Collaborative MASSD Plan are  
 18 outgrowths of the existing work of the department and not new programs, is that the  
 19 District costed out the expense of the entire department in 2018-19 and “new” (or, more  
 20 accurately, enhanced) activities that were included in the Collaborative MASSD Plan<sup>32</sup>  
 21 were, to the best of the Mendoza Plaintiffs’ knowledge, included in those estimates. See  
 22 July 24, 2018 Governing Board presentation attached as Exhibit H.

23  
 24  
 25 <sup>31</sup> Notably, the referenced section of the Collaborative MASSD Plan is explicit in  
 26 providing for regular monitoring and evaluation of program effectiveness. This, too,  
 appears to be missing from the Special Master’s recommendations.

27 <sup>32</sup> Mendoza Plaintiffs are referencing activities like “Develop Mujeres En Movimiento  
 28 Mother-Daughter Program initially targeting seventh graders as an early-outreach program  
 designed to increase the number of first-generation students who are qualified and  
 prepared to enroll in college through family empowerment.” (Doc. 2151-2 at 9.)



1 The response to the first finding is that the responsibilities that touch on the  
2 responsibilities of other organizations are ones in which the MASSD personnel  
3 “collaborate”, “assist”, “facilitate”, “liaison” “consult”, and “coordinate”. (See, e.g., tasks  
4 of Academic Empowerment & Engagement Program Specialists at 2151-2 11-12.) Thus,  
5 the program specialists are not taking on responsibilities for delivering services in specific  
6 areas in which they may not be fully competent. Rather, they are adding their areas of  
7 expertise to that of others in the District to maximize the programs, services, and activities  
8 made available to its students.

9 5. Objection to the Finding About the Placement of Program Specialists  
10 at Individual Schools

11 The SP R&R finds that the Collaborative MASSD Plan locates program specialists  
12 at individual schools and states that such location “undermines the ability to direct  
13 appropriate resources to places of need.” (SP R&R at 36:16-18.) As the Mendoza  
14 Plaintiffs noted in the Revised Plan Response, the District in its 2019 MASSD Plan  
15 revision assigned more program specialists to individual schools than occurred under the  
16 Collaborative MASSD Plan. (Doc. 2287 at 6.) Mendoza Plaintiffs object to the Special  
17 Master’s implicit recommendation that no program specialists be located in individual  
18 schools because it fails to address the important, underlying issue. As they wrote in the  
19 Revised Plan Response (at 6:9-17): “[W]hat is unknown from the limited information  
20 provided by the District is whether TUSD has determined that the need/demand at 16  
21 schools (two per Program Specialist) is so great that eight individuals must devote some  
22 significant amount of time to this effort rather than the three envisioned as recently as last  
23 year [in the Collaborative MASSD Plan]. (Nor, if this is so, does the District address the  
24 larger implication of there currently being such a great demand for knowledgeable persons  
25 to design culturally responsive behavioral and ...academic interventions that all of the  
26 MASSD Program Specialists must be called upon to fill this need.)” Further, as the  
27 Mendoza Plaintiffs also noted, rather than suggesting duplication and overlap, this  
28



1 allocation of MASSD resources would seem to indicate a void in the District's capacity to  
2 deliver culturally responsive direct services that the MASSD has been tasked to fill.

3 6. Objection to the Recommendation That Two of the Eight Program  
4 Specialists be Specifically Tasked With Addressing  
5 Attendance/Retention and Virtual Learning

6 Mendoza Plaintiffs agree with the Special Master's finding that high absenteeism  
7 contributes to low academic performance. (SP R&R at 37:22-25) but object to his implicit  
8 recommendation that the number of Academic Empowerment & Engagement Program  
9 Specialists (currently two) be reduced to one and that the position be replaced by a  
10 program specialist whose sole focus is attendance and retention<sup>33</sup> not only because the  
11 reverse also is true: that low performance contributes to absenteeism, but also because  
12 there are a myriad of social, behavioral, and familial factors that contribute to students  
13 being absent from school. Mendoza Plaintiffs believe that attendance/retention already is  
14 very much within the purview of the Academic Empowerment & Engagement Program  
15 Specialists and the Social-Emotional & Behavioral Support Program Specialist and that if  
16 more attention to the important issue of absenteeism is required than the department  
17 currently can address, the answer is not to cut an Academic Empowerment & Engagement  
18 Program Specialist but, rather, to add another Social-Emotional & Behavioral Support  
19 Program Specialist.

20 Mendoza Plaintiffs also agree with the Special Master's findings about the  
21 inequities relating to access to and use of technology, including, but not limited to, for  
22 distance learning. (SP R&R at 37:26-38:2.) They also agree that the MASSD (and the  
23 AASSD) can play a role in helping the District to address this challenge and to focus on  
24 equity and culturally responsive practices in doing so. But they object to the Special  
25 Master's recommendation to the extent he would have these two departments fill a void

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26 <sup>33</sup> Because the Special Master recommends leaving the total number of program  
27 specialists in the MASSD department at eight, he has to eliminate or reduce the number of  
28 positions already in the department to add the two new positions he is recommending. He  
includes academic [empowerment] and engagement in his list of eight separate domains.  
Mendoza Plaintiffs therefore conclude that he is reducing the number of personnel  
specifically working in this area from the two in the Collaborative MASSD Plan to one.

1 that the District must address directly. The Special Master’s finds that teacher training  
2 with respect to technology is inadequate (a statement he makes generally but appears to  
3 apply to TUSD as well) and that the “information technology division within the District is  
4 significantly understaffed and could use all the help it can get”. (SP R&R at 37: 1- 38:2,  
5 38:7-8.) But the solution is not to add a position in each of the student services  
6 departments. Rather, it is to fund and staff the information technology division adequately.

7 **E. The Recommendation to Grant Unitary Status for Dual Language**  
8 **Should be Rejected Because Mendoza Plaintiff Objections to the Molina**  
9 **Report That Were not Considered by the Special Master Demonstrate**  
10 **that Further Action is Required**

11 In the SP R&R, the Special Master states that the Mendoza Plaintiffs raised two  
12 objections to the District’s Notice of Compliance: Two-Way Dual Language and  
13 accompanying report by Rosa Molina (“Molina Progress Report”), Doc. 2401, (jointly, the  
14 TWDL Filing), and proceeds to discuss only those two objections. (SP R&R at 41:12-  
15 42:16.) However, in their Objection to the Notice of Compliance and Molina Progress  
16 Report (Doc. 2413), the Mendoza Plaintiffs set out two additional, related objections.  
17 These concern the Spanish language skills of the students in the dual language program  
18 and the need for teachers to develop their own language fluency in order to be able to  
19 effectively assist their students to develop those skills.

20 In its Order dated 9/30/19 (Doc. 2258-1) at 5:14-16, this Court recognized that  
21 “important to the integrity of the TWDL program is the ability of teachers to ensure ‘that  
22 the students are reaching the bilingual and biliteracy goals set out by the program ...*in*  
23 *both languages.*” (Emphasis added, citing Dual Language Plan (Doc. 2258-1) at 21.)

24 The TWDL Filing included the finding of TUSD’s engaged expert Dr. Kathryn  
25 Lindholm-Leary that “[s]cores in Spanish reading on both the ELD and Logramos  
26 Reading/Language Arts subtest assessment were much lower than grade level overall”  
27 (TWDL Filing, Exhibit B, at 7) and her observation that the results were particularly  
28 “troubling” for EL students. (*Id.*)

1 Of additional concern is the fact that Ms. Molina, in her 2016 Report, noted that  
2 TWDL classrooms were particularly weak in Spanish at the intermediate and middle  
3 school levels.<sup>34</sup> (See Report of Dr. Beatriz Arias, attached to the Mendoza Plaintiffs’  
4 Objection, Doc. 2413, as Exhibit B at 2.) Nothing is said about this issue in Ms. Molina’s  
5 discussion of the District’s progress. (Molina Progress Report, Doc. 2401-3, at 7.) Yet,  
6 the charts included in the TWDL Filing as Exhibit B, Attachment 5, presumably based on  
7 the data sets organized by Dr. Lindholm-Leary, unfortunately report that the poorest scores  
8 in Spanish language arts are those of the District’s sixth, seventh, and eighth graders. (See,  
9 e.g., Logramos Spanish Language Arts, Sp. 2018, Grades 2-8.) Therefore, it appears that  
10 the issue Ms. Molina identified in 2016 persisted at the time of her up-dated report.

11 After having reviewed the professional development component of the TWDL  
12 Language Framework, Dr. Arias noted that “very few of these instructional components  
13 focus on developing teachers’ proficiency in the target language.” (Dr. Arias’s Report,  
14 Doc. 2413, Exhibit B at 3.) She then stated: “While it is assumed that teachers will possess  
15 adequate fluency in the target language, they must serve as language models for students.  
16 It is essential, *particularly at the intermediate and middle school grades*, that teachers are  
17 fluent in the technical vocabulary required in content areas. As the reader reflects on the  
18 low achievement in Spanish and Spanish language arts across the TWDL program, one  
19 component to closely examine is teachers’ proficiency in Spanish. Professional  
20 development that provides teachers practice and scaffolds their Spanish proficiency is  
21 strongly recommended.” (*Id.*; emphasis added.)

22 Based on the foregoing, the Mendoza Plaintiffs object to the Special Master’s R&R  
23 to the extent it failed to recommend that the District be directed to revise the professional  
24 development component of the TWDL plan as recommended by Dr. Arias and to revise its  
25

---

26  
27 <sup>34</sup> Mendoza Plaintiffs understand that the District points to the lack of linguistic balance in  
28 TUSD TWDL schools to explain the relative lack of Spanish fluency in its students. However, they suggest that this does not adequately explain the decline observed by both Ms. Molina and Dr. Lindholm-Leary in the scores of the program’s 6<sup>th</sup> through 8<sup>th</sup> graders.

1 evaluation instrument for TWDL teachers to the extent necessary to include teacher  
2 language proficiency.

3 *1. Mendoza Plaintiffs Support the Recommendation That the Roskruge*  
4 *Format be Modified to Permit an Alternative to Participation in the*  
5 *TWDL Program but Object to the Particular Formulation in the R&R*

6 As the Court is aware, there has been significant discussion and litigation  
7 concerning the academic program to be offered at Roskruge which is both a dual language  
8 magnet school and the neighborhood school for, among others, Native American students  
9 who would have attended Richey Elementary School had the District not closed that  
10 school and incorporated its attendance zone into that of Roskruge. The Mendoza Plaintiffs  
11 agree with and support the Special Master's recommendation to pursue an approach at  
12 Roskruge that permits the school to provide an academically sound education both to those  
13 who wish to pursue the TWDL program and those who do not. And they concur with the  
14 view implicit in that recommendation that such an approach would advance the academic  
15 achievement of students attending the school.

16 They therefore support the recommendation that there be a non-TWDL track but  
17 object to the Special Master's identification of that alternative track as "dual language" (SP  
18 R&R at 8-11) which might suggest a Spanish immersion model rather than a track in  
19 which students whose academic classes will be in English also will have the opportunity to  
20 learn Spanish. This would be very similar to a proposal that the Mendoza Plaintiffs made  
21 to the District in March 2019. At that time they suggested that Roskruge be reenvisioned as  
22 a World Language Academy Magnet School. They provided the District with a conceptual  
23 framework for such a school, demonstrating both that it was consistent with the TWDL  
24 Framework and the District's Strategic Plan. A copy of their proposal is attached as  
25 Exhibit I.

26 The District's primary objection to the proposal appears to have been that given the  
27 size of the school, it would not be possible to have a TWDL strand with two classes in  
28 each of the elementary school grades as the TWDL framework contemplates and also have  
a non-TWDL class at each of those grades. Mendoza Plaintiffs' response is that while they

1 understand the reason for the two class at each grade level framework and have argued that  
2 the District should implement it at schools that have only a single TWDL class at each  
3 grade level, they also recognize that there are schools, like Van Buskirk and Mission View,  
4 where the District has determined to maintain the TWDL model notwithstanding that the  
5 schools are too small to have two TWDL classes at each grade level.<sup>35</sup> Mendoza Plaintiffs  
6 and their expert, Dr. Beatriz Arias, remain willing to work with the District to frame the  
7 optimal TWDL/non-TWDL model for the school while focusing as well on the need to  
8 improve the academic achievement of all of its students should it in fact be the case that  
9 Roskruge is physically unable to implement both a two class per grade TWDL strand and a  
10 non-TWDL strand.

11 However, it is not at all clear that Roskruge cannot accommodate a sufficient  
12 number of in-District<sup>36</sup> students to be able to offer a two classroom strand TWDL program  
13 as well as a strand in which the standard curriculum also includes lessons in Spanish,  
14 thereby providing every child in the school exposure to a world language in addition to  
15 English, and that serves to develop cultural competencies within the school's magnet  
16 theme without adding portables, a solution the District currently is planning to facilitate the  
17 expansion of the TWDL program at Bloom.

18 In 2019-20, the enrollment at Roskruge was 649. (Exhibit B, Doc. 2470.) However,  
19 as recently as school year 2015-16, the school's enrollment was 716. (TUSD 2015-16  
20 Annual Report, Appendix II-4, Doc. 1960-1 at 111.) Therefore, it appears that without  
21 taking any additional actions (and even without limiting out of District attendance),  
22

---

23 <sup>35</sup> See the District's RFI responses #2417 and #2418 (attached as Exhibit J) reporting that  
24 each school has only one classroom per grade in its TWDL strand and its TWDL  
expansion plan (Expanding TWDL Programs at Tucson Unified, Doc. 2258-1, at 2-3 of  
69) reporting no plans to add a second classroom per grade at these two schools.

25 <sup>36</sup> A map detailing the residences of Roskruge students was shared with the Mendoza  
26 Plaintiffs during discussions of the school's proposed boundary change. That map, a copy  
of which is attached as Exhibit K, shows that during the 2016-17 school year, 31 to 33  
27 students then attending the school lived outside the District. Because TUSD's first  
obligation is to educate students who reside in TUSD and because the District can  
28 gradually reduce the number of out of District students as those students graduate or  
otherwise move on, out-of-District students should not be considered in assessing capacity.

1 Roskruge can provide classroom space for an additional 67 students. Further, according to  
 2 data provided in June 2019 in response to an April 2019 data request, Roskruge has the  
 3 operational capacity to house 900 students. (See Excel Spreadsheet attached as Exhibit  
 4 L.)<sup>37</sup> Significantly, while Roskruge currently is well under its operational capacity and also  
 5 under its design capacity, the District is operating more academically successful schools  
 6 like UHS, Davis, Lineweaver, and Mansfeld with enrollments that exceed their design  
 7 and/or operational capacities. (Exhibit L.) Based on this data, there do not appear to be  
 8 physical constraints to even the fullest implementation of the re-envisioning the Mendoza  
 9 Plaintiffs have suggested which also is consistent with the Special Master's  
 10 recommendation properly understood.

11 **V. USP SECTION VI – DISCIPLINE**

12 **A. The Special Master's own Observation About his Knowledge of TUSD's**  
 13 **Review of its Discipline Data Establishes That Unitary Status Cannot be**  
 14 **Awarded in the USP Area of Discipline Data**

15 The Special Master begins his discussion of the District's performance of its  
 16 obligations under the Discipline Section of the USP making findings concerning what he  
 17 states is an "important step" in the District's monitoring of disciplinary actions in TUSD  
 18 schools: that the District now "asserts that these reviews include comparisons of schools  
 19 with similar populations." However, notwithstanding that he is entitled to access to  
 20 District data and has an Implementation Committee to assist him, he goes on to say that he  
 21 "has no knowledge about how this step is carried out" and then adds that "he has no reason  
 22 to believe it is not used." (SP R&R at 44:7-10.) Simply put, unitary status cannot be  
 23 awarded on the basis of the Special Master's belief. Accordingly, his recommendation that  
 24 TUSD should receive partial unitary status for Section VI of the USP should be rejected  
 25 for this reason alone, and this Court should direct the District to provide the parties and the  
 26 Special Master with the information they require to confirm that it does indeed have a

27 <sup>37</sup> Mendoza Plaintiffs have slightly adjusted the formatting of this excel sheet to produce  
 28 for the Court a legible exhibit containing all pertinent data. They have made no changes to  
 the substantive data.



1 process in place and is indeed comparing disciplinary outcomes in schools with similar  
2 populations.

3 **B. Objection to the Omission of Needed Discipline Data and the Special**  
4 **Master's Apparent Misreading of the Data**

5 The Special Master seemingly misunderstands Mendoza Plaintiffs' concerns  
6 relating to incomplete and inaccurate TUSD data because he does not address them.<sup>38</sup>  
7 Mendoza Plaintiffs respectfully request that this Court review those concerns which are  
8 addressed to TUSD assertions about reducing by half unspecified "discipline rates" and  
9 "dramatically reduc[ing]" "likelihood ratios" as detailed in the MP Supp. Pet. Opp. at  
10 26:16-28:3. However, they do highlight here one data reporting concern. In its 9/6/18  
11 Order, this Court required TUSD to report "discipline data both by number of each type of  
12 disciplinary consequence imposed and by number of students receiving each type of  
13 disciplinary consequence... [to] avoid any miscount of the degree of discipline  
14 difficulties." (9/6/18 (Doc. 2123) Order at 130:7-11.)

15 The Special Master informed the Mendoza Plaintiffs that he in part<sup>39</sup> based his SP  
16 R&R on TUSD's Annual Report data (*see* Appendices VI-22 to TUSD's Annual Report  
17 for 2018-19 (Doc. 2305-3)). However, as far as Mendoza Plaintiffs can tell having again  
18 reviewed that data, TUSD has not reported the data as required by this Court to "avoid any  
19 miscount of the degree of discipline difficulties." They therefore object to the Special  
20 Master's recommendation because that information must be provided (with an opportunity  
21 for the Mendoza Plaintiffs to review and respond to it) and assessed before a unitary status  
22 determination can be made in this area.

23  
24 <sup>38</sup> As an initial matter, to the extent the Special Master's assertion that data reporting  
25 consistency issues have "now been resolved" (SP R&R at 45:6-8) relates to the District's  
26 prior misclassification of exclusionary discipline as reported to this Court, Mendoza  
27 Plaintiffs note that they raised this issue not because they believe the District continues to  
28 misclassify such discipline, but rather, to respond to the District's inaccurate assertions that  
it has always consistently reported discipline data. (*See e.g.*, Doc. 2280 at 1:17-5:6.)

<sup>39</sup> The Special Master also provided copies of District responses to RFI's relating to  
discipline that he posed while working on the SP R&R. None of those relate to the  
concerns being discussed here.



1           Moreover, Mendoza Plaintiffs believe that the Special Master’s finding that  
2 “recidivism rates are quite low” is inadvertently inaccurate because it is based on  
3 misleading information. The recidivism data the Special Master relied on was provided by  
4 TUSD in response to his inquiry concerning recidivism generally. However, the TUSD  
5 response narrows the recidivism inquiry by looking at only two types of misbehavior –  
6 fighting and drug offenses – and whether students who engage in that misbehavior  
7 subsequently engage in the same misbehavior. (*See* Response to RFI #2773, provided by  
8 the Special Master on May 28, attached as Exhibit M (noting 2018-19 recidivism rates of  
9 between 7.2% and 15.1% for Latinos and between 11.3% to 20.5% for African  
10 Americans.) However, such a narrow approach masks the following TUSD statement  
11 concerning general recidivism trends for the same school year:

12           The average number of students with one or more suspensions increased  
13 over five years by 32 students, bringing the overall rate in 2018-19 back to  
14 the 2014-15 level. Additionally, the number of repeat offenders is also  
15 comparable to the 2014-15 rate with a difference of only 53 students. The  
average percent of repeat offenders over five years therefore has shown a  
gradual decrease which spiked in 2018-19.

16 (TUSD Annual Report for 2018-19 School Year, Appendix VI-16 (Doc. 2305-2) at ECF  
17 46). Notably, in 2018-19, *repeat* suspensions made up 36.77% of total suspensions  
18 administered to African American students, up 8.38% from the previous year. (*See id.*  
19 (data taken from 2017-18 and 2018-19 charts).) Similarly, in 2018-19, repeat suspensions  
20 made up 29.77% of total suspensions administered to Latinos, up 7.59% from the previous  
21 year. (*Id.*) Plainly, in light of the District’s data and assertions that recidivism rates as  
22 they relate to fighting and drug offenses are relatively low, the spiking of the overall  
23 recidivism rates in 2018-19 cannot be explained by the changes to the code of conduct  
24 relating to these offenses, as the Special Master notes, the District now asserts. (*See* SP  
25 R&R at 45:20-24.)

26           For these reasons, Mendoza Plaintiffs believe the Special Master inadvertently  
27 relied on materially misleading data in concluding that recidivism rates are “quite low” and  
28 object to that finding and accompanying recommendation that TUSD be awarded unitary

1 status in the area of discipline. They also respectfully suggest that further explanation of  
2 the spike in recidivism in 2018-19 is required to obtain a complete picture of the District's  
3 progress in the area of discipline.

4 **C. Objection to Partial Unitary Status Recommendation in Light of the**  
5 **Lack of Process to Identify and Address Teachers and Administrators**  
6 **who Disproportionately Administer Discipline**

7 USP Sections VI, E, 3-4 require the development of corrective action plans where  
8 the data shows disparities in the administration of discipline, including where teachers  
9 administer discipline in a discriminatory or racially/ethnically disparate manner.  
10 Additionally, under the subsection on monitoring, USP Section VI, F, 2 requires the  
11 District to collect, review, and analyze discipline data from each school, disaggregated by  
12 a number of categories, including teacher. Further, that subsection expressly states that if  
13 the data collected by the District "suggests that any teacher or administrator at the school  
14 site is imposing discipline in a racially or ethnically disproportionate manner or otherwise  
15 contrary to District policy, the District shall, in conjunction with the principal, consider  
16 and take corrective action...." (*Id.*)

17 Mendoza Plaintiffs therefore were surprised to see the Special Master report that  
18 seven years into the implementation of the USP, the District "has no idea of the extent to  
19 which this problem ["over-disciplining" or inappropriately disciplining students] exists,  
20 what schools do to remedy this problem, or which of the remedies are effective." (SP  
21 R&R at 44:18-22.) While Mendoza Plaintiffs had once understood corrective action plans  
22 ("CAPs") to be limited to school-wide CAPs, on April 19, 2019, TUSD informed them  
23 that, in the 2018-19 school year and continuing into 2019-20, TUSD "identif[ies] teachers  
24 and administrators who are over-referring or disciplining A[frican] A[mericans], N[ative]  
25 A[mericans], and Hispanic students at higher rates. We are identifying additional training  
26 for these teachers and administrators." (*See* Response to RFI #2290, attached as Exhibit  
27 N.) Plainly, what the District reported last year and what the Special Master reports now,  
28 coupled with his statement that the "District acknowledges the absence of such information  
believing it is the responsibility of the school-level disciplinary committees to address

1 these problems” (SP R&R at 44:14-16) directly conflict and suggest the District is not yet  
2 in compliance with USP Sections VI, E, 3-4, and F, 2.

3 Mendoza Plaintiffs therefore object to the Special Master’s recommendation that  
4 the District be awarded partial unitary status in the area of discipline in part based on  
5 TUSD’s “agree[ment]” to implement procedures to identify and address individual  
6 teachers’ and administrators’ disproportionate administration of discipline (*see* SP R&R at  
7 47:26-48:7) -- a promise for future improvement on which an award of unitary status  
8 cannot be premised, particularly given what appears to have been a total absence of  
9 compliance up to this point. *Fisher*, 652 F.3d at 1140.

10 **D. Objection to the Failure to Address the District’s Process for Assessing**  
11 **Teacher Understanding of Discipline Practices, the GSRR, PBIS and**  
12 **Restorative Practices**

13 Unfortunately, in addressing the District’s combined professional learning plan for  
14 discipline and for inclusiveness and civility, the SP R&R (at 47:11-24) entirely omits  
15 discussion concerning the requirement in this Court’s 9/6/18 Order that TUSD “institute a  
16 process to regularly assess that teachers have an understanding of District disciplinary  
17 practices, the GSRR, PBIS, and restorative practices” (9/6/18 Order (Doc. 2123) at 131:22-  
18 24) and Mendoza Plaintiffs’ related objections as detailed in their September 20, 2019  
19 response to TUSD’s related notice of compliance (Doc. 2280). Rather than recite the  
20 entirety of those objections here, they respectfully invite this Court to review Mendoza  
21 Plaintiffs’ concerns in that response (Doc. 2280) at 12:14-15:16. Briefly, in that response,  
22 Mendoza Plaintiffs highlighted the inadequacy of the District’s assessments, including one  
23 online “assessment” to give “PD credit” for taking an online training, and another  
24 containing a mere six questions, including an illogical non-question that simply states  
25 “PBIS,” another that asks whether the responding teacher was given training, and a third  
26 asking teachers to rate discipline at their school on a scale of one to ten. (*Id.*) These  
27 “assessments” plainly are not designed to measure the effectiveness of the teachers’  
28 understanding of disciplinary practices.

1           Mendoza Plaintiffs therefore object to this omission and any implied  
2 recommendation that the District should be awarded partial unitary status in this area.  
3 Moreover, because the District’s effectiveness in implementing professional learning  
4 concerning cultures of civility and inclusive school environments is a measure which this  
5 Court will use to assess the District’s professional learning obligations generally (*see*  
6 9/6/18 Order (Doc. 2123) at 145:12-146:6), they additionally object that the Special Master  
7 has not recommended that the District be denied partial unitary status in the area of  
8 professional development as well.

9           **E. Procedural Objection Concerning Mendoza Plaintiffs’ Lack of Access to**  
10 **the What Works Practices File**

11           This Court’s September 6, 2018 Order mandates that TUSD shall provide teachers,  
12 principals and others “easy access to information about how to *best deal with particular*  
13 *offenses* as defined by the GSRR... based on research.” (9/6/18 Order (Doc. 2123) at  
14 130:11-15 and 131:15 (emphasis added).) As Mendoza Plaintiffs’ detailed in their 9/20/19  
15 filing (Doc. 2280), they were not provided with access to the District’s online best  
16 practices resources and were instead provided with snapshots of the website. Based on  
17 that review they determined that the rather than focus on resources on how to “best deal  
18 with particular offenses,” the “best practices” online resource was dominated by copies of  
19 TUSD’s discipline-related policies, excerpts from the code of conduct, and general videos  
20 concerning PBIS and restorative practices. (*See* Doc. 2280 at 7:4-8:23.) While Mendoza  
21 Plaintiffs have no problem with the District including this material, it is not the  
22 information this Court ordered be included in the resource.

23           Mendoza Plaintiffs recognize that this District database is a work in process and  
24 they therefore do not expect that there now exists a resource library that, for example,  
25 provides resources as to how teachers should handle each code of conduct offense. Rather,  
26 their objection here now is largely procedural because they have at no point been provided  
27 access to the best practices resources located in TUSD’s “internal staff website” (*see* Doc.  
28

1 2266-1, at 3) and it does not appear that the Special Master has reviewed it either<sup>40</sup> What  
 2 Mendoza Plaintiffs seek is the ability to independently verify that the District is making  
 3 meaningful progress beyond the “early development of this [resource which] provided  
 4 information about procedures” (SP R&R at 45:14.). Thus, Mendoza Plaintiffs object to  
 5 the Special Master’s recommendation that the District be granted unitary status in this area  
 6 on procedural grounds, and respectfully ask that the District be ordered to provide the  
 7 plaintiffs with access to their best practices online resource so that they may verify that  
 8 progress is being made.

9 **VI. USP SECTION VII – FAMILY AND COMMUNITY ENGAGEMENT**

10 **A. Objection to the Failure to Address Lack of Data Concerning Site-Level**  
 11 **Strategies to Enable Teachers to Learn From Families and Parents to**  
 12 **Enable Them to Participate Meaningfully in School Activities**

13 As this Court knows, Mendoza Plaintiffs have long been concerned about and  
 14 advocated for the meaningful family engagement efforts at school sites that this Court  
 15 directed be the focus of the District’s guidelines for fostering family engagement at the  
 16 school level. (*See* 9/6/18 Order (Doc. 2123) at 136:10-16 (guidelines to include “strategies  
 17 which enable teachers to learn from families how best to meet the needs of their students  
 18 and strategies which enable parents to participate meaningfully in school plans and  
 19 activities.”).) In the MP Supp. Pet. Opp., the Mendoza Plaintiffs discussed why the  
 20 District’s reporting has made it increasingly difficult to assess whether sites have  
 21 implemented the guidelines for site-level family engagement (particularly with respect to  
 22 two-way family engagement and parent empowerment efforts) by, among other things,  
 23 reporting less site-specific information than it previously has and by failing to comply with  
 24 this Court’s directive to no longer report “parent involvement” activities. Rather than  
 25 repeat that discussion here, and in light of the Special Master’s failure to address the issue,

26 <sup>40</sup> Notably, the Special Master reports only having spoken to the person responsible for the  
 27 file, who, he reports, “expressed considerable interest in further expanding its character  
 28 and content” (SP M&M at 45, n.15), thereby suggesting that to date progress has not been  
 made beyond what was notable in the snapshots of the website on which Mendoza  
 Plaintiffs were moved to comment.

1 Mendoza Plaintiffs respectfully invite the Court’s attention to the MP Supp. Pet. Opp. at  
2 29:10-32:21.<sup>41</sup>

3 Accordingly, Mendoza Plaintiffs object to this omission in the SP R&R and the  
4 implicit recommendation that the District be awarded partial unitary status with respect to  
5 site-level family engagement.

6 **B. Objection to the Special Master’s Implicit Assertion That the Detailing**  
7 **of the Interconnectivity of Departments Implementing Family**  
8 **Engagement Strategies is Unnecessary**

9 In the SP R&R at 49:7-28, the Special Master implicitly finds that organizational  
10 charts or matrices detailing TUSD departments’ interconnectivity as it relates to family  
11 engagement activities is unnecessary and “not productive” because they result in “massive  
12 matrices or unreadable charts” with “very small font.” While Mendoza Plaintiffs  
13 understand the Special Master’s concern, they strongly disagree as they believe it  
14 necessary, and of particular importance to TUSD departments themselves, that the roles  
15 and responsibilities of the departments be clearly defined, including what department is  
16 primarily available for particular family engagement events.

17 Moreover, by focusing exclusively on the interconnectivity chart, the Special  
18 Master seemingly lost sight of the importance of clarifying responsibilities in the FACE  
19 Plan itself. Indeed, this Court expressly recognized that “[c]larity [of departments’  
20 responsibilities] is especially important in the FACE Plan for any ‘other departments,’ like  
21 the Language Acquisition Department, if there is no USP Plan expressly referenced for  
22 details.” (12/3/19 Order (Doc. 2386) at 5:18-20.) Mendoza Plaintiffs respectfully invite  
23 this Court to review their extensive discussion of this outstanding issue detailed in their  
24 Response to TUSD’s Notice of Report and Compliance re Revised FACE Plan, filed as  
25 document 2391 at 4-8.

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26 <sup>41</sup> Mendoza Plaintiffs further question the adequacy of the District’s family engagement  
27 data tracking system in light of the District’s apparent inability to separate out the “parent  
28 involvement” activities this Court ordered no longer be reported from meaningful family  
engagement events and the fact that, with the exception of a few pilot schools, TUSD  
“continued to use paper sign-in sheets and excel sheets” to track family engagement events  
in 2018-19. (See MP Supp. Pet. Opp. at 32:1-21.)

1 **VII. USP SECTION VII – TECHNOLOGY AND FACILITIES**

2 **A. Objection to the Special Master’s Partial Unitary Status**  
3 **Recommendation Notwithstanding the “Significant[] Understaff[ing]” of**  
4 **TUSD’s Technology Department to Meet Needs**

5 As an initial matter, Mendoza Plaintiffs note that they do not object to the Special  
6 Master’s recommendations concerning revisions to the District’s technology observation  
7 tool, or expansion of learning opportunities focused on core subjects. (SP R&R at 53:2-8.)

8 Mendoza Plaintiffs do, however, object to the Special Master’s recommended  
9 award of partial unitary status in this area in light of the significant TUSD shortcomings  
10 the Special Master identifies in the SP R&R section concerning student support  
11 departments but which is entirely omitted in his discussion of technology and facilities.  
12 That is, the Special Master seemingly makes reference to TUSD being among school  
13 districts with inadequate technology training particularly in light of the rapidly evolving  
14 online and distance learning modalities. (SM R&R at 38:3-9.) The Special Master then  
15 goes on to recommend that this Court order a program specialist focusing on “virtual  
16 learning” be included in student support departments, because “the information technology  
17 division within the District is significantly understaffed and could use all the help it can  
18 get, as well as an enhanced capability to focus on equity.” Plainly the Special Master’s  
19 finding and recommendation indicate that there are serious inadequacies in the District’s  
20 delivery of technology training, particularly culturally responsive technology learning.

21 In light of the above, Mendoza Plaintiffs object to the Special Master’s  
22 recommendation that the District be awarded partial unitary status in the area of  
23 technology.

24 **CONCLUSION**

25 For the reasons set forth above and in the Mendoza Plaintiffs’ Opposition to TUSD  
26 Supplemental Petition for Unitary Status, the Court should deny TUSD’s motion for  
27 unitary status and reject findings and recommendations of the Special Master in the Report  
28 and Recommendation on the District’s Supplemental Petition for Unitary Status as detailed  
in the foregoing argument.



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Respectfully submitted,

Dated: June 16, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 16, 2020, I electronically submitted the foregoing to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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