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

Roy and Josie Fisher, et al.,
 Plaintiffs
and
United States of America,
 Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.,
 Defendants,
and
Sidney L. Sutton, et al.,
 Defendants-Intervenors,

No. CV-74-00090-TUC-DCB
(Lead Case)

Maria Mendoza, et al.,
 Plaintiffs,
and
United States of America,
 Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.
 Defendants.

No. CV-74-0204-TUC-DCB
(Consolidated Case)

AMENDED ORDER

3-Year Plus Integration Plan (3-Year PIP)¹

1
2 The Order, issued September 6, 2018, related to the District's attainment of unitary
3 status for the Unitary Status Plan (USP) § II.E, Magnet Schools and Programs, called for
4 the District to prepare a 3-Year Plus Integration Plan (3-Year PIP). The District has
5 completed this task, pursuant to the directives of the Court, with the exception of needed
6 clarification from this Court and, related, revisions and addendums for a 3-Year PIP
7 Magnet Project Priorities Plan (MPPP) and Non-Magnet Priority Improvement Action
8 Plans (Action Plans).

9 After recapping the difficult journey taken by the District to improve its magnet
10 school program, difficult in large part due to removing magnet status from schools for
11 programs created prior to the USP, the Court noted that the District has relied on the Special
12 Master to recommend and this Court to determine which existing magnet programs should
13 remain and which should be terminated. Post-unitary status, this difficult task shifts to the
14 District. To ensure the District is prepared for this undertaking, the Court asked the Special
15 Master to share the criteria he was using to make these hard decisions. The Court asked the
16 District to prepare a 3-Year PIP, setting out its procedures, strategies, and plans going
17 forward for magnet programs and other integration options for non-magnet schools. The
18 Court asked the District to prepare the 3-Year PIP that, in the interest of transparency, does
19 the following: 1) sets out criteria for how magnet schools are evaluated, including criteria
20 for terminating an existing program; 2) identifies potential future magnet schools and
21 programs, and creates a 3-year plan for expanding the District's CMP; 3) identifies non-
22 magnet schools where integration can be improved and develop plans for such
23 improvements; 4) identify needed transportation services to successfully implement the 3-
24 Year PIP, and 5) ensure sufficient funding for program implementation, especially
25 transportation costs. (Order (Doc. 2123) at 19-34.)

26 The District filed the 3-Year PIP on August 30, 2019 (Doc. 2270), which in large
27 part satisfies the requirements included in the September 6, 2018, Order. To the extent the

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¹ Amended at original page 12, lns. 8, 12 and page 18, ln. 11.

1 3-Year PIP falls short, the Court accepts responsibility for creating some confusion
2 between its directive that student achievement be assessed for purposes of magnet status
3 by the state's accountability scores for schools, i.e., AZMerit Grades, and directing the
4 Special Master to assist the District in developing assessment criteria, including student
5 achievement, for terminating magnet status. The Special Master has used alternative
6 academic data in addition to the AZMerit grades, such as growth of the bottom 25% of the
7 students at a school and/or evidence that a school is narrowing the racial achievement gap.
8 The Court also invited discussion between the Special Master and the Parties as to the
9 relevancy of the USP integration definition going forward, post-unitary status. Both of the
10 Court's directives led to confusion, which the Court addresses now so that the District can
11 take the final step of actually identifying the specific integration efforts which it will
12 undertake over the next 3 years in a 3-Year PIP Magnet Project Priorities Plan (MPPP).

13 The 3-Year PIP stopped short of identifying any actual magnet projects planned by
14 the District in the next three years to grow the CMP. Instead, the 3-Year PIP calls for the
15 District to begin planning in year one, with the launch of a new magnet program in year
16 three, assuming of course that the District determines there is a need for a new magnet
17 school or program in year one. There is, however, no reason given why the District delayed
18 identifying, specifically, new magnet projects, if any for the next three years, and this was
19 in fact the goal of the Court's directive that the District prepare a 3-Year PIP. The District
20 has, however, laid the necessary groundwork and can finish its work by filing the two
21 addendums as recommended by the Special Master.

22 The 3-Year PIP identifies three types of magnet programs, which the District finds
23 to be the most viable ((Doc. 2270-1) at 6-9) for TUSD and identifies the top nine² potential
24 new magnet schools, *id.* at 9. It has also assessed the non-magnet schools and determined
25 each school's viability for becoming integrated. The 3-Year PIP, Study to Identify Potential
26 Magnet Schools and Themes, identified a need for a Middle School Fine and Performing

27
28 ² The District says there are five elementary schools, but there are six elementary
schools (Cragin, Davidson, Howell, Steele, Tolson and Whitmore). ((Doc 2270-1) at 10.)

1 Arts program, (Doc. *Id.* at 8-10), and Health Sciences and Advanced Technology as
2 potentially successful magnet themes. The 3-Year PIP, CMP, calls for assessing viability
3 of a new magnet school when there are gaps in a pipeline and/or when new and proven
4 successful magnet themes come to light. Both conditions exist, but the District stopped
5 short of making the requisite assessments. *See* 3-Year PIP, CMP § D (providing criteria for
6 assessing need for a new magnet school, which may result in the District developing a
7 proposal for a new magnet school). When the District balked, it stopped short of
8 completing the 3-Year PIP sought by this Court, which must be a planning document
9 reflecting the actual intentions of the District for future expansion, if any, of the existing
10 CMP. The 3-Year PIP is a plan to plan future expansion of the CMP.

11 The Court adopts the Special Master's recommendation that the District identify,
12 through application of the procedures set out in the 3-Year PIP as clarified below, one or
13 two of the three magnet program options for one or two of the nine candidate magnet
14 schools. The Special Master explains that the District lacks resources to develop magnet
15 plans for all nine schools and needs to generate a prioritized list of the actual projects it
16 believes are viable to implement over the next 3 years, plus. (R&R Re: Executive Summary
17 (Doc.2468) at 4) (explaining need to prioritize new magnet schools)). The Court agrees,
18 the District shall prepare and file the 3-Year PIP MPPP based on actual budgetary needs
19 and constraints, including transportation.

20 The 3-Year PIP MPPP shall reflect prioritized³ new magnet schools, if any, the
21 District believes are sufficiently viable to actually grow the CMP over the next three years.
22 In effect, the District should have already completed the provisions set out in § D.3 of the
23 3-Year PIP for year one, Spring-Summer. ((Doc. 2270-2) at 16.) If the District does not
24 intend to add any new magnet programs over the next three years, it should say so, explain
25 why, and be subject to review and comment from the parties and the Special Master. If this
26 is the case, the District should identify when it anticipates its priority project(s)§§

27
28 ³ In other words, the one or two priority magnet project list recommended by the
Special Master.

1 beginning, hence, the meaning of the “Plus” in the 3-Year PIP. In this way, the 3-Year PIP
2 MPPP addresses the ambiguity created by the 3-Year PIP, § D, plan to plan new magnet
3 programs.

4 For non-magnet schools, the District has provided generic plans for improving
5 approximately 69 schools. The Special Master agrees with the Mendoza Plaintiffs that
6 these improvement plans lack the specificity necessary to be meaningful action plans. The
7 Special Master explains that in fact the District is well positioned to create meaningful
8 action plans. It has invested in training all its principals and professional staff in
9 professional learning communities (PLC), which is a methodology for implementing
10 continuous improvement that begins in a school with its administration identifying how
11 well its students are learning. The goal of PLC is to create buy-in at the school level for
12 improvement. The Court adopts the Special Master’s recommendation that the District
13 revise its improvement plans to reflect the work that has been done at the school level. In
14 other words, the District should revise the improvement plans to be non-generic, school
15 specific, meaningful action plans based on the PLC work that has been and continues to be
16 done in the schools. The Court agrees.

17 The District shall adopt this same PLC foundation for magnet school improvement
18 plans, the Targeted Integration Plans, developed pursuant to the 3-Year PIP, CMP, §§
19 B(4)(d) and B(5)(d), which should address in part the Mendoza Plaintiffs’ criticism of the
20 current magnet improvement process being conducted pursuant to MSPs. The Court does
21 not reach the Mendoza Plaintiff’s concerns that the MSPs are being undercut by arbitrary
22 budget constraints. The Court ordered discovery in favor of the Mendoza Plaintiffs and
23 afforded them an opportunity to reurge the challenge by requesting a Report and
24 Recommendation (R&R) to resolve the sufficiency of the MSPs, but no further challenge
25 was made subsequent to the discovery. (Orders (Docs. 2272, 2383)).

26 In addition to prioritizing new magnet schools, the District shall prioritize by year
27 its planned improvements over the next three years, plus, for non-magnet schools. The
28 District generated improvement plans for 69 non-magnet schools, including the nine

1 schools identified as potential magnet candidates. The District shall develop prioritized
2 action plans for integration of these schools, excepting the schools included in the 3-Year
3 PIP MPPP, for the schools identified as having a “High” probability of being integrated:
4 Bloom ES, Davidson ES, Howell ES, Kellond ES, Lineweaver ES, Wheeler ES, Maxwell
5 K-8, Robinson K-8, and Doolen MS. The District shall also prioritize the integration of
6 UHS, and any other non-magnet school where the District believes focused efforts are
7 imperative over the next three years. For these priority improvement projects, the District
8 shall prepare and file Non-Magnet Priority Improvement Action Plans (Action Plans),
9 which shall designate the school as a year one, two, three, or plus priority.

10 Simultaneously, the District shall develop Non-Magnet Priority Student
11 Achievement Improvement Action Plans (Student Achievement Action Plans) for the
12 approximately 19 schools that have AZMerit grades below a C, with first year priority
13 efforts being undertaken for the approximately 9 schools that are Racially Concentrated
14 and the remainder begun no later than year two. *See* (Fisher Response (Doc. 2276) at 11
15 (identifying “Blenman, Cavett, Dietz, Robert-Naylor and Catalina Highschool as having
16 large numbers of African American students, but no plans to improve academic
17 achievement at these schools).

18 It is important that there be transparent criteria and procedures for creating new
19 magnet schools, and clarity is especially important when assessing existing magnet
20 programs for the purpose of terminating magnet status. It is especially difficult to terminate
21 magnet status because of its attendant benefits to a school, including extra funding which
22 translates into program supports not afforded other schools. Parents and students attending
23 a magnet school have much to lose from its termination, and there is, routinely, a public
24 outcry against termination.⁴ As difficult as it may be, the consequences of retaining non-

25
26 ⁴ While the Court focuses on the need to terminate magnet status, it fully
27 understands the importance of magnet status to a school, parents, and students. The fiscal
28 benefits that flow from the status enable a school to spend more money educating its
students. Equally important, parents and students have made educational decisions based
on the magnet status of a school. Students have commenced an academic program at a
school that spans multiple years and grades. They have developed their friends and social
connections at the school. When magnet status is terminated, students and parents must

1 magnetic schools in the CMP is worse. It wastes school resources, creates schools that fail
2 to meet the academic needs of students, and destroys the District's ability to use magnet
3 schools to integrate the District. The Court finds that it is in the interests of all parties,
4 especially the student class plaintiffs, to have clear and transparent termination procedures
5 that follow automatically when a magnet school fails to offer enhanced learning
6 experiences. Even with clear criteria, processes, procedures, and guidelines, real
7 impediments exist to maintaining a viable magnet program because of the serious
8 ramifications described above which must be addressed by the School Board when it
9 considers removing magnet status.

10 Integration and Student Achievement: Essential Criteria for Magnet Schools

11 Under the USP, the District uses the CMP as one of two⁵ primary means for
12 promoting integration in a district where options are limited because of state law mandates
13 for open enrollment across school districts and tuition-free charter schools, and because of
14 racially concentrated neighborhoods and the natural proclivity of families to enroll children
15 in schools close to home. *See* (Executive Summary (Doc 2384-1) at 9 (detailing
16 limitations)). Operationally, “[m]agnet schools and programs should be so attractive that
17 they are ‘magnetic’ to students outside of the neighborhood while still offering enhanced
18 learning for neighborhood students.” *Id.* at 13. Accordingly, this Court has held that
19 magnet schools must be integrated and rated for academic performance by the state as A
20 and B schools.

21 An integrated school is defined by the USP as: “when no racial or ethnic group
22 exceeds 70% of total enrollment; and when no single racial or ethnic group varies from the
23 district average for the school’s grade level (Elementary, Middle, K-8, High) by more than

24 _____
25 reassess their choices mid-program, and there are negative educational and social
26 ramifications that caution against changing schools. Terminating magnet status should not
27 be done lightly, but it must be done unless the District wants to return to a pre-USP magnet
28 program when only two of approximately 19 magnet schools were integrated. Hard choices
must be made to strictly adhere to magnet criteria, if the District intends to maintain an
effective CMP.

⁵ Secondly, the District relies on student assignment strategies like attendance
boundaries, open enrollments, enrollment preferences and lotteries, etc.

1 +/- 15 percentage points.” (3-Year PIP (Doc. 2270-2) at 6); (USP (Doc. 1713) at 8). The
2 Court will use this definition when assessing the District’s CMP operations under the USP
3 to determine unitary status, but the District may use a more commonly accepted definition
4 of Integration going forward, including its development of the 3-Year PIP MPPP and
5 Action Plans. Previously, this Court has approved such a definition, “Highly Diverse,”
6 meaning schools which have at least two racial or ethnic groups of students that are 25%
7 or more of the student population, and no one racial or ethnic group comprises more than
8 70% of the school’s population.” (Executive Summary (Doc. 1384 -1) at 10.) The Special
9 Master recommends: “No more than 70% of students of one race and, instead of +/- 15 he
10 suggests +/- 20 or 25.” (R&R Re: Unitary Status (Doc. 2468) at 12.) Either definition for
11 an integrated school, subsequent to unitary status, is acceptable—but there must be a clear
12 definition in order to evaluate the successes or failures of the magnet schools. To the extent
13 the District suggests there need not be a set definition for Integration, this is rejected by the
14 Court because there must be a standard for integration in the context of evaluating the
15 success or failure of individual magnet schools, specifically, and the CMP, generally.⁶

16 Student achievement, the second criteria for assessing success or failure of a magnet
17 program, measures the ability of a magnet school to offer enhanced learning that
18 magnetizes it. The Court makes the following clarifications so that the District may revise
19 the 3-Year PIP, CMP, accordingly.⁷

20 The Court will not reconsider its previous findings that a magnet school must be an
21 A or B school as graded by the state, AZMerit scores. The Court relies on the state AZMerit
22 scores for two reasons 1) they reflect the academic performance of a school and 2) the

23 _____
24 ⁶ Additionally, as noted by the Special Master, a confusing integration definition,
25 like the USP definition, can cause parents to pass up opportunities for their children to have
26 an integrated education because some highly diverse schools are not defined as integrated.
(R&R Re: Unitary Status (Doc. 2468) at 11.)

27 ⁷ The District should also revise the text of the document to reflect the correct
28 paragraph identification as set out in the Table of Contents, which is Eliminating Magnet
Programs § C, not D, and Creating New Magnet Programs § D, not E. In this Order, the
Court cites to the sections as properly labeled in the Table of Contents so that this Order
will correctly correspond to the 3-Year PIP, CMP, subsequent to its revision.

1 scores are readily apparent and easily understood by students and parents. It is not enough
2 that a school offers an enhanced learning experience, if no one knows. The AZMerit grades
3 are the only readily apparent measurement of school performance that exists at this time.

4 The Court understands that there are other measures for student achievement, such
5 as those included in the 3-Year PIP, CMP, § B(2): L25 Growth; Gaps, Compared to District
6 Cohorts; Gaps, Compared to White Students; Narrowing or Eliminating Gaps, and
7 Improving Performance. ((Doc. 2270-2) at 6.) Likewise, the District makes a detailed
8 presentation of its proposed Academic Achievement Measures for Magnet Schools (Doc.
9 2422), which includes a point system by criteria, including such things as ELA and Math
10 proficiency ratings, improved achievement gap in ELA and Math scores, and academic
11 growth for minimally proficient students at a school. The Special Master proposes that
12 achievement gap measures take into consideration economic variables, i.e, the value-added
13 approach. (R&R Re: Unitary Status (Doc. 2468) at 8), *see also* (R&R Re: Roskruge (Doc.
14 2274) at 3 n.1.) The Special Master notes that the District has agreed to follow his proposals
15 for alternatively measuring student achievement. *Id.* The Court approves using alternative
16 measures of academic excellence for magnet schools that are AZMerit grade C schools.⁸

17 There shall be no AZDMerit D or F magnet schools, and a school with an AZMerit
18 grade A or B is *per se* a magnet in respect to student achievement. The District shall, with
19 the assistance of the Special Master,⁹ adopt an alternative grading system to measure
20 student achievement at magnet schools having an AZMerit grade of C to identify schools
21 that are offering enhanced learning for magnet purposes, i.e., a TUSD Magnet Merit
22 (MagnetMerit) grade. Magnet schools with an AZMerit grade C that attain a TUSD
23 MagnetMerit grade B shall qualify for magnet status. Of equal importance, the TUSD

24
25 ⁸ The Court's approval of a value-added approach for assessing student
26 achievement-gap improvement for determining magnet status is not determinative of
27 challenges, if any, made to the application of this approach in other contexts for assessing
unitary status.

28 ⁹ The Special Master shall take into consideration the objections raised by the
Mendoza Plaintiffs to the proposed academic achievement measures for magnet schools
made in the Motion to Strike (Doc. 2430).

1 MagnetMerit grade must be easily understood by the community to be a credible measure
2 of excellence to ensure that a TUSD MagnetMerit grade B is “magnetic” to students inside
3 and outside of an AZMerit C school’s neighborhood.

4 With the clarification regarding the future definition for Integration and clarification
5 as to how and when alternative academic measures may factor into magnet school
6 assessments, the Court reviews the 3-Year PIP, CMP, August 2019, processes and
7 schedules for improving magnet programs, § B, and for eliminating magnet programs, § C.

8 The CMP sets out a detailed plan for offering differing levels of monitoring and
9 support for its magnet schools depending on the determined level of need being, as follows:
10 standard, additional, or intense. The Court finds that any magnet school, that is an AZMerit
11 grade C that does not have a TUSD MagnetMerit grade of B shall receive Level 3, i.e.,
12 intense, support and monitoring. An AZMerit grade C school that attains a TUSD
13 MagnetMerit grade B may be a Level 1 or 2.

14 If a magnet school has an AZMerit grade C, but not a TUSD MagnetMerit grade B,
15 this shall trigger the Magnet Department to develop a targeted academic improvement plan
16 (TAIP) by the second semester of year one to be incorporated into the MSP and
17 implemented by year two. (CMP § B.5(d) (Doc. 2270-2) at 13.) At the beginning of year
18 two, the Magnet Department shall develop a Transition Plan to be implemented in year
19 three, if Level 1 or 2 was not attained by the end of year two. There is no reason to delay
20 creating the TAIP for two years or to delay implementation of the Transition Plan until
21 year five as proposed in the 3-Year PIP, CMP. The schedule recommended by the Special
22 Master and adopted by the Court allows an AZMerit C school one full year in year two to
23 attain a TUSD MagnetMerit grade B. The Court approves a one-year delay of the third-
24 year transition period to year four, if the magnet school has made substantial progress by
25 moving halfway towards attaining a TUSD MagnetMerit grade B by the end of year
26 two/beginning of year three.

27 In short, only where there is substantial progress made in year two, a school may
28 have one more year (year three) to retain magnet status, with implementation of the

1 Transition Plan beginning in year four, if necessary. Substantial progress means moving
2 halfway towards meeting the requisite criteria for becoming an Integrated school and/or
3 attaining a TUSD MagnetMerit grade B or AZMerit grade A or B. The Court finds that
4 with the targeted improvement plan approach, set out in the 3-Year PIP, CMP §§ B(4)(d)
5 and (5)(d), there shall be no other reason for extending the time to implement a Transition
6 Plan. Accordingly, the District's strategies and processes for improving magnet schools in
7 the 3-Year PIP, CMP, shall be revised to reflect the directives contained in this Order.

8 The Court approves the District's 3-Year PIP, CMP strategies and processes for
9 improving integration, with the clarification that magnet schools needing Level C support
10 and monitoring shall include any Racially Concentrated school or school that is not
11 Integrated. Level C status shall trigger the Magnet Department's development of a targeted
12 integration improvement plan (TIIP), pursuant to the 3-Year PIP, CMP § B.4(d), and a
13 Transition Plan. The TIIP shall be implemented by the second semester of year one and the
14 Transition Plan developed in the second semester of year one. If the school does not reach
15 Level A or B by the 40th day of year two, the Transition Plan shall be implemented. The
16 Court approves a one-year delay of the second-year transition period to year three, if the
17 magnet school has made substantial progress by moving halfway towards becoming
18 Integrated.

19 The District shall revise the 3-Year PIP, CMP, § B, Supporting Existing Magnet
20 Programs, and § C, Eliminating Magnet Programs, accordingly.

21 With the future definition for Integration and TUSD MagnetMerit grade B for
22 AZMerit grade C magnet schools, the Court finds that there is no need for the proposed
23 mitigation measures. Mitigation is more appropriately considered by the School Board,
24 with the recommendation for termination to be made in accordance with the CMP
25 provisions approved herein by this Court, simultaneously with the implementation of a
26 Transition Plan.

27 The Court believes that these processes and strategies are most problematic for
28 existing magnet schools because going forward the District can factor student achievement

1 and integration concerns into its prioritization of potential candidates for new magnet
2 programs. The Court applies the 3-Year PIP processes, strategies, and guidelines for
3 eliminating magnet programs, as revised according to this Order, to the existing 13 magnet
4 schools: Elementary Schools (ES) Bonillas, Borton, Carrillo, Davis, Holladay, and Tully;
5 K-8 Booth-Fickett, Drachman, and Roskruge; Middle Schools (MS) Dodge and Mansfeld,
6 and High Schools (HS) Palo Verde and Tucson High.

7 Booth-Fickett has a 2018-19 AZMerit grade of F. In 2017-18, its AZMerit grade
8 was D, and in 2016-17 it was a C school. Because there shall be no AZDMerit D or F
9 magnet schools.

10 There are six magnet schools with AZMerit grades of C: Bonillas ES, Borton ES,
11 Tully ES, Drachman K-8, Roskruge K-8, and Palo Verde HS.

12 The District shall grade these schools,¹⁰ pursuant to the alternative academic
13 achievement criteria, being developed pursuant to this Order, to determine whether these
14 schools have a TUSD MagnetMerit grade B. If they do not, the District shall notify the
15 Court that, pursuant to the 3-Year PIP, CMP, these existing magnet schools are subject to
16 termination. Where any such notice is given, a TAIP and Transition Plan shall be
17 developed, with the TAIP implemented SY 2020-21, and the Transition Plan implemented
18 in year three, SY 2022-23, unless by the end of SY 2021-22, the school has attained a
19 TUSD MagnetMerit grade B or AZMerit grades A or B. Roskruge and Palo Verde were
20 D schools, and Drackman was an F school, in prior years. While they have not had the
21 benefit of a TAIP, they have been operating for the past six years under the USP with full
22 magnet school funding through multiple Magnet School Plans (MSPs) improvement cycles
23 aimed at improving academic achievement. Magnet status for Roskruge K-8 is especially
24 problematic because it is Racially Concentrated. If these schools have not or do not attain
25 a MagnetMerit grade B by the end of SY 2021-22, the Court finds that these schools shall
26 not be afforded any extension of the transition period beyond year three and magnet status
27 shall be terminated and the Transition Plan implemented at the beginning of SY 2022-23.

28 ¹⁰ Including Booth-Fickett ES.

1 There are no other Racially Concentrated magnet schools, besides Roskruge K-8.
2 There are, however, two schools that were Integrated in SY 2016-17, Holladay ES and
3 Booth-Fickett K-8 (Order (Doc. 2123) at 22), that are no longer Integrated, but they are
4 also not Racially Concentrated. (Notice (Doc. 2470)); *but see* (2018-19 DAR (Doc. 2299-
5 3) at 24-25) (filed 10/1/2019, reflecting Holladay as Integrated and Booth Fickett as neither
6 Racially Concentrated nor Integrated). For the purpose of determining whether magnet
7 status should be terminated pursuant to the 3-Year PIP, CMP, § D, the District shall apply
8 the future definition for Integration, which is being established pursuant to this Order,
9 because it would not make sense to define Integration differently for establishing a new
10 magnet versus removing one. If the Integration standard is not met, the District shall so
11 notify the Court, and develop a TIIP and Transition Plan, with the TIIP to be implemented
12 first semester, SY 2020-21 and the Transition Plan developed the second semester of SY
13 2020-21. Unless the school has made substantial progress by moving halfway towards
14 becoming integrated by the 40th day of SY 2021-22, the Transition Plan shall be
15 implemented for SY 2021-22. If substantial progress has not been made by the beginning
16 of SY 2021-22 towards Integration, the Court finds that the transition period shall not be
17 extended to SY 2022-23.

The Transportation Plan

18 The concerns expressed by the Mendoza Plaintiffs regarding the Transportation
19 Plan submitted by the District are legitimate in the context of the 3-Year PIP MPPP and
20 Action Plans.
21

22 The Mendoza Plaintiffs challenge the sufficiency of the District's Transportation
23 Plan, but the Court finds that the District complied with its directive for the 3-Year PIP to
24 be informed by program costs, including estimated transportation costs. The 3-Year PIP
25 used "transportation as a criterion for selecting future magnet candidates and non-magnet
26 schools with high potential for becoming integrated in the future." (Doc. 2270-4) at 2.) In
27 the same way that the District did the hard work necessary to build a strong PLC foundation
28 at its schools for continuous academic improvements, the District's Comprehensive

1 Integration Plan (CIP) lays the necessary foundation for the District to estimate the
2 transportation cost for newly proposed magnet schools or new integration efforts at a non-
3 magnet school.

4 The Court finds that the Transportation Plan in the 3-Year PIP is sufficient for its
5 purpose, but not for developing the MPPP or the Actions Plans. The project prioritizations
6 in the MPPP and Action Plans require the type of transportation and budget information
7 discussed by the Court in its September 9, 2018 Order ((Doc. 2123) at 32), mirrored in the
8 Mendoza Plaintiffs' Response ((Doc. 2275) at 10-15.) The Court granted unitary status,
9 generally, in its 2018 Order for USP § III, Transportation, but retained jurisdiction to
10 address transportation "relevant to the questions of unitary status remaining." (Order (Doc.
11 2123) at 38.) The question of unitary status remains for USP, § II.E, Magnet Schools and
12 Programs.¹¹

13 In short, the District needs to conduct the transportation assessments in sufficient
14 detail to identify actual transportation services needed for a priority candidate magnet
15 school or non-magnet school, such as: yellow buses, public transportation, contracted
16 services, express shuttle busses, activity busses, incentive transportation from racially
17 concentrated neighborhoods or incentive zones.¹² Will the District need new bus routes and
18 where will those routes run? Can transportation costs be minimized, and integration
19 impacts maximized, and if so how and what will the minimized costs be? Based on such
20 relevant information and data review, the District shall develop a budget estimate for short-
21 term (3-Year) planning purposes, which can be compared to the existing transportation
22 budget for the candidate school. The Transportation Department shall prepare the
23 transportation section of the Action Plan and similarly inform the Magnet Development

24
25 ¹¹ The question of unitary status also remains for USP § V.A, Advanced Learning
26 Experiences (ALEs). ((Doc. 2275) at 15-19.) The Mendoza Plaintiffs' Response includes
27 objections to the Transportation Plan that are relevant to ALEs. ((Doc. 2275) at 15-19.)
The Court will consider them in the context of the Notice of Compliance, ALE Policy
Manual (Doc. 2267).

28 ¹² The Court approves the District's plan to expand eligibility for incentive transportation
to students who reside in "incentive zones" based upon the same eligibility criteria
currently applied to students residing in racially concentrated neighborhoods.

1 Committee (MDC). The budget projections used for planning shall be sufficient for the
2 candidate prioritized projects as to jeopardize implementation from being “constrained by
3 budgetary issues relating to transportation.” (Mendoza Plaintiffs’ Response (Doc. 2275) at
4 17 (citing Order (Doc. (2123) at 97.)) Budgetary constraints shall have been factored in
5 during the 3-Year planning process so that the priority projects included in the 3-Year PIP
6 MPPP and Action Plans are realistically viable projects for expanding the CMP and
7 improving integration in non-magnet schools. In other words, barring something
8 unexpected, the Court, the parties, the schools, and the community can count on the 3-Year
9 PIP.

10 To the extent the Mendoza Plaintiffs complain that the District has not shown
11 express shuttle bus services promote integration, they may be heard to object to any such
12 express bus service included in a 3-Year PIP MPPP or Action Plan. In 2018, when the
13 Court granted unitary status for the District for USP § III, Transportation, it approved the
14 District’s use of ridership data based on logical inferences of use rather than an actual
15 accounting, (Order (Doc. 2123) at 36), “except for the express bus pilot projects.”
16 (Mendoza Response (Doc. 16) at 16 (quoting Order (Doc. 2123) at 37). There, in response
17 to objections from the Mendoza Plaintiffs, which are again repeated here, the Court ordered
18 that the District was required to track actual express bus ridership. The District is and has
19 been responsible to “monitor express shuttle ridership to assess their effectiveness in
20 improving integration” is a responsibility already held by the District. (Mendoza Response
21 (Doc. 2275) at 15 (quoting Transportation Plan (Doc. 2270-4) at 3). It also means that data
22 exists, available to the Mendoza Plaintiffs, to support any assertion that an express bus
23 operating at a specific school is not promoting integration. In addition, the District shall
24 include anticipated ridership for any express bus shuttle it proposes as a transportation
25 component for any magnet school included in the 3-Year PIP MPPP and/or Action Plan.
26 Upon a request from the Mendoza Plaintiffs, the District shall provide ridership data
27 relevant to assessing the merits of any express shuttle bus proposal in the MPPP or Action
28 Plans. The Court will allow the Mendoza Plaintiffs to reurge the express shuttle bus

1 challenge, made with specificity, in response to the candidate magnet schools identified in
2 the 3-Year PIP MPPP and/or any Action Plan.

3 **Out-Reach and Recruitment (ORR) for Magnet and ALE Programs**

4 The Court's Order issued September 6, 2018, directed the District to file one
5 Outreach and Recruitment plan for both Magnet and ALE programs. The District filed it
6 as an addendum to the 3-Year PIP. The Court addresses the Outreach and Recruitment
7 materials only in the context of the Magnet schools and will address outreach and
8 recruitment issues for Advanced Learning Experiences (ALE) when it reviews the ALE
9 Policy Manual.

10 The Mendoza Plaintiffs criticize the marketing strategies for omitting references to
11 the District's "Knowledge Changes Everything," which is a District-wide campaign
12 promoting the value of diversity. The Mendoza Plaintiffs point out that this messaging is
13 especially important in east side areas where the District is targeting recruitment of White
14 students to attend west-side Magnet Schools, especially the Roskrige TWDL magnet and
15 the Cholla High School¹³ IB program. As the Court understands the District's plans to
16 expand CMP, which includes the addition of east-side incentive zones and express shuttle
17 busses to facilitate east to west student movement, the Mendoza Plaintiffs' suggestions are
18 good ones especially if existing magnet marketing materials do not include reference to
19 "Knowledge Changes Everything" and IB marketing is not aimed at east-side
20 neighborhoods.

21 The Mendoza Plaintiffs also point out that the outreach and recruitment efforts in
22 the individual magnet school plans do not include the peer-to-peer type of recruitment that
23 this Court suggested in its September 9, 2018 Order. And now, this Court adds that it is not
24 enough to recruit students, but it is advisable to retain these students, therefore, the peer-
25 to-peer programs might morph into magnet buddy programs for students who do decide to

26
27 ¹³ Cholla High School's IB program is not a magnet program but it has magnetic
28 potential because it is a stellar academic program attractive to all students inside and
outside its neighborhood. Therefore, the IB program, if properly marketed, can improve
integration at Cholla High School, which is Racially Concentrated school.

1 take the plunge and move schools. Furthermore, the Court notes that the individual school
2 outreach and recruitment plans rely heavily on school site activities, which are going to be
3 quite difficult for at least this coming year, therefore, the District should consider
4 expanding the use of personalized on-line engagement strategies to off-set the impact of
5 COVID-19.

6 Following what may or may not be good advice does not, however, necessarily
7 defeat unitary status. The fact remains that the magnet schools are moving decisively
8 towards integration and the existing CMP is offering a more integrative experience than
9 ever before. The Court has reviewed the outreach and recruitment plans for each of the
10 magnet schools and finds them to be sufficiently robust and fluid to adapt to changing
11 circumstances as necessary and are fully supported by the District. The Court approves the
12 District's overall marketing and outreach plan for its magnet schools. To the extent a
13 magnet school fails to become integrated, its individual specific outreach and recruitment
14 plan may be found to be insufficient. In the event the District notices termination of magnet
15 status as directed above, for Roskrige K-8, Booth-Fickett K-8, and Holladay, the Mendoza
16 Plaintiffs may reurge this challenge in response to the TIIP.

17 Conclusion

18 The Court renders these directives after considering all the briefs filed by the parties,
19 now and in the past, and the interests of the student class plaintiffs. The Court finds that
20 with the amendment of the 3-Year PIP, CMP, pursuant to this Order, including the
21 addendums for a 3-Year PIP Magnet Project Priorities Plan (MPPP) and Non-Magnet
22 Priority Improvement Action Plans (Action Plans), the District shall have completed and
23 complied with the directives of this Court Order (Doc. 2123), issued September 6, 2018,
24 related to the District's attainment of unitary status for the Unitary Status Plan (USP) §
25 II.E, Magnet Schools and Programs.

26 **Accordingly,**

27 **IT IS ORDERED** that, that pursuant to the Report and Recommendation (Docs.
28 2379 and 2378), the District shall have until September 1, 2020 to file the addendums for

1 the 3-Year PIP Magnet Project Priorities Plan (MPPP) and Non-Magnet Priority
2 Improvement Action Plans (Action Plans). The MPPP should include relevant planning
3 documents, containing information like that found in the Action Plans for the Non-Magnet
4 schools to enable the Court, the Special Master, and the parties to assess the merits of these
5 priority projects. Any objection shall be filed within 14 days of the filing date of the MPPP.

6 **IT IS FURTHER ORDERED** that the Motion to Strike (Doc. 2430) is DENIED
7 AS MOOT; the Special Master shall take the Mendoza Plaintiffs' concerns into
8 consideration when developing the alternative achievement measures for the TUSD
9 MagnetMerit grade B.

10 **IT IS FURTHER ORDERED** that the District shall have 21 days to file the notices
11 required above for the existing magnet schools, including Booth-Fickett ES, with the TIIPs,
12 TAIPs, and Transition Plans filed by September 1, 2020.

13 **IT IS FURTHER ORDERED** that, as directed herein, for any existing magnet
14 school that fails to become an Integrated school or to attain a TUSD MagnetMerit grade B
15 or AZMerit grades A or B, by the end of SY 21-22, magnet status shall be terminated
16 without further order of this Court and the Transition Plan shall be implemented at the
17 beginning of SY 22-23. NO FURTHER EXTENSIONS OF TIME SHALL BE
18 GRANTED.

19 Dated this 22nd day of June, 2020.

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Honorable David C. Bury
United States District Judge