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

15 Roy and Josie Fisher, et al., Plaintiffs,	4:74-cv-0090-DCB (Lead Case)
16 v.	
17 Tucson Unified School District No. 1, et al., Defendants.	
18 Maria Mendoza, et al., Plaintiffs,	4:74-cv-0204 TUC DCB (Consolidated Case)
19 v.	
20 Tucson Unified School District No. 1, et al., Defendants.	

22
 23 **DISTRICT RESPONSE TO SPECIAL MASTER'S**
 24 **REPORT AND RECOMMENDATION**
 25 **(ECF 2469)**
 26

Introduction and Summary

Pursuant to the Court's scheduling orders, following briefing on the District's Supplemental Petition for Unitary Status, the Special Master filed a Report and Recommendation on unitary status on May 19, 2020. [ECF 2469.]¹ As required by Fed. R. Civ. P. 53(f)(1), the Court's scheduling orders afforded the parties the opportunity to respond and object to the Report and Recommendation before acting.² This document presents the District's response and objections to that Report and Recommendation.

The Special Master's recommendation was that the District is entitled to unitary status in each of the areas he addressed. In some areas, the Special Master identified specific actions, tasks, or changes to be done as a condition or requirement for unitary status. The District's position in response is simple. The District urges the Court to adopt the recommendations of the Special Master to the extent he recommends unitary status in each area. The District objects to the recommendations to the extent that they are read as imposing any additional requirements, tasks, obligations, or changes as conditions of unitary status. The District respectfully submits that it has complied in good faith with the Unitary Status Plan, and the Court's subsequent orders, more than sufficiently to establish, without genuine dispute, that there is no likelihood that the District will suddenly become segregated again. That is the fundamental purpose underlying the "good faith" requirement for unitary status.

¹ The original report and recommendation was filed on May 12, 2020. [ECF 2468.] An amended version making small corrective changes was filed on May 19, 2020. [ECF 2469.] For ease of reference, the balance of this response refers simply to the "Report and Recommendation" and cites to the amended version filed on May 19, 2020.

² The Court originally provided 14 days for the parties' responses. [ECF 2312, p. 3.] In a subsequent order, without reference to the previously ordered 14-day period for responses, the Court ordered that responses be provided in 30 days. [ECF 2466, p. 10:19-21.] That period was extended to today, June 16, 2020, by order granting an unopposed joint motion for an extension. [ECF 2473.]

1 In sum, it is the District's position that it has met the conditions necessary for
2 unitary status. The last vestige of the prior dual school system was eliminated 35 years
3 ago, and the current recommendations for additional requirements, however laudable they
4 may or may not be, simply cannot be tied to remediation of any segregative conduct by
5 the District 70 years ago. In these circumstances, the Constitutional basis for the federal
6 court to involve itself in operation of the District has ended; the Court must return control
7 of the District to its locally-elected officials forthwith, without further condition, task or
8 oversight. The decision of whether and how to adopt the Special Master's
9 recommendations must be left to the District and its locally-elected officials.

10 Subject to and without waiving its objections, however, the District also notifies
11 the Court that, in every aspect of the specific recommendations of Special Master, the
12 District has already implemented or is working to implement the recommendations of the
13 Special Master, as set out below.³

14 **Detailed Analysis**

15 The Special Master has reported on the District's compliance with the Unitary
16 Status Plan and with the Court's order dated September 6, 2018 granting partial unitary
17 status and setting out a series of tasks, termed "completion plans," for full unitary status.
18 As the Court reviews the Special Master's report and determines whether the compliance
19 is sufficient to meet the "good faith" compliance test, it is important that the process be
20 conducted in the context of the applicable law governing, and limiting, that review and
21 determination.

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23 ³ This response does not address two intervening orders of the Court, one filed on June 4,
24 2020, relating to the District's Comprehensive Magnet Plan and other issues relating to
25 Section II of the Unitary Status Plan, which adopted some of the Special Master's
recommendations, expanded others, and added new requirements (ECF 2471), and the
other filed on June 15, 2020, relating to the ALE Policy Manual (ECF 2474).

1 A. The Standard for Assessing Compliance for Purposes of Unitary
 2 Status.

3 1. **The Court must take a holistic look at whether the District has**
 4 **demonstrated sufficient compliance that it is clear that there is**
 no danger that the District will revert to an intentionally
 segregated school system.

5 In the good-faith compliance analysis, the question is not, and cannot be, whether
 6 the District has complied with “all provisions” of the decree perfectly.⁴ “The focus is on
 7 the school board’s pattern of conduct, and not isolated events,” because “[f]ocusing on
 8 isolated aberrations blurs a court’s long-term vision.” *Manning ex rel. Manning v. Sch.*
 9 *Bd. of Hillsborough County, Fla.*, 244 F.3d 927, 946 n.33 (11th Cir. 2001). “Perfect
 10 compliance with the court’s remedial orders is not required for a constitutional violator
 11 to be released from judicial oversight.” *Berry v. Sch. Dist. of City of Benton Harbor*, 195
 12 F. Supp. 2d 971, 991 (W.D. Mich. 2002). Indeed, “[t]he good faith requirement concerns
 13 the manner of the school district’s compliance more so than it does technical compliance
 14 with every detail of a remedial order.” *Jenkins v. Sch. Dist. of Kansas City, Missouri*,
 2003 WL 27385936, at *10 (W.D. Mo. Aug. 13, 2003).

15 The Court must take a holistic, big-picture view at whether the District has made
 16 sufficient good-faith efforts to comply that there is no concern that the District will return
 17 to an intentionally segregative system. This is because “the purpose of the good-faith
 18 finding is to ensure that a school board has accepted racial equality and will abstain from
 19 intentional discrimination in the future.” *Manning*, 244 F.3d at 946 n.33. *See also, e.g.*,
 20 *Morgan v. Nucci*, 831 F.2d 313, 321 (1st Cir. 1987) (“A finding of good faith . . . reduces
 21 the possibility that a school system’s compliance with court orders is but a temporary
 22 constitution ritual.”); *Jenkins*, 2003 WL 27385936, at *11 (quoting *Manning, Freeman v.*
 23

24 _____
 25 ⁴ The Mendoza Plaintiffs have incorrectly posited that such perfect compliance is
 required. [*See, e.g.*, ECF 2439, pp. 10:19-11:4.]

1 *Pitts*, 503 U.S. 467 (1992), and *Morgan* and holding that “[t]he essence of the above-cited
2 authority is that whether a school district has evidenced good faith depends on whether
3 the school district’s record throughout the litigation demonstrates that the school district
4 has accepted the principle of racial equality”); *Berry*, 195 F. Supp. 2d at 991 (“The
5 testimony uniformly supports the conclusion that all students in the [district] are receiving
6 the same education, regardless of race. As a result, the failure to continue to implement
7 [a program] after 1992 does not suggest a likelihood that the district will return to its past
8 segregative conduct.”).

9 **2. Unitary status cannot be contingent on the District completing**
10 **tasks that are not designed to remedy the original Constitutional**
11 **violation.**

12 The framework set forth above is particularly important to keep in mind in this
13 case, where the hundreds of very specific, detailed tasks set forth in the Court’s orders
14 have moved far beyond what could once have been considered necessary to remedy the
15 Constitutional violation. The Special Master has repeatedly described the USP, and he
16 does so again in his Report and Recommendation on unitary status, as “the most extensive
17 set of remedies in a desegregation case ever.” [ECF 2469, p. 2:23-24.] This is not an
18 exaggeration.

19 Because the vast majority — arguably, all — of those remaining tasks cannot be
20 tied to the District’s original Constitutional violation, unitary status cannot hinge on their
21 completion. “[T]he nature of the desegregation remedy is to be determined by the nature
22 and scope of the constitutional violation.” *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995)
23 (quotation marks omitted). Indeed, as the District noted in its Reply in support of the
24 Supplemental Petition for Unitary Status, the U.S. Supreme Court has admonished that
25 “federal-court decrees exceed appropriate limits if they are aimed at eliminating a

1 condition that does not violate [federal law] or does not flow from such a violation. If [a
2 federal decree is] not limited to reasonable and necessary implementations of federal law,’
3 it may ‘improperly deprive future officials of their designated legislative and executive
4 powers.’” *Horne v. Flores*, 557 U.S. 433, 450 (2009) (internal citation omitted).⁵

5 Here, the Constitutional violation was the former dual elementary school system
6 operated with respect to African American students, which ended voluntarily seven
7 decades ago. Most of the remaining tasks — including those for which the District’s
8 compliance is analyzed in the Special Master’s Report and Recommendation on unitary
9 status — are completely unmoored from that violation.

10 One prime (but certainly nonexclusive) example is the purported requirement that
11 the District use a technology integration observation tool (“TIOT”) as part of its ever-
12 developing list of tasks related to USP Section IX (technology and facilities). The TIOT,
13 which is a tool for evaluating teachers’ use of technology, is not even mentioned in the
14 USP, and its use is not tied to any Constitutional violation by the District. Indeed, the
15 Special Master notes in his Report and Recommendation on unitary status that “[t]here is

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17 ⁵ The overbreadth of the USP also has serious implications in the analysis of whether the
18 vestiges of the former segregation have been eliminated to the extent practicable. As
19 noted in the District’s Supplemental Petition for Unitary Status and Reply in support
20 thereof, “[t]he vestiges of segregation [to be eliminated] . . . must be so real that they have
21 a causal link to the *de jure* violation being remedied.” *Freeman*, 503 U.S. at 496. The
22 District simply cannot be required to eliminate any racial disparities or cure any ills that
23 are not causally linked to the original Constitutional violation, even if the USP charges
24 the District with tasks in those areas. *See, e.g., San Francisco NAACP v. San Francisco*
25 *Unified Sch. Dist.*, 413 F. Supp. 2d 1051, 1067 (N.D. Cal. 2005) (“Unless the current
segregation is a ‘vestige’ of past discrimination, a desegregation decree cannot be
extended.”). It is also beyond dispute that the District is “under no duty” to battle
reoccurrence of racial disparities that result from factors other than the original violation.
Freeman, 503 U.S. at 494; *see also Pasadena City Board of Education v. Spangler*, 427
U.S. 424, 436-37 (1976) (“[H]aving once implemented a racially neutral attendance
pattern in order to remedy the perceived constitutional violations on the part of the
defendants, the District Court had fully performed its function of providing the
appropriate remedy for previous racially discriminatory attendance patterns.”).

1 no reason to believe that there was any discrimination in the allocation of [technological]
2 hardware and software”; the only problem he identifies is that, “[a]s is the case of most
3 school Districts, the technology is underutilized” — and he does not even suggest that
4 underutilization is racially disparate. [ECF 2469, p. 51:7-14 (emphasis added).]
5 Nevertheless, the District has been charged with, and has complied with, making various
6 revisions to the TIOT to meet the Special Master’s requirements. [*Id.*, p. 52:4-27.] The
7 Special Master recognizes that the District’s efforts have been a “significant
8 improvement” [*id.*, p. 52:15-17] but suggests that more can be done, and his current
9 Report and Recommendation includes a proposal for another change to the TIOT. [*Id.*, p.
10 53:2-6.] Although the District has made good-faith efforts to comply in this area, using
11 the TIOT — and doing so in accordance with every specific preference stated by the
12 Special Master — is not, and cannot be, a prerequisite for unitary status.

13 While the Court may broadly consider the District’s good-faith efforts to comply
14 with its orders, it cannot maintain jurisdiction over the case merely to oversee
15 implementation of tasks that were imposed on the District far beyond the requirements of
16 the Constitution — particularly when those tasks are not even set forth in the USP. *See,*
17 *e.g., Keyes v. Congress of Hispanic Educators*, 902 F. Supp. 1274, 1281-82 (D. Colo.
18 1995) (“The constitutional authority of the federal courts is limited to compelling the
19 elimination of negative effects of *de jure* discrimination [The proposal] that this
20 court retain jurisdiction and require further affirmative action in the District’s
21 employment practices . . . would go beyond remediation of past discriminatory
22 conduct.”). Unitary status cannot be contingent on whether such tasks have been
23 completed.

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1 **3. The limited suggestions the Special Master makes in the Report**
2 **and Recommendation for the District’s future operations are no**
3 **bar to unitary status.**

4 Recommendations by the Special Master for the District’s continuing efforts to
5 improve its educational system for minority students should not be taken as indications
6 that the District has not complied in good faith or is otherwise unready for unitary status.
7 *See, e.g., Jenkins*, 2003 WL 27385936, at *10 (“Plaintiffs complain that details of the
8 Court-ordered educational plans are yet to be implemented or have not been implemented
9 to the maximum possible extent. Plaintiffs do not argue with the notion, nor could they,
10 that the [school district] has whole-heartedly adopted the concept of systemic reform that
11 was the thrust of the educational plans. Nor do Plaintiffs question the [school district’s]
12 commitment to the delivery of quality education to all students regardless of race.”). Of
13 course there is still more work to be done — there likely always will be. But the Special
14 Master’s conclusions and his recommendations indicate that he is confident, based on the
15 District’s track record of good-faith efforts to comply, that the District is committed to
16 continuing this work on its own, without the need for court supervision. The Special
17 Master’s Report and Recommendation on unitary status does not question the District’s
18 commitment to delivering a quality education to all students regardless of race. [*See* ECF
19 2469, p. 2:22-27 (stating that “he believes that TUSD is more equitable . . . and is more
20 capable of enhancing the learning opportunities outcomes of all its students than [it] was
21 seven years ago” (emphasis added)).] The Court should adopt the Special Master’s
22 conclusions.

23 In short, the Special Master’s Report and Recommendation confirms that the
24 District has made good-faith efforts to comply and that there is no concern that the District
25 will return to a system of intentional segregation. This is more than sufficient to meet the
 “good faith” prong of the unitary status analysis.

B. Review of Compliance in the Remaining Areas of the USP.

1 The Special Master reports on the District’s compliance activities in the areas of:
2 (1) student assignment, (2) administrative and certificated staff, (3) quality of education,
3 (4) discipline, (5) family and community engagement, (6) extracurricular activities, and
4 (7) professional learning regarding technology use in the classroom. The District responds
5 to the report on each of these areas below.

1. USP Section II: Student Assignment.

6 The Special Master made three general recommendations in the area of student
7 assignment: (a) revisions to the District’s proposed criteria for determining academic
8 worthiness of a school to continue as a magnet, (b) a change to the definition of
9 integration, and (c) revised school academic improvement plans.

10 The District objects to these recommendations to the extent that they may be read
11 to imply that compliance is a condition for termination of Court supervision and closure
12 of the case. For the reasons set forth in the District’s Supplemental Petition for Unitary
13 Status and its Reply [ECF 2461 and 2464], it is the District’s position that it has met the
14 conditions requiring the Court to return control of the District to its locally-elected
15 officials. The last vestige of the prior dual school system was eliminated 35 years ago,
16 and the current Comprehensive Magnet Plan, while laudable, simply cannot be tied to
17 remediation of any segregative conduct by the District. There is no question that the
18 District has devoted a significant time and effort to compliance with the USP with regard
19 to magnet schools, such that the District has made major progress in increasing the
20 diversity and integration of its magnet schools.⁶ There is no chance that, 70 years after it
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23 ⁶ The District has successfully utilized its 13 magnet schools and programs to improve
24 integration. In SY2014-15, 20% of magnet schools were integrated (4 of 19); by
25 SY2019-20, 92% were integrated (12 of 13). As a result, more than 5,000 additional
students now attend integrated magnet schools — including new magnet programs at
Tully ES and Mansfeld MS.

1 voluntarily ended segregation, and after 45 years of this litigation, the District is suddenly
2 going to start segregating students again. In these circumstances, the authority of the
3 federal court to involve itself in the details of academic improvement in the District, or
4 the future management of its magnets, is simply exhausted. The Court must return control
5 of the District to its locally-elected officials forthwith.

6 In addition, the District notes that each school in the District already prepares
7 academic improvement plans pursuant to state law, and Title I under federal law, and
8 those plans follow formats and content approved as a matter of federal and state law. It is
9 the District's position these school improvement plans, sufficient under federal and state
10 education law, should be sufficient for this Court, and the District objects to the Special
11 Master's recommendation to the extent that the Special Master's recommendation would
12 require a new and different format or planning operation.

13 Subject to and without waiving the foregoing objections, the District notifies the
14 Court that it is working with the Special Master to modify its Comprehensive Magnet
15 Plan to restate the academic criteria for retaining magnet status and to revise the academic
16 improvement plans for schools, as recommended by the Special Master.

17 **2. USP Section IV: Administrative and Certificated Staff**

18 The Court should adopt the Special Master's recommendation and grant unitary
19 status in the area of staff because the Special Master's report makes clear that the District
20 has complied with the Court's decrees in good faith in this area.

21 **(a) Support for Beginning Teachers**

22 As the Special Master notes in his Report and Recommendation on unitary status,
23 the District has fully complied with the Court's directives, has sufficiently addressed
24 additional concerns raised by the Mendoza Plaintiffs and the Special Master, and now
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1 employs “exemplary” procedures in the area of support for beginning teachers. [ECF
2 2469, pp. 13-15.] The Special Master has made an unqualified recommendation of unitary
3 status in this area.

4 The District filed a notice and report of its compliance with the Court’s orders
5 related to support for beginning teachers in December 2018. [ECF 2155.] It subsequently
6 provided additional information and requested a waiver of a requirement to study
7 strategies to reduce first-year teachers at Racially Concentrated or underperforming
8 schools. [ECF 2180.] In February 2019, the Special Master reported that “[t]he
9 recruitment and hiring plan developed by the District is a good one and changes in
10 procedures significantly reduced the number of first-year teachers hired” but
11 recommended that the study be carried out. [ECF 2202, p. 3:18-23.] The Court ordered
12 the District to conduct the study. [ECF 2217, pp. 7:21-8:3.]

13 In May 2019, the District filed a supplemental notice and report of compliance
14 [ECF 2222], in which it: proposed a Certification Form to be completed whenever
15 circumstances required that a first-year teacher be hired at a Racially Concentrated or
16 underperforming school [ECF 2222-1] and provided an in-depth report on a study of
17 mitigation alternatives it had conducted, which included a support plan developed with
18 the Special Master. [ECF 2222-2.] The Special Master found the Certification Form was
19 adequate, noted that the District helps teachers with individual shortcomings, and
20 recommended unitary status. [ECF 2251, pp. 3:13-4:24.]

21 In September 2019, the Court ordered the District to complete additional tasks.
22 [ECF 2273.] The District submitted a second supplemental notice of compliance
23 [ECF 2327] that included: a plan for beginning teachers [ECF 2327-1]; a 2019-20
24 inventory for beginning teachers at all schools [ECF 2327-2] and a summary report of
25

1 that inventory [ECF 2327-3]; a revised study of strategies to support beginning teachers
2 to reflect the Court’s directives [ECF 2327-4]; a revised Certification Form [ECF 2327-
3 5]; and a summary of the strategies it uses to support first-year teachers, including both
4 sheltering and development strategies [ECF 2327-6.] In his October 2019 R&R, the
5 Special Master described the District’s programs as “exemplary,” and the only change he
6 recommended was that the District should solicit feedback following seminars.
7 [ECF 2346, pp. 2:17-3:4.] He also recommended the Court order the District to answer
8 seven questions [*id.*, p. 3:6-26.] The District did so in January [ECF 2423] and attached
9 an updated inventory of beginning teachers [ECF 2423-1] and a chart of
10 sheltering/mitigating strategies in place at individual schools. [ECF 2423-2.] In his
11 current Report and Recommendation, the Special Master concludes that the District
12 “adequately provid[ed] the information at issue.” [ECF 2469, p. 13:7-11.]

13 The District has complied in good faith with the Court’s orders in this area of
14 District operations. Indeed, the Special Master notes in his current Report and
15 Recommendation that the support provided for beginning teachers in the District has met
16 the Court’s requirements and is standout among school districts. For example, the District
17 employs the “Santa Cruz program” for training new teachers, which the Special Master
18 describes as a “state-of-the-art model,” and the District enhances mentoring support for
19 first-year teachers by 50% above that program’s guidelines. [*Id.*, p. 14:13-16.] In another
20 example, the Special Master confirms that each Racially Concentrated or
21 underperforming school in the District has implemented at least one of the mitigating
22 practices identified in the Court-order study, and he reports that such widespread
23 implementation is “very uncommon.” [*Id.*, pp. 13:23-14:5.] As the Special Master wrote
24 in his October 2019 R&R:

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1 It is important to recognize that the District’s support for beginning teachers
2 is exemplary. Its strategies prior to the USP were very good, and the level of
3 support provided now is even better. Of particular note[] is the District’s
4 identification of a broad range of sheltering/mitigating practices that will
5 contribute to professional improvement and teacher retention.

6 [ECF 2346, p. 2:17-20.]

7 The Special Master identifies no area where the District has failed to comply with
8 Court orders as to beginning teachers. He has nothing but praise for the programs, and he
9 notes that any remaining challenges are ones faced by urban school districts generally
10 (not unique to the District). While he suggests that the District continue to monitor the
11 efficacy of various strategies — something the District will of course do — the report is
12 a glowing one. There can be no question that the District has sufficiently complied, in
13 good faith, with the Court’s directives in this area to obtain unitary status.

14 **(b) Teacher/Administrator Diversity, Retention, and Grow
15 Your Own Programs**

16 The Court should adopt the Special Master’s recommendation of unitary status in
17 this area because the record shows good-faith compliance by the District. Indeed, in one
18 of the three subsets of this area, retention, the District’s efforts have not drawn a single
19 objection from the plaintiffs, the Special Master, or the Court since the Court ordered
20 continued supervision in 2018.

21 In 2018, the Court ordered that it would reconsider unitary status after the District
22 “file[d] the 2018-19 Teacher Diversity Plan (TDP), including the attrition and Grow-
23 Your-Own Program studies.” [ECF 2123, p. 149:25-27.] The District did so in
24 December 2018 [ECF 2159] and later provided further information about its significant
25 compliance efforts. [ECF 2183.] In his February 2019 R&R, the Special Master:
recommended that the TDP be rethought and improved but did not identify any failures
to comply with the Court’s orders [ECF 2203, p. 4:22-26]; recognized that District teacher

1 attrition was below state and national averages and declining further, and recommended
2 unitary status in the area of teacher attrition [*id.*, p. 5:1-11]; and recommended that the
3 Court require the District to modify its recruitment process for the Grow Your Own
4 Programs to increase African-American and Hispanic participation (but, again, did not
5 identify any failures to comply with the Court’s orders). [*Id.*, p. 6:14-18.]

6 In April 2019, the Court noted the District’s successful transfer of 66 teachers to
7 increase diversity and that the number of target schools remaining Racially Concentrated
8 was “not determinative”; adopted a new list of target schools for staff integration;
9 instructed the District to modify its recruitment process for Build Your Own Programs to
10 increase the number of African American and Hispanic candidates; and noted that the
11 District’s attrition rates were less than state and national averages and that its Hispanic
12 and African American attrition rates were “substantially lower” than the national average.
13 [ECF 2217, pp. 9:6-10:4, 12:9-14:7.] The District filed a supplemental notice of
14 compliance in May 2019, in which it reported that it had designated a director-level
15 employee tasked with recruiting African American and Hispanic teachers for both the
16 transfer initiative and the Grow Your Own Programs, and that the District had worked
17 with the Special Master to create a detailed initial recruiting plan for both initiatives.
18 [ECF 2221, p. 2:6-19; *see also* ECF 2221-1 (the plan).] The Special Master described the
19 District’s May 2019 filings as “a substantial step forward in spelling out how the District
20 will enhance the effectiveness of its strategies to increase the diversity of teachers and
21 school administrators both at the school level and districtwide.” [ECF 2253, p. 2:22-26.]

22 In September 2019, the Court ordered the District to modify its plan to, *inter alia*,
23 apply the TDP to administrators as well as teachers and apply the Grow Your Own
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1 Programs to teachers as well as administrators. [ECF 2273, pp. 15:6-17:13.]⁷ The District
2 then filed a Second Supplemental Notice and Report of Compliance, clarifying
3 misunderstandings about some of the data presented and setting forth how it had complied
4 with each of the Court's directives. [ECF 2329.] The District produced a plan that
5 incorporated all of the Court's requirements [ECF 2329-1] and provided current teacher
6 numbers for all schools. [ECF 2329-2.] The Special Master filed a November R&R in
7 which he did not identify compliance failures but made additional recommendations
8 [ECF 2372], and the District filed in January a Notice of Compliance explaining how it
9 had complied, and would comply, with those recommendations. [ECF 2425.]

10 Individual subcomponents of this area of operations, and the Special Master's
11 specific recommendations for each in his Report and Recommendation on unitary status,
12 are addressed below.

13 (1) **Teacher and Administrator Retention**

14 The Special Master notes in his Report and Recommendation on unitary status
15 that, in his February 2019 R&R, he analyzed the District's efforts in this area of operations
16 and found them to be sufficient, and that there have been no objections to his
17 recommendation of unitary status in this area. [ECF 2469, p. 15:9-13.] This area of
18 operations needs no further review. But, the fact that the District has complied so
19 thoroughly here that there have been no objections must be noted as evidence of the
20 District's good-faith compliance overall in the area of staff. This was a substantial portion
21 of Section IV of the USP that had undisputed perfect compliance.

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23 ⁷ The Mendoza Plaintiffs had objected that the District did not include in the plans
24 information it was ordered to include; the Court did not find that information was missing
25 but merely said it was confused about how the new comprehensive plan fit within the
confines of the prior plan, or whether it was a replacement. [*Id.*, pp. 16:23-17:3.] In its
October 2019 report, the District clarified that the new plan was a supplement to
preexisting plans. [ECF 2329, pp. 2:17-3:1.] This was not noncompliance.

(2) **Teacher Diversity**

1 As the Court has noted, lack of staff diversity “is not a problem unique to TUSD,”
2 and in fact the District employs a vastly higher percentage of Hispanic teachers than the
3 state average and meets the state average for percentage of African American teachers.
4 [ECF 2217, p. 10:7-11.] The District has also made sincere efforts to comply in this area.

5 Although the Special Master describes his conclusions from November 2019 as
6 that “the District fell far short of meeting the goals of the original teacher diversity plan”
7 [ECF 2469, p. 15:16-18], the emphasis must be on the word “goals.” The Special Master’s
8 November 2019 R&R describes that the District was charged with “achiev[ing] diversity”
9 in 26 schools but, over a three-year period, only managed to meet the Court’s diversity
10 standards for teachers in 10-12 of those schools. [ECF 2372, p. 3:12-26.] While the
11 District was not able to meet the benchmark in all 26 schools, the Special Master voiced
12 no concerns about the District’s efforts in either his November 2019 R&R [ECF 2372] or
13 his current Report and Recommendation on unitary status. [ECF 2469.]

14 To be sure, achieving optimum levels of teacher diversity in all schools is a
15 challenge, but the District has made good-faith efforts to do so. As detailed in the Special
16 Master’s November 2019 R&R, the District has offered various incentives to teachers for
17 transfers that increase diversity, with measurable success. [ECF 2372, p. 4:1-8.]

18 Because the District’s good-faith efforts have not been as successful in reaching
19 the aspirational diversity metrics as all parties hoped, the Special Master made three new
20 recommendations in his November R&R, which he reaffirms in his current Report and
21 Recommendation on unitary status: (1) White teachers should be counted in assessing
22 diversity; (2) schools should be considered racially diverse as to teachers when they are
23 within 2% of the 15± rule of the USP or when the percentage of the second-largest racial
24 group of teachers is at least 50% of the percentage of teachers who are either White or
25

1 Hispanic, and the 15± rule should not apply to African American teachers (due to their
2 scarcity in the District); and (3) the initial incentives set forth in the teacher diversity plan
3 should be maintained even if not used in any particular cycle,⁸ with the 26 identified
4 schools remaining as the target for a three-year period beginning with the 2021 school
5 year. [ECF 2469, pp. 15:20-16:11.]

6 Indeed, the District’s filings this year show that it has already taken these
7 suggestions to heart. The District agreed to continue reporting the number of teachers of
8 each race/ethnicity — including White teachers — at every school, as it always has done,
9 and it added a commitment to compute compliance with the 15% standard for all
10 races/ethnicities. [ECF 2425, p. 2:4-11.] The District agreed to return the additional 26
11 target schools to be the targets for a three-year period starting in 2020-21. [*Id.* p. 2:16-
12 19.] And the District clarified that the original incentives available for diversity-
13 increasing transfers under the initial Teacher Diversity Plan all remain. [ECF 2441, p. 6:5-
14 15.] As for No. 2 on the Special Master’s list of suggestions, the District is open to using
15 that method of calculating teacher diversity in the future, if the Court so orders.

16 The District has complied in good faith with the Court’s orders in this area.

17 (3) Administrator Diversity

18 This is yet another area where the Special Master has absolutely no complaints
19 about the District’s compliance with the Court’s orders. Although the District did not
20 initially tailor its TDP to address administrators as well as teachers, it did so promptly
21 after the Special Master and the Court focused on the issue. [ECF 2253, pp. 2:27-3:15.]⁹

22 ⁸ As the Special Master noted in November, no teacher has ever selected a transfer
23 incentive other than the monetary option. [ECF 2372, p. 4:5-10.] He was concerned,
24 however, that other incentives may have been taken off the table.

25 ⁹ The Special Master noted that he had not previously addressed the TDP to administrators
“because research tells us that the instability in school level and District level leadership
is a major impediment to school improvement.” [ECF 2253, pp. 2:27-3:15.]

1 The Special Master notes only one remaining question in this area: how to measure
2 diversity in administration going forward. Because a “viable formula for determining
3 diversity among school administrative staffs” is absent,¹⁰ he recommends that the District
4 should do so on a case-by-case basis. As the Special Master notes, the District has already
5 indicated that it will comply. [ECF 2469, pp. 16:27-17:2.]

6 Again, the Special Master identifies not a single issue in this area that gives him
7 pause as to whether the District has complied with Court orders. The District has complied
8 with sufficient good faith to entitle it to unitary status.

9 (4) Grow Your Own Programs

10 Here, too, the Special Master expresses no concerns. He reports that, in response
11 to the Courts orders, the District appointed a Director of Talent Acquisition “who has cast
12 a broader net for potential candidates, especially teachers who might move into
13 administrative roles.” [*Id.*, p. 17:15-20.] Early indications are that the new effort is having
14 a positive effect — there has been a “significant increase” in African American and
15 Hispanic applicants for the Leadership Prep Academy, and the selected participants are
16 proportionate to the applicants by race — but it will not be possible to measure the success
17 in appointing candidates from those races for two to three years. [*Id.*, pp. 17:20-18:9.]
18 The Special Master, appropriately, does not think unitary status need wait those years to
19 see the results. The question properly before the Court is whether the District has made
20 efforts to comply in good faith, not the ultimate success of those efforts.

21 The Special Master has recommended that the District offer tuition support to
22 outstanding internal leadership candidates, and he notes that the District has agreed to do

24 ¹⁰ The Special Master notes that he determined that a 15% requirement was unworkable,
25 that an alternative proposal he made was problematic because it could be viewed as an
illegal quota, and that no other proposals have been made. [ECF 2469, pp. 16:20-17:3.]

1 so. [*Id.*, p. 18:18-24.] This is further evidence of the District’s good faith implementation.

2 The District has taken good-faith steps to comply with the Court’s directives and
3 the Special Master’s recommendations in the area of Staff (Section IV). While there were
4 a couple of instances of miscommunications along the way (primarily relating to how
5 information was reported), the District willingly undertook each substantive action
6 ordered by the Court and took to heart every suggestion by the Special Master. The
7 Special Master is satisfied with the District’s compliance, and the Court should be, also.
8 The Court should adopt the Special Master’s recommendation and grant unitary status.

9 **3. USP Section V: Quality of Education.**

10 **(a) Advanced Learning Experiences**

11 The Special Master recommends that the District be declared unitary regarding
12 ALEs because the District has engaged in numerous efforts to increase enrollment and
13 success of African American and Hispanic students in ALEs, because such efforts have
14 had markedly positive effects in actually increasing African American and Hispanic ALE
15 enrollment, because there has been no evidence or even allegations of actual
16 discrimination in ALE enrollment, and because the District has addressed, as effectively
17 as is reasonable under the circumstances, all recommendations made by the Court and
18 Special Master. [ECF 2469, pp. 19-24, 28-29.]

19 In its September 6, 2018 Order, the Court directed the District to prepare and file
20 an ALE Policy Manual addressing several specific areas. [ECF 2123, pp. 45-98, 150.]
21 The District prepared and filed the ALE Policy Manual, the ALE Progress Report, and
22 the operating plan for the District’s ALE Department. [ECF 2267.] As detailed in these
23 documents, as well as in the District’s annual reports, the District has complied in good
24 faith with the USP and related Court orders. And, as noted in the Supplemental Petition
25

1 for Unitary Status, because quality of education is not a *Green* factor, the plaintiffs have
2 the burden of demonstrating that any alleged disparities are traceable as vestiges of the
3 District’s prior *de jure* segregation and that the District has not eliminated any such
4 vestiges to the extent practicable.

5 Additionally, as detailed throughout the filings submitted in compliance with the
6 Court’s directives in this area, important measures of academic achievement — such as
7 graduation rates, dropout rates, and access to, participation in, and completion of
8 advanced learning experiences — continue to improve, due to the District’s commitment
9 to equitable access to these programs. [ECF 2267-2, pp. 5-22, 34-45, 48-56, and 59-63.]
10 More African American and Hispanic students in the District are participating in
11 advanced learning experiences than ever before.

12 The Mendoza Plaintiffs have argued the District should not be declared unitary
13 because African American and Hispanic students do not participate in ALEs at the same
14 rate as White students, or because there is an achievement gap between African American
15 and Hispanic students and White students. But the Court has previously stated that it
16 would not require parity, and that although it would “consider” the 15% rule [ECF 2084,
17 pp. 18-19], that benchmark is not determinative of unitary status. Instead, the 15%
18 benchmark may only serve as an “indicator” of “possible discrimination.”

19 Even through the microscope under which this District has been operating for
20 several years, there has not been any indication of actual discrimination. If the
21 participation disparity indicates the need for a further look, that further look has revealed
22 no discrimination by the District, and not even an allegation thereof.

23 Any remaining disparity is attributable to factors other than discrimination by the
24 District, and it cannot serve as a bar to unitary status. Parity in academic achievement or
25

1 ALE participation cannot be determinative of unitary status when there is no evidence
2 that a single school district in the country satisfies such a standard. The District is aware
3 of none that does.

4 In his Report and Recommendation on unitary status, the Special Master again
5 concluded that:

6 The Special Master has previously noted many difficulties in considering the
7 achievement gap, but analyses undertaken by the Special Master and his
8 consultants, as well as the District, show that when one takes into account
9 variations in student family income (because schools typically account for
10 less than half of student test scores), the evidence is that the achievement gap
11 is relatively narrow and that it has decreased slightly over a five-year period.

12 [ECF 2469, p. 19.]

13 Indeed, a school district's inability to create racial balance despite significant
14 efforts, where there is no evidence of discrimination, is not indicative of a lack of good
15 faith but instead evidences outside forces that cannot properly be attributed to the school
16 district's prior discriminatory acts. *See Everett v. Pitt Cty. Bd. Of Ed.*, 788 F.3d 132, 147
17 (4th Cir. 2015) ("While the Board was under no duty to implement intensive
18 desegregation efforts given that many of the remaining racially identifiable schools were
19 a consequence of demographic shifts within Greenville, **its failed efforts at bringing**
20 **greater racial balance to Greenville City schools illustrate that any remaining**
21 **segregation in the school district is a consequence of outside forces that cannot**
22 **properly be attributed to the Board's prior discriminatory acts.**" (emphasis added));
23 *cf. Jenkins*, 515 U.S. at 102 (to require a remedy, inferior student achievement must be
24 proven to have resulted from *de jure* segregation); *see also Keyes*, 902 F. Supp. at 1282
25 ("The Court's opinion in . . . *Jenkins* . . . defeats the plaintiffs' call for compelling
additional action to investigate and redress racial disparities in student achievement . . .

1 [when the] court has never made any findings that such differences are the result of
2 discrimination by the District.”).

3 To be sure, as found by Judge Frey, differences in academic achievement between
4 different ethnicities are “a common finding in school districts throughout the United
5 States,” are “not peculiar in any way to Tucson School District No. 1,” and “do not
6 support a reasonable inference of unequal provision or delivery of educational services.”
7 [ECF 345, pp. 166-67.] As the Supreme Court has declared, although “numerous external
8 factors beyond the control of the [school district] and the State affect minority student
9 achievement,” “[s]o long as these external factors are not the result of segregation, they
10 do not figure in the remedial calculus. **Insistence upon academic goals unrelated to the**
11 **effects of legal segregation unwarrantably postpones the day when the [school**
12 **district] will be able to operate on its own.**” *Jenkins*, 515 U.S. at 102 (emphasis
13 added).¹¹

14 In any event, the Special Master’s 2019 R&R recognized the success the District
15 has achieved in increasing access to and participation in ALE programs: “It seems worth
16 noting that between 2012-13 and 2018-19, the numbers of African American students
17 participating in ALE has increased 41% and the number of Latino students has increased
18 23%. For both racial groups, the sharpest rise in participation occurred over the last two
19 years after a drop in enrollment” [ECF 2376, p. 2.]

20 Indeed, the District’s African American and Hispanic students have achieved
21 significant academic success when compared with state and national averages, and when
22 compared to other districts in the state and around the nation. [ECF 2406, pp. 50-55.] The
23

24 ¹¹ Stated differently, the good-faith standard tests the District’s actions — not the results
25 of the District’s actions. There have been no allegations, let alone proof, of actual, specific
discriminatory actions by the District.

1 District's African American and Hispanic students have achieved an increase in
2 graduation rates and a decrease in dropout rates, as well as increased access to,
3 participation in, and completion of ALEs. [ECF 2267-2, pp. 5-22, 34-45, and 59-63.] In
4 fact, more African American and Hispanic students are participating in ALEs in the
5 District than ever before, despite declining enrollment.

6 The District has addressed each of the Mendoza Plaintiffs' ALE arguments
7 [ECF 2315, ECF 2424, ECF 2440], and the Special Master considered the parties'
8 positions and found in the District's favor on each of these arguments. [ECF 2469, pp.
9 19-24 (providing detailed analysis of the parties' positions and adopting the District's
10 positions).]¹²

11 Consequently, in November 2019, the Special Master identified five final
12 recommendations on ALE programs and policies that he believed would improve the
13 District's ALE programs, recommending that the District be awarded unitary status once
14 it initiated those policies. [ECF 2376, p. 8.] Specifically, the Special Master recommended
15 that the District initiate programs to: (1) make dual-credit classes more available
16 throughout the District's high schools; (2) increase the number of AP classes at Santa
17 Rita; (3) pilot an opt-out, self-contained GATE program at one or two schools; (4) not
18 limit its policies and practices relating to attrition from ALE to African American
19 students; and (5) include all ALE policies and practices in the ALE policy manual, even
20 if it means they appear in more than one type of document.

21
22 ¹² In a portion of his analysis, the Special Master states the District finesses one of the
23 Mendoza Plaintiffs' questions "because they do not offer a summer program to UHS
24 entering students." [ECF 2469, p. 23.] However, the District offers BLAST, a UHS
25 summer program for 7th and 8th grade students. [ECF 2267-1, p. 32.] Additionally, UHS
parents from diverse backgrounds run two additional sessions for the parents of 7th and
8th graders. [*Id.*] The District also offers Bounce, a math and science summer support
program to UHS students entering their sophomore years. [*Id.*]

1 As reported in detail in the District's Notice of Compliance [ECF 2424], the
2 District complied with all five recommendations.¹³ Indeed, the Mendoza Plaintiffs did not
3 lodge any complaints as to the District's initiation of implementing these five policies.

4 Moreover, neither the Mendoza Plaintiffs nor anyone else have come forth with
5 evidence that the District is discouraging African American students from enrolling in
6 ALEs or that the District is offering ALEs only at predominantly White schools (of which
7 the District has none). Indeed, the District has been on the cutting edge of creating and
8 offering ALE classes and programs that create significantly more opportunities for
9 African American and Hispanic students to participate in ALEs. For example, as the
10 Mendoza Plaintiffs admit, the District's cluster GATE classes have drastically increased
11 GATE participation among African American and Hispanic students. GATE participation
12 among African American students went from 5% to 13% from 2014-15 to 2019-20, and
13 participation among Hispanic students increased from 7% to 13% in that same time frame.
14 Additionally, the increased number of ALEs available in an ever-increasing number of
15 schools demonstrates not only that the District is not discriminating, but that it is in the
16 vanguard of districts that utilize innovative strategies to improve the academic
17 achievement of its African American and Hispanic Students. [*See* ECF 2406, pp. 50-52.]
18 As shown in the District's Supplemental Petition, these efforts have resulted in the
19 District's achievement gap being among the lowest in the state, when compared with
20 comparable districts. [ECF 2406, p. 53.]

21 ¹³ The District: (1) has made dual-language classes available at all District high schools,
22 and those classes continue to increase; (2) has increased AP offerings at Santa Rita high
23 school in both 2017-18 and 2018-19 and continues to work with the ALE Department to
24 increase its offerings and provide AP opportunities; (3) has planned to pilot an opt-out
25 self-contained GATE program at two schools in SY 2020-21; (4) has not restricted its
policies and practices for limiting ALE attrition to African American students, but rather
has made such policies applicable for all students; and (5) has included all ALE policies
in the ALE Policy Manual. [ECF 2424, pp. 3-5.]

1 In reaching his ultimate recommendation that the District be declared unitary for
2 its ALE programs, the Special Master made several key findings:

- 3 • The District has engaged in numerous efforts to increase enrollment and
4 success of students in ALEs;
- 5 • The Mendoza Plaintiffs and the Special Master have made no further
6 proposals for implementing additional strategies;
- 7 • The District faces the same fundamental problems in enrolling students in
8 ALEs faced by all school systems;
- 9 • The District is doing what is reasonable to increase the enrollment of
10 African American and Hispanic students in ALEs; and
- 11 • African American and Hispanic participation in ALEs has increased
12 markedly.

13 [ECF 2469, pp. 28-29.] The Court should declare the District unitary regarding its ALE
14 programs.

15 **(b) ELL Dropout Prevention and Graduation (DPG)**

16 In its September 6, 2018 Order, the Court directed the District to prepare an ELL
17 Action Plan for dropout prevention. [ECF 2123, pp. 140, 151.] The District prepared and
18 implemented the ELL Action Plan, and it submitted it to the Court on December 6, 2018.
19 [ECF 2153.]

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

1 information is regularly included and attached a related appendix to the supplemental
2 notice. [ECF 2130.]¹⁴ The District has complied in good faith with the USP and all
3 subsequent Court orders regarding the ELL Action Plan for Graduation and Dropout
4 Prevention.

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

14 On November 18, 2019, the Court approved the District's ELL dropout goal.
15 [ECF 2363, p. 4.] On May 19, 2020, the Special Master recommended that the District be
16 awarded unitary status for ELL dropout prevention once the District identifies the office
17 or offices responsible for monitoring and addressing any problems with respect to ELL
18 dropouts. The Language Acquisition Department is and will continue to be responsible
19 for monitoring and addressing any problems with respect to ELL dropouts.

20 The Special Master also addressed the parties' prior dispute regarding whether the
21 District's ELL DPG goals were sufficiently ambitious:

22
23 ¹⁴ Compliance with USP requirements for ELL students and dropout prevention is also in
24 the record in the following specific locations, incorporated herein by reference:
25 ECF 2057-1, pp. 242-62 and appendices cited therein; ECF 2124-1, pp. 79-82 and
appendices cited therein; and ECF 2075-5, pp. 39-72, 290-311 and documents cited
therein.

1 The Special Master agrees with the District and notes further that this is an
2 ambitious goal and that the dropout rate for ELL students in the District is
3 quite low. Indeed, there is no criticism by the Mendoza plaintiffs, or the
Special Master, of the dropout goals, no objections about what the District
has done, and no suggestions about or what it needs to do to further lower
the ELL dropout rate.

4 [ECF 2469, p. 39.]

5 The District has complied in good faith with the USP and all subsequent Court
6 orders regarding the ELL Action Plan for dropout prevention and, as recommended by
7 the Special Master, should be declared unitary in this area.

8 **(c) Culturally Relevant Courses and Multicultural**
9 **Curriculum**

10 Section V.E.6 of the USP provides, in part, for the District to develop and
11 implement a multicultural curriculum (“MC”) and culturally relevant courses (“CRCs”)
12 to increase academic achievement and engagement among African American and
13 Hispanic students.

14 The District’s CRCs and MC program are exemplary, positively impacting
15 thousands of District students academically and beyond. Indeed, as stated by the Special
16 Master in his Report and Recommendation on unitary status:

17 Research undertaken by faculty members of the University of Arizona and
18 published in the premier education research journal shows that TUSD’s
19 culturally relevant courses have a significant impact on student learning that
20 transcends the content of the courses. The District has increased the number
21 of these courses by almost 400 over the last five years. As important, the
22 District has made substantial investments in teaching improvement through
23 mentors to ensure that the courses are taught with fidelity and that teachers
24 use culturally responsive pedagogy. Indeed, the level of support in this case
25 is extraordinary.

[ECF 2469, p. 31.]

26 The Court directed the District to prepare and file a plan for culturally relevant
27 courses, a related professional learning plan, and a multicultural curriculum plan.

[ECF 2123, pp. 140, 151.] The District prepared and filed such plans. [ECF 2259.]

1 However, like other areas of the USP, the Mendoza Plaintiffs argue the District
2 should not be declared unitary because they believe the District should report more
3 details. The Special Master specifically addressed and rejected the Mendoza Plaintiffs’
4 arguments:

5 The Mendoza Plaintiffs object (ECF 2286), arguing not that the District has
6 not done what the Court asked it to do, but rather that the District did not
7 report all of these things in its plan. The District argues that it does indeed
8 discuss these matters in the plan and the Special Master concurs. The Special
9 Master wonders if he and the Mendoza plaintiffs were reading the same
10 District description of CRC. In any event, the District should not be denied
11 unitary status because it does not cite all of its achievements or provide
12 extensive details of courses and activities in its plan.

13 [ECF 2469, pp. 31-32 (footnote omitted).]

14 Total enrollment in CRCs has grown from approximately 1,250 students in
15 SY2015-16 to more than 6,000 in SY2018-19. The CRPI Department has contributed to
16 the development of an extremely successful comprehensive CRC Plan to expand the
17 availability of CRCs and culturally relevant pedagogy. Pursuant to the CRC Plan, the
18 District offers CRCs to elementary, middle, and high school students, and CRC teachers
19 continue to develop and revise CRC curriculum and review and revise curriculum maps.
20 The District has also recently expanded CRC offerings to include the first-of-its-kind AP
21 CRC offered at University High School. Working with the College Board and the ALE
22 Department, the CRPI Department and University High School created an AP Language
23 and Composition course focused on “The American Experience,” which is taught from
24 the Mexican American and African American perspective. [ECF 2298-1, pp. 88-89.] All
25 UHS juniors take this course, as it is the required ELA course for this grade level.

 As a result of intensive effort over the last several years by the District’s
Multicultural Curriculum Department, all district curricula have multicultural elements,
either because the District has infused multicultural elements into curriculum not

1 originally designed as multicultural, or because the curriculum was originally designed
2 as multicultural. Recently, the Department revised the District's K-12 English Language
3 Arts, Science and Social Studies curricula to meet the District and new state standards for
4 academic rigor. [ECF 2259-2.]

5 The District will continue to review its K-12 English Language Arts, Science,
6 Math and Social Studies curricula to meet the District and new state standards for
7 academic rigor, while maintaining a curriculum that provides a range of opportunities for
8 all students to conduct research and to improve critical thinking and learning skills. The
9 Multicultural Curriculum Development Framework (MCDF) used by the District as its
10 guide incorporates a curricula review process and relevant professional development
11 protocol for continuous improvement, to ensure a multicultural curriculum that meets
12 standards and is aligned, articulated, well administered, and responsive to TUSD's
13 diverse student population. [*Id.*]

14 Training in multiculturalism as both an ideology and a practice will continue to be
15 provided to classroom teachers, staff, and site administrators through multiple site-based,
16 job-embedded professional development and web-based training opportunities. Prior to
17 the purchase and use of new texts or materials, the authenticity and accuracy of the
18 curricular materials are assessed using a developed set of rubrics. After purchase, there is
19 a continuous process to review texts and materials to ensure that the curriculum is diverse
20 and inclusive. [*Id.*]

21 As recommended by the Special Master, the District should be declared unitary in
22 this area.¹⁵

23 _____
24 ¹⁵ The Special Master also recommends that the District develop video examples of
25 different levels of culturally relevant pedagogy that administrators would rate using the
modified Danielson teacher evaluation instrument. [ECF 2469, p. 33.] Subject to and

(d) Dual Language

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

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

20 The Special Master recommends that the District be awarded unitary status for
21 dual language. [ECF 2469, p. 43.] The Special Master directly addressed both of the
22 Mendoza Plaintiffs’ arguments against unitary status in this area, and he identified the
23

24 _____
25 without waiving the District’s general and previously stated objections, the District has
agreed to this procedure.

1 District’s efforts to address these issues to the extent practicable. First, in response to the
2 argument that not all TWDL teachers are certified, the Special Master found that the
3 difficulty in recruiting and retaining bilingual teachers is a national problem that the
4 District has aggressively addressed by providing financial incentives and paths to
5 bilingual certification. He also found specifically that: “the District has taken strong
6 initiatives to ensure that its teachers in dual language programs are certified as bilingual
7 teachers. All staff in these programs are either certified as bilingual or are in the process
8 of being so.” [ECF 2469, p. 41.]

9 In response to the argument that most of the District’s TWDL programs do not
10 have perfectly balanced enrollment, the Special Master found that the District “worked
11 successfully to change state policy as it applies to TUSD so that the state requirement that
12 ELL students take four periods of immersive Spanish can be waived.” [ECF 2469, p. 40.]
13 The Special Master also found, as noted by the District’s expert Rosa Molina, that
14 requiring perfect linguistic balance in these classes would likely result in the elimination
15 of some existing dual-language programs. [ECF 2469, p. 41.]

16 Indeed, the Special Master recognized the District’s efforts to improve linguistic
17 balance in TWDL programs:

18 To increase the number of students who have access to good dual language
19 programs, the District added grades in some schools worked top change state
20 policy, added a new program at Bloom Elementary (which is now
21 integrated), undertook a comprehensive study of existing programs and
22 addressed weaknesses, and, strengthened the competency of bilingual
23 teachers as noted.

24 [ECF 2469, p. 41-42.] The Special Master further noted that “[i]t seems futile to require
25 dual language schools to be linguistically balanced.” [ECF 2469, p. 41.]¹⁶

¹⁶ The District addressed the Mendoza Plaintiffs’ objections in detail in ECF 2417, at pages 3-10.

1 The District has complied in good faith with the USP and all subsequent Court
2 orders. The District's TWDL program is exemplary in nurturing a vibrant K-12 learning
3 community in which students speak, read, and write in English and Spanish and
4 participate in multicultural studies and experiences as part of an education that prepares
5 them for global communities. The structure and elements of the TWDL program are set
6 out in detail in the District's TWDL Framework, developed in conjunction with Ms.
7 Molina, which appears in the record at ECF 2258-1, pp. 7-69. As recommended by the
8 Special Master, the District should be declared unitary in this area.¹⁷

9 **(e) Student Services Departments**

10 In specifying the limited actions the District needed to take to receive a declaration
11 of unitary status, the Court directed the District to prepare and file a Post-Unitary Status
12 Plan for AASSD and MASSD, including ELL students. [ECF 2123, pp. 121-22, 150.]
13 The District prepared and filed those departmental operating plans on December 6, 2018.
14 [ECF 2151-1 and 2151-2, respectively.]

15 In subsequent orders, the Court ordered the District to revise the operating plans
16 according to its directives and resubmit them. [ECF 2213, pp. 3-10, 17-19.]¹⁸ The District
17 revised the operating plans as requested. [ECF 2265-1 and 2265-2.] Those revised

18 ¹⁷ The Special Master also recommended that Roskrige should offer two alternative
19 tracks for dual language, one TWDL track and one track doing "what the school does
20 now with respect to dual language." [ECF 2469, p. 43.] As explained in the District's
21 2018-19 Annual Report, Roskrige is a school-wide TWDL program in which all students
22 participate in TWDL, as the site can only accommodate two grade strands (two
23 classrooms for every grade level [ECF 2298-1, p. 17; *see also* Notice And Report of
24 Compliance: Two-Way Dual Language, ECF 2401, pp. 4-5 (same).] Thus, offering one
25 TWDL track and one track doing what the District is already doing (TWDL), means
offering two TWDL tracks, which is what the District offers. Therefore, the District has
already implemented what the Special Master recommends.

¹⁸ This order followed objections by the Mendoza Plaintiffs [ECF 2168]; the District's
response to those objections [ECF 2176]; a report and recommendation by the Special
Master [ECF 2185]; District objections to that report and recommendation [ECF 2196];
and the Mendoza Plaintiffs' objections to that report and recommendation. [ECF 2197.]

1 operating plans set out a detailed statement of the organization and operations of each of
2 these departments, identifying each task or service as primary, supplemental, supportive,
3 or additional, and identified interactions with other departments.

4 The Mendoza Plaintiffs objected to the revised plan [ECF 2287], the Fisher
5 Plaintiffs' objected to the revised plan [ECF 2276], and the District responded to both
6 objections. [ECF 2314 and 2322.] The Special Master filed a report and recommendation
7 to change both of the District's operating plans substantially. [ECF 2347.]

8 The Court subsequently ordered the Special Master to develop new organizational
9 structures for these departments. [ECF 2359.] On December 23, 2019, the Special Master
10 filed a report and recommendation with a different, and more radical, "re-visioning" for
11 these two student service departments. Both the District and the Mendoza Plaintiffs
12 objected. [ECF 2411 and 2408, respectively.]

13 The Special Master's Report and Recommendation on unitary status outlined a
14 structure and directed the District to fill in the outline with detailed duties, and also
15 specified the relationship between these student service departments and other
16 departments. [ECF 2469, pp. 36-38.] Subject to and without waiving its previously stated
17 objections, since the Special Master's latest Report and Recommendation, the District has
18 developed new staffing plans for each department, following the outlines set out in that
19 Report and Recommendation. Copies of those staffing plans are attached hereto as
20 Exhibits A and B. Following the recommendation of the Special Master, the District
21 hereby solicits comments and suggestions from the Special Master and the parties, and it
22 will take those into account in implementing the staffing plans.

23 Thus, the District has complied with Court orders regarding the AASSD and
24 MASSD Plans and has met the requirements set out in USP §§ V.E.7. and V.E.8., as
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1 shown by the record herein, including its annual reports. [See ECF 2057-1, pp. 275-319
2 and appendices cited therein; ECF 2124-1, pp. 89-111 and appendices cited therein;
3 ECF 2075-5, pp. 94-182 and documents cited therein.] Accordingly, the District is in
4 unitary status in these areas of District operations (USP §§ V.E.7. and V.E.8.).

5 **(f) Inclusive School Environments and Cultures of Civility**

6 The Court ordered the District to collaborate with the Special Master on effective
7 strategies for promoting inclusiveness and civility and to prepare a professional learning
8 plan for Inclusivity and Cultures of Civility. [ECF 2123.] The District prepared and filed
9 that plan, as ordered. [ECF 2156-2.] In a subsequent order, the Court directed the District
10 to prepare and file a study of the effectiveness of strategies used to promote inclusiveness
11 and cultures of civility in collaboration with the Special Master. [ECF 2217, p. 14.] The
12 District worked on a combined plan for professional learning in both discipline and
13 inclusivity, and it presented this plan to the Special Master on May 6, 2019. [ECF 2266,
14 pp. 2-3.] The District worked on multiple drafts in collaboration with the Special Master
15 and prepared and submitted the final Combined Discipline/Inclusivity Professional
16 Learning Plan. [ECF 2266, p. 3; ECF 2266-2.] The District has complied in all respects
17 with the USP and the Court's orders regarding inclusive school environments and cultures
18 of civility.

19 The Mendoza Plaintiffs objected to the District receiving unitary status in this area,
20 arguing the District allegedly did not collaborate with the Special Master in this area and
21 that it did not understand a study of some elements of the current strategies being used to
22 foster inclusiveness and civility. [ECF 2469, p. 30.] The District and the Special Master
23 reported on their collaboration, and the Special Master in his Report and Recommendation
24 found such collaboration adequate. [*Id.*] The Special Master also found that because it
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1 would not be feasible to study every practice targeted at inclusivity and civility, the
2 District should undertake a literature review. [*Id.*] The District conducted such a review,
3 which confirmed the effectiveness of the practices the District had already implemented,
4 and identified social and emotional learning as an additional strategy that could be
5 undertaken, which some District schools already use. [*Id.*] Ultimately, the Special Master
6 found that the District “met the intent of the Court order related to inclusiveness and
7 civility and should be awarded partial unitary status for the relevant provisions of the
8 USP.” The District is unitary in its operations in this area.

9 **4. USP Section VI: Discipline.**

10 The Court ordered the District to file a report detailing progress in addressing the
11 provisions of the Court’s order regarding discipline, including the ordered completion
12 plan. [ECF 2123, pp. 140, 150.] The District prepared a Discipline Progress Report as
13 directed, and it provided a draft to the Special Master. The Special Master reviewed the
14 draft and offered suggestions and comments. The District then modified the Progress
15 Report to incorporate the Special Master’s suggestions. The District filed the modified
16 Discipline Progress Report with the Court. [ECF 2266.]

17 The Court also directed the District to prepare and file two related Professional
18 Learning Plans: (a) one for Inclusivity and Cultures of Civility and (b) one for Discipline.
19 The District prepared and filed the Professional Learning Plan for Inclusivity and Cultures
20 of Civility on December 6, 2018, as ordered. [ECF 2156-2.] Because of the overlap
21 between discipline prevention and inclusiveness and the need to prepare a Discipline
22 Professional Learning Plan by September 1, the District worked with the Special Master
23 on a combined plan for professional learning in both discipline and inclusivity, which was
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1 filed August 30, 2019 with the District’s Notice and Report of Compliance on Discipline.
2 [ECF 2266.]

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

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

16 [ECF 2380, p. 2.]¹⁹

17 Despite these positive findings, the Special Master recommended that the District
18 respond to a few additional issues. The District responded to those issues on January 31,
19 2020. [ECF 2427.] As explained in detail in a subsequent District filing [ECF 2437], the
20 Mendoza Plaintiffs’ substantive arguments against unitary status in this area are meritless
21 and, for the most part, are allegations not that the District has not made compliance efforts,
22 but rather that in their opinion the District should make different compliance efforts. The
23 District has provided all information requested by the Special Master without obscuring
24 any data. [ECF 2437, pp. 6-7.] The District has clearly explained its discipline review
25 process. [ECF 2437, pp. 8-9.] And the District has thoroughly and repeatedly disclosed

¹⁹ As reported previously, the District’s significant reduction in discipline disparity (especially compared to the national disparity), coupled with the low levels of discipline experienced by African American students overall in the District, show that any remaining disparities are not connected to prior conduct by this school district more than a half-century ago. These significant reductions to levels far better than state and national averages, along with the fact that there is no discipline disparity between Hispanic and White students, counsel in favor of unitary status.

1 all discipline data. [ECF 2437, pp. 9-10.] The District incorporates by reference these
2 arguments included in ECF 2437. The District also addressed each of these issues in detail
3 in ECF 2325 and ECF 2427, both of which are incorporated herein by reference.

4 The Special Master also addressed each of the Mendoza Plaintiffs' arguments, and
5 he recommended that the District receive unitary status for the Discipline section of the
6 USP. He found that the District has instituted an extensive process of review to identify
7 any errors or inaccuracies in data reporting, and that he has no reason to believe this
8 process is not used. [ECF 2469, p. 44.] He found that the Mendoza Plaintiffs' arguments
9 about the consistency in reporting discipline data over time was resolved, and he
10 referenced the District's explanation in ECF 2266. [*Id.*, p. 45.] The Special Master also
11 recognized that the recent increase in disciplinary actions was due in part to the increase
12 in drug, vaping, and alcohol offenses in Tucson, and that the number of days District
13 students had spent out of school, as well as the discipline recidivism rates, had been
14 reduced significantly. [*Id.*, pp. 45-46.] Regarding fairness in the administration of
15 discipline, the Special Master noted that this issue is one of concern nationally and that
16 the Department of Justice has specifically reviewed this issue in the District and found no
17 pattern of unfair or unequal penalties for similar offenses for students of different races.
18 [*Id.*, p. 46-47.] The Special Master also found that "there appears to be no evidence of
19 discrimination in TUSD." [*Id.*, p. 47.]

20 Separate and apart from his recommendation that the District be declared unitary
21 in this area, the Special Master made one recommendation regarding discipline: that
22 schools report to the central office the number of teachers that school-level discipline
23 committees have identified as needing support to improve their administration of
24 discipline and include the issues identified, the nature of the intervention, and the
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1 estimates of the intervention's success, which should be used in training teachers and
2 administrators and developing a set of common interventions. [*Id.*, pp. 47-48.]

3 Subject to and without waiving the District's general and previously stated
4 objections, the District has already implemented this recommendation. The District
5 already collected the information recommended by the Special Master in meetings
6 between the Student Relations department and school staff, and it has now revised the
7 monthly report form to include an explicit section for the recommended information. A
8 copy of the revised form is attached hereto as Exhibit C.

9 **5. USP Section VII: Family and Community Engagement.**

10 In its 2018 Order on unitary status, the Court directed the District to file an update
11 to the FACE Action Plan. [ECF 2123, at 150-51.] The District filed its Notice and Report
12 and Compliance, attaching the update, on December 6, 2018. [ECF 2154.] This was
13 followed by subsequent filings addressing this topic, as follows:

ECF	Date	Description
2165	01/07/2019	Mendoza Plaintiffs' Objection
2179	01/22/2019	District Response to Mendoza Plaintiffs' Objection
2199	02/15/2019	Special Master's R&R
2213	04/10/2019	Court's Order Requiring Revisions
2217	04/22/2019	Court's Order Requiring Revisions
2219	05/22/2019	District's Supplemental Notice of Compliance
2262	08/30/2019	District's Notice of Filing Revised FACE Plan
2288	09/23/2019	Mendoza Plaintiffs' Objection
2318	10/07/2019	District Response to Mendoza Plaintiffs' Objection
2371	11/18/2019	Special Master's R&R
2386	12/03/2019	Court's Order Requiring a Supplemental Notice
2391	12/09/2019	Supp. Notice and Report of Compliance – Revised FACE Plan
2397	12/19/2019	Mendoza Plaintiffs' Objection

1 In its most recent order [ECF 2386], the Court directed the District to file a revised
2 version of its FACE plan filed on August 30, 2019 (ECF 2262-1), identifying the USP
3 plans that contain family and community engagement activities by other district
4 departments and attaching the relevant portions or excerpts from those plans. The District
5 revised its FACE plan to meet this requirement, and it filed the revised plan on
6 December 9, 2019. [ECF 2391.] This revised plan lays out the responsibilities and staffing
7 for the Family and Community Engagement Department, and the interactions with other
8 departments and plans.²⁰ The FACE plan sets out a robust and developed plan to guide
9 the promotion, training, tracking, and assessment of family engagement efforts across the
10 District, at individual school sites, at the four District Family Engagement Centers, and
11 in central district departments.

12 This has culminated with the Special Master's current Report and
13 Recommendation, in which he recommended unitary status in this area. [ECF 2469,
14 p. 50.] For this reason, and the reasons set forth in the District's prior filings on Family
15 and Community Engagement, itemized above, the District respectfully urges the Court to
16 adopt the Special Master's recommendations regarding the District's family and
17 community engagement activities.

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21 ²⁰ To meet the Court's requirements, this revised FACE plan has in turn 12 exhibits:
22 Exhibit 1: Guidelines for Family and Community Engagement At School Sites; Exhibit 2:
23 Maintaining Updated and Current School Websites; Exhibit 3: Family Resource Centers
24 Schedule of Workshops and Events; Exhibit 4: Cross-departmental activities chart;
25 Exhibit 5: Outreach and Recruitment Addendum - Magnet and ALE Programs; Exhibit 6:
Excerpts from ALE Policy Manual; Exhibit 7: Family Engagement Section of DPG Plan;
Exhibit 8: Family Engagement Section of ELL DPG Plan; Exhibit 9: Chapter 10, TWDL
Framework; Exhibit 10: Excerpts from the AASSD Operating Plan; Exhibit 11: Excerpts
from the MASSD Operating Plan; and Exhibit 12: Excerpts from CRC Plan. [ECF 2391-
1.]

6. USP Section VIII: Extracurricular Activities.

1 In its 2018 order granting partial unitary status, the Court noted a need for an
2 additional year of data and ordered that it would reconsider unitary status in this area after
3 the District filed a Notice and Report of Compliance with the Extracurricular Activities
4 Plan addressing five specific tasks. [ECF 2123, pp. 137:4-38:6.] The District filed its
5 notice and report in August 2019, documenting its compliance with the five areas in a
6 completion plan the District created in collaboration with the Special Master. [ECF 2260.]
7 The District noted that, based on the Special Master's suggestions, it had added a chart
8 showing enrollment numbers and had voluntarily agreed to analyze clubs at each school
9 (although not as a requirement for unitary status), despite the fact that these went beyond
10 the Court's orders. [*Id.*, p. 2:9-22.] The District subsequently provided further
11 clarification and explanation of its compliance, including an analysis of extracurricular
12 activities occurring at all schools and their funding sources. [ECF 2317.]

13 In its November 18, 2019 Order, the Court noted the District's efforts, conclusions,
14 and understanding of the need to ensure availability of extracurricular activities to all
15 students. [ECF 2364, pp. 2:10-3:3.] Indeed, the Court stated that "[t]he only thing missing
16 are the specifics necessary to ensure that the District is monitoring the efficacy of these
17 efforts." [*Id.*, p. 3:4-5.] Therefore, the Court ordered the District to file a supplemental
18 analysis providing certain data for target Racially Concentrated schools with lower
19 socioeconomic status. [*Id.*, p. 4:14-21.] The Court was dissatisfied with the way in which
20 the District gave notice of its compliance with the requirement to provide school-by-
21 school comparison data and extracurricular activity comparisons and ordered that they be
22 provided in a particular format recommended by the Special Master. [*Id.*, p. 4:22-25.] The
23 District promptly provided both of these items in December. [ECF 2387.]
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1 The Special Master, in his Report and Recommendation on unitary status,
2 concludes that the District complied with all of these requirements. [ECF 2469, pp. 50-
3 51.] He thus makes an unqualified recommendation of unitary status in this area of
4 District operations.

5 There should be no question that unitary status is warranted here. The District fully
6 complied with the Court's directives, provided additional data requested by the Special
7 Master, and, when the Special Master and the Court were dissatisfied with how
8 compliance was reported, promptly provided information and reports in the requested
9 format. Furthermore, the Special Master and the Court now have the two years of data
10 they desired, as stated in the 2018 order on unitary status, and there is no longer any
11 reason to delay unitary status in this area. That data shows that students of all races across
12 the District participate in athletics, fine arts, and clubs at all schools in healthy numbers,
13 with minorities often participating more than White students — yet another reason,
14 beyond the District's good-faith compliance, that unitary status must be granted in this
15 area. As the Special Master recognizes, his and the Court's work is beyond done.

16 **7. USP Section IX: Technology Professional Learning**

17 The USP required the District to include in its professional development for
18 classroom personnel “training to support the use of computers, smart boards and
19 educational software in the classroom setting.” [ECF 1713, p. 55.] This the District did,
20 and it reported on it in its annual reports as required by the USP. [*E.g.*, ECF 2298.]

21 In its partial unitary status order dated September 6, 2018, the Court ordered the
22 District to file a professional learning plan for teacher proficiency in using technology to
23 facilitate student learning. [ECF 2123, p. 151.] The District prepared and filed a plan as
24 ordered, on December 6, 2018. [ECF 2152.]

25

1 The following proceedings then occurred on this one requirement:

2 ECF	Date	Description
3 2152	12/06/2018	District's Notice and Report of Compliance
4 2172	01/07/2019	Mendoza Plaintiffs' Objection
5 2177	01/22/2019	District's Response to Mendoza Plaintiffs' Objection
6 2193	02/12/2019	Special Master's R&R Recommending Additions and Changes
7 2206	03/15/2019	District Objection to Special Master's R&R
8 2210	03/25/2019	Mendoza Plaintiffs' Response to District Objection to Special Master's R&R
9 2212	03/27/2019	Special Master's Response to Objections to R&R
10 2217	04/22/2019	Order Requiring Additional Revisions
11 2220	05/22/2019	District's Supplemental Notice of Compliance
12 2228	06/05/2019	Mendoza Plaintiffs' Objection
13 2252	08/07/2019	Special Master's R&R Recommending Changes
14 2273	09/10/2019	Order Requiring Additional Revisions
15 2330	10/10/2019	Second Supplemental Notice of Compliance
16 2342	10/24/2019	Mendoza Plaintiffs' Objection
17 2375	11/21/2019	Special Master's R&R Recommending Changes
18 2426	01/31/2019	Notice of Compliance with Special Master's R&R
19 2433	02/14/2020	Mendoza Plaintiffs' Motion to Strike/Objection to Notice of Compliance
20 2442	02/28/2020	District's Response to Mendoza Plaintiffs' Motion to Strike

21 The proceedings on this issue have culminated with a recommendation from the Special
 22 Master for another modification to the particular tool used by the District in observing
 23 teachers' use of technology in the classroom, to guide and inform future professional
 24 learning, and a generalized enjoinder to continue to expand the learning opportunities for
 25 teachers to include content for all of the core subjects being taught by the District.

[ECF 2469, p. 53.]

1 likelihood that the District will suddenly become segregated again — which it has not
2 been for nearly 70 years, since it voluntarily ended its prior state-mandated segregation
3 of African American elementary students.²¹ This is particularly true in the context of
4 Tucson, Arizona (not New Kent County, Virginia), in 2020 (not 1966). It is also
5 particularly true since the only vestiges of that pre-1951 dual school system were
6 eliminated by 1986, 35 years ago. The District incorporates herein by reference its
7 pending Supplemental Petition for Unitary Status and Reply [ECF 2461 and 2461], its
8 assessment of compliance with the USP [ECF 2075 and 2092], and its objection to the
9 Special Master’s 2018 report and recommendation on unitary status. [ECF 2099.] The
10 District is operating in unitary status, and it is entitled to immediate dissolution of the
11 pending desegregation decree, termination of Court supervision, and closure of the case.

12 Dated this 11th day of June, 2020.

13 Respectfully submitted,

14 /s/ P. Bruce Converse

15 P. Bruce Converse

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19 *Attorneys for Tucson Unified School*

20 *District No. 1*

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24 ²¹ The District never segregated Hispanic students, and it never segregated African
25 American students at the high school level. [ECF 345, pp. 193, 221.]

CERTIFICATE OF SERVICE

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I hereby certify that on the 11th day of June, 2020, I electronically transmitted the attached foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ P. Bruce Converse