

**TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT**

1010 E. Tenth Street
Tucson, Arizona 85719
Telephone: (520) 225-6040
Tobert S. Ross (State Bar No. 023430)
Robert.Ross@tusd1.org
Samuel E. Brown (State Bar No. 027474)
Samuel.Brown@tusd1.org

DICKINSON WRIGHT PLLC

1850 N. Central Ave., Suite 1400
Phoenix, Arizona 85004-2382
Telephone: (602) 285-5000
Facsimile: (844) 670-6009
P. Bruce Converse (State Bar No. 005868)
bconverse@steptoe.com
Timothy W. Overton (State Bar No. 025669)
toverton@steptoe.com

*Attorneys for Tucson Unified
School District No. 1*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

<p>Roy and Josie Fisher, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.</p>	<p>4:74-cv-0090-DCB (Lead Case)</p>
<p>Maria Mendoza, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.</p>	<p>4:74-cv-0204 TUC DCB (Consolidated Case)</p>

**SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE
AND LIMITED REQUEST FOR RELIEF FROM ORDER
(ECF 2474)**

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Introduction and Summary

Subject to and without waiving its objections previously stated and referenced herein, the District hereby provides notice of compliance with the Court’s order dated June 15, 2020 (ECF 2474), as discussed in Section I below. The revised ALE Policy is attached hereto as Exhibit A, and the revised Transportation Plan is attached as Exhibit B. The District also requests relief from certain limited requirements of the order that are impractical or inadvisable. The reasons for the request for relief are set out in Section II below. The District expressly incorporates its previously stated general objections in Section III below.

I. COMPLIANCE WITH THE COURT’S JUNE 15 ORDER.

The Court’s September 6, 2018 Order directed the District to prepare and file a revised ALE Policy Manual, with a list of instructions and requirements. [ECF 2123, pp. 45-98, 150.] Subject to and without waiving its previously stated objections, the District prepared and filed the revised ALE Policy Manual, the ALE Progress Report, and the operating plan for the District’s ALE Department. [ECF 2267 and attachments.] As detailed in these documents, as well as in the District’s annual reports, the District has complied in good faith with the USP and all related Court orders.

Additionally, as detailed throughout the filings submitted in compliance with the Court’s directives in this area, important measures of academic achievement — such as graduation rates, dropout rates, and access to, participation in, and completion of ALEs — continue to improve, due to the District’s commitment to equitable access to these programs. [ECF 2267-2, pp. 5-22, 34-45, 48-56, and 59-63.] Indeed, more African American and Hispanic students are participating in the District’s ALEs than ever before, despite overall declining enrollment. See also Special Master’s Report and

1 Recommendation re The ALE Policy Manual (“ALE R&R”), ECF 2376, p. 2 (“It seems
2 worth noting that between 2012-13 and 2018-19, the number of African American
3 students participating in ALE has increased 41% and the number of Latino students has
4 increased 23%.”); Supplemental Petition for Unitary Status, ECF 2406, pp. 50-55
5 (detailing the District’s ALE and other academic success when compared with state and
6 national averages, and when compared to other districts in the state and around the
7 nation).

8 The Special Master’s Report and Recommendation on the District’s Supplemental
9 Petition for Unitary Status (ECF 2468) (the “Unitary Status R&R”) recommended that
10 the District be granted unitary status in all areas of operations. [*See generally* ECF 2468.]
11 Likewise, the Department of Justice concluded that the District is in unitary status in all
12 areas. [ECF 2475.]

13 Indeed, in this Court’s June 15, 2020 Order (ECF 2474) (the “Order”), the Court
14 itself found compliance with all prior ALE orders. [ECF 2474, p. 3 (“The Court finds
15 compliance.”).] Nevertheless, the Court directed the District to revise the ALE Policy
16 Manual in a number of respects. Though many requirements were phrased as
17 “clarifications,” they included substantial forward-reaching commands, including
18 instructions for the District to develop new policies and plans for guiding future ALE
19 operations years into the future. [ECF 2474, p. 25.] The Court also ordered several
20 changes to current ALE and transportation policies.

21 The District respectfully submits that it has again complied in good faith with the
22 USP and with the Court’s orders and requirements, that it has clarified its policies and
23 programs as directed in the Order to the extent practicable, and that the District is entitled
24 to unitary status in this area (USP § V.A.). The District’s compliance is demonstrated in
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1 the District's Revised ALE Policy Manual, which is attached hereto as Exhibit A. A
2 revised Transportation Plan, addressing free transportation provided by the District for
3 ALEs, and for the Dual Language program, is attached as Exhibit B. For the Court's
4 convenience, the District has also attached hereto as Exhibit C a separate index that
5 identifies the Court's directives from the Order and the location where each directive is
6 addressed within the ALE Policy Manual.

7 The Court also directed the District to file a revised Targeted Integration Action
8 Plan for Cholla; this plan is under development and will be filed on September 1, along
9 with the other integration plans ordered by the Court in its recent order re integration and
10 magnet plans.

11 **II. LIMITED REQUEST FOR RELIEF FROM ORDER.**

12 The District also requests relief from the order in certain limited respects: (a) the
13 requirement for development of a schedule for AP expansion and a statement as to the
14 "optimal" number of AP courses, (b) the development of a schedule for AVID expansion
15 and prioritization of schools for AVID, (c) the requirement to conduct transportation
16 studies for the expansion of ALE opportunities generally, and the provisions of the order
17 which would require a complete redesign of the District's honors, advanced and
18 accelerated courses at the middle and high school level. These are all matters that go
19 beyond the Special Master's report, and on which the District has not had the opportunity
20 to be heard. The circumstances and rationale for each request are addressed separately
21 below.

22 **A. Schedule for ALE Growth and Expansion.**

23 In discussing its desire that the District continue to expand access to ALEs, the
24 Court ordered that the ALE Policy Manual "shall prioritize viable ALE growth, if any, or
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1 clarify that there is no need for future expansion.” [ECF 2474, p. 9.] Because many of the
2 factors the District must analyze to consider future growth change on a regular basis, the
3 District conducts a yearly review and analysis of program implementation, availability,
4 and opportunity, as discussed in more detail on pages 6-7 of the Revised ALE Policy
5 Manual. As a part of this yearly process, the District considers whether financial and other
6 resources may support levels of growth for any particular ALE. The District cannot
7 accurately forecast which ALEs will be viable in which schools years into the future in
8 large part because, in addition to budgeting concerns, the District cannot forecast future
9 enrollment, particularly when considering changes in attendance caused by COVID.
10 Planning for these classes also requires the District to consider the availability of qualified
11 teachers at the time the ALE would be offered. While the District constantly works to
12 increase the number of qualified teachers, it cannot accurately predict the exact number
13 of teachers at each school each year.

14 Soon after a detailed plan is developed, circumstances will change such that the
15 detailed plan becomes worthless and an attempt to adhere to the plan will harm rather
16 than help the District’s academic progress. To succeed, such a plan would demand a level
17 of precision that would be impossible. This directive should be reconsidered and
18 rescinded.

19 After raising questions regarding whether a specific number of courses at a specific
20 school is the minimum or optimal, the Court asks whether a specific number of AP
21 courses is needed at a high school based on factors such as how many students qualify for
22 AP courses at a school.¹ [ECF 2474, p. 17.] The Court then orders the District to clarify
23 what “Appropriate ALE opportunities” means. [Id. at 18.] As explained above and in the
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25 ¹ Students do not need to qualify for AP courses. AP courses do not have prerequisites or
26 testing requirements. All students may register for AP courses.

1 ALE Policy Manual, the specific number and type of ALEs at a specific school is based
2 on a number of factors that are evaluated each year, including student demand, teacher
3 qualification and availability, related costs, curriculum mapping, and availability of other
4 ALEs that may conflict with or complement a specific ALE, among other factors.

5 As explained in the Revised ALE Policy Manual (previously in the ALE
6 Operations Plan), each year the ALE Director reviews course offerings at each school to
7 look for ways to expand AACs, compiles a comprehensive list of AACs offered by each
8 school and, together with school administration at each campus, reviews the list for
9 accuracy and develops a campus-based plan for adding AACs, as appropriate. The ALE
10 Director and Desegregation Research Project Manager annually review the enrollment
11 trends in all AACs and share this information with school administrators with a specific
12 focus on the number of course offerings, student enrollment patterns, and integration of
13 the courses. Based on school data, student interest, and teacher availability, schools
14 include AACs in their respective master schedules. The ALE Director then works with
15 the appropriate departments to provide support for those courses, certification for the
16 teachers, and training and licensing from outside organizations like the College Board or
17 local colleges.

18 Accordingly, to the extent that the Court has requested a more specific timetable
19 for ALE growth and expansion, the District respectfully declines, and requests relief from
20 the order. Any plan or timeline for expansion that extends out more than the next school
21 year would depend on so many contingencies and uncertainties (in enrollment, funding,
22 changes and developments in other programs, school staff readiness, and the like) that it
23 would be more likely than not to be inaccurate and not achievable, and thus misleading
24 to the school community. There is no evidence in the record that the **current** scope and
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1 extent of the District's ALE offerings is somehow deficient by state or federal standards.
2 Indeed, the District's GATE programs go far, far beyond Arizona state requirements for
3 providing gifted and talented educational services. UHS is a nationally recognized exam-
4 based high school, and compares extremely favorably with other similar schools on its
5 diversity (UHS is now a minority-majority school). Moreover, the creation of an ALE
6 growth and expansion plan at this stage in the process is clearly an addition to the USP
7 and a new requirement (both the Special Master and the Justice Department have found
8 compliance with USP in the area of ALEs). There is no constitutional requirement to
9 provide advanced learning experiences, they are not a *Green* factor, and there is no
10 evidence which even plausibly connects the District's current ALE offerings with the
11 prior *de jure* segregation of elementary African American children. Finally, any such
12 plan would depend on so many contingencies and conditions that it would be virtually
13 impossible to follow in a way that makes educational and academic sense, and, because
14 changes to any schedule would be almost certain, it would be misleading to the school
15 community. For all these reasons, the Court should grant relief from the order.

16 **B. Schedule for AVID Expansion.**

17 Although the Court requested that the District include a timeline for AVID
18 expansion, based on the judgment of experienced educators, the District believes that the
19 detailed decisions on when and where to expand AVID should be made on a yearly basis
20 as described above in relation to analyzing the potential expansion of ALEs. The District
21 does not currently anticipate adding a new AVID school in the 2020-21 school year, but
22 it is continuing its AVID expansion efforts. The District developing Utterback Middle
23 School into an AVID National Demonstration school, and is expanding training for
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1 additional staff districtwide to increase the number of teachers and staff who are
2 knowledgeable about, and using, AVID strategies.

3 But any plan or timeline for expansion that extends out more than the next school
4 year would depend on so many contingencies and uncertainties (in enrollment, funding,
5 changes and developments in other programs, school staff readiness, and the like) that it
6 would be more likely than not to be inaccurate and/or not achievable, and thus misleading
7 to the school community. Simply put, the District understands the value of the AVID
8 program and will expand as much as is practically possible over the next several years.
9 Nothing in the record suggests that after expanding and championing AVID for more than
10 a decade, TUSD will regress in this regard. The District cannot commit to anything more
11 definite. To the extent that the Court has requested a more specific timetable for
12 expansion, the District respectfully declines, and requests relief from the order.

13 **C. ALE Transportation Studies**

14 The Court ordered the district to do detailed transportation studies of its ALE
15 programs, including identification of specific students and specific travel times from those
16 students' residences to various ALE programs, as a guide for plans for future expansion of
17 ALEs. However, it is important to understand the role of transportation in decisions
18 regarding the growth or expansion of ALEs.

19 **1. GATE Services.**

20 **a. Growth generally.** The District currently provides GATE services
21 to all students who qualify. The District has already reduced the cut score for qualifying,
22 as suggested in recent recommendations of the Special Master and orders of the Court,
23 and has easily accommodated the increase in students as a result. Thus, there is no
24 potential for major expansion of the number of students qualifying for GATE service, and
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1 no current plans to change the qualifying score again in such a way that would produce a
2 measurable impact on transportation costs.

3 **b. Self-contained GATE Programs.** The expansion of self-contained
4 GATE does not generally require transportation studies, as expansion to a new school or
5 even adding a classroom at an existing school does not increase transportation costs, as
6 fewer students need transportation to access a self-contained GATE program. Since no
7 school has an individual “transportation budget,” a change in transportation costs does
8 not affect the school’s individual budget. Transportation cost is not a factor in the
9 District’s decision to expand self-contained GATE programs.

10 The District currently has only one school which offers a Two-Way Dual
11 Language self-contained GATE program (Hollinger), and does not currently have any
12 plan to expand the number of schools offering this program, preferring instead to expand
13 its regular Two-Way Dual Language Program. Though the District remains committed to
14 providing free transportation for students enrolled in this program, the District recognizes
15 that for some students, transportation times to this program from various points in the
16 District may exceed 30 minutes, due to the geographic size of the District and prevailing
17 traffic at school transport times.

18 **c. Cluster GATE Programs.** Similarly, expansion of a cluster GATE
19 program to a new school, or increasing the number of cluster GATE classrooms at an
20 existing school, does not increase transportation costs, as fewer students need
21 transportation to access a full time GATE program. Transportation cost is not a factor in
22 the District’s decision to expand cluster GATE programs.

1 **d. Pull Out and Resource GATE Programs.** These programs do not
2 involve transporting students, and there is no need for expansion: All students qualifying
3 for GATE services are currently provided these services in the school they attend.

4 **2. Advanced Academic Courses.**

5 **a. Middle School Courses.** Transportation cost is not generally a
6 factor in deciding to expand advanced academic courses at middle schools, as decisions
7 regarding expansion are usually based on factors related to the current school and do not
8 involve additional student transportation. Transportation cost may be relevant in the
9 special circumstances where the District considers transporting students from their
10 enrolled school to a nearby school for advanced academic courses, but that is a much
11 simpler analysis weighing the cost of transporting students from one school to another
12 along with the cost, convenience and teacher availability for a class at the enrolled school
13 with lower-than-standard enrollment. These decisions are made on a case by case basis,
14 and no advance transportation studies are needed.

15 **b. High School Courses.**

16 **i. AP and Dual Credit Courses.** Transportation cost is not a
17 factor in deciding to expand AP and Dual Credit courses, as decisions regarding
18 expansion are usually based on factors related to the current school and do not involve
19 additional student transportation.

20 **ii. IB Program.** The District is committed as a matter of policy
21 to provide free transportation to any student enrolled in the IB program at Cholla who
22 lives beyond the designated “walk zone” for that school. Transportation cost is not
23 considered in decisions to promote or expand the program. As a practical matter, efforts
24 to expand the program are unlikely to have a measurable impact on transportation, as the
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1 location of the school in the southwest quadrant of the District is more than 30 minutes,
2 travel time, under any transportation mode, from many areas of the District, including in
3 particular the northeast quadrant of the District.

4 **iii. University High School.** As noted above, the District is
5 committed as a matter of policy to provide free transportation to any student enrolled at
6 University High School who lives beyond the “walk zone” for that school. Transportation
7 cost is not considered in decisions to promote or expand the program. As a practical
8 matter, unless the requirements for admission to University High School are changed in a
9 manner not currently contemplated, efforts to expand the program or recruit higher
10 minority participation are unlikely to have a measurable impact on transportation costs.

11 Accordingly, the District respectfully requests relief from the order requiring
12 detailed transportation studies. They are not needed. The studies described in the order
13 are extremely time consuming and draining of staff time that is currently focused on
14 adapting to the COVID-19 pandemic. Any studies conducted now would be quickly out
15 of date to the extent they address or rely on last year’s enrollment, and no decisions on
16 growth or expansion are likely to be made this year until enrollment numbers are more
17 certain. Moreover, (a) these studies are clearly in addition to the USP and a new
18 requirement (both the Special Master and the Justice Department have found compliance
19 with USP), and (b) there is no evidence in the record that this school district somehow
20 lags or does not meet state or federal averages or standards for ALEs. Indeed, the
21 District’s ALE programs go far, far beyond any Arizona state requirements for providing
22 ALE services. There is no constitutional requirement to provide advanced learning
23 experiences, they are not a *Green* factor, and there is no evidence which even plausibly
24 connects the District’s current ALE offerings with the prior *de jure* segregation of
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1 elementary African American children. For all these reasons, the Court should grant
2 relief from the order.

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4 **D. Advanced Academic Courses**

5 Students in grades 6-10 take honors, advanced or accelerated courses, which
6 provide an expanded and more rigorous program of study than regular courses. Sites
7 offer these classes as open-access courses to any students who would like to enroll. In
8 middle school, accelerated math classes have the pace of curriculum increased to prepare
9 students for taking high school algebra earlier than 9th grade. All schools serving
10 students in grades 6-8 offer, at minimum, one honors, advanced, or accelerated class.
11 Each school serving students in grades 6-8 also offers, at a minimum, one honors or
12 accelerated CRC course.

13 These courses have been at times referred to as “Pre-AP” courses in the USP and
14 by the Court, and by the District in reference to the USP and other Court orders. Since
15 the adoption of the USP, the College Board (which accredits AP courses, trains teachers,
16 and administers AP tests) has begun using the “Pre-AP” term for a specific set of courses
17 with curriculum established and licensed by the College Board, offered at the middle and
18 high school level, and mapped to specific AP courses. The District does not offer “Pre-
19 AP” courses of this type. Its courses designated as honors, advanced or accelerated
20 courses are not specifically mapped to any AP course curriculum, and are not intended as
21 a prerequisite or other “pipeline” or path to taking an AP course (though the District does
22 believe that taking these courses in middle school can help prepare students to take more
23 rigorous courses in high school). Indeed, many honors courses at the high school level are
24 designed specifically as an alternative to AP courses.

1 The District has no current plans to offer “Pre-AP” courses in this College Board
2 sense, or to map its curricula for honors, advanced or accelerated courses to specific AP
3 courses. To the extent that the Court has ordered the District to do so, the District
4 respectfully declines, and requests relief from the order. The District remains committed
5 to offering its honors, advanced and accelerated courses at middle and high school levels,
6 as discussed above. To avoid confusion, the District has not used the term “Pre-AP” in
7 the ALE Policy Manual.

8 **III. GENERAL OBJECTIONS**

9 As noted at the outset of this Notice and Request, the District is complying with
10 the order at issue, and requesting limited relief from that order, subject to and without
11 waiving its general objections set out in previously filed documents, incorporated herein
12 by reference. These include in particular, but are not limited to, its objection to the
13 Special Master’s 2018 Report and Recommendation (ECF 2099), its Supplemental
14 Petition for Unitary Status (ECF 2460 and 2464), its objection to the Special Master’s
15 Report and Recommendation (ECF 2477), and its motion for reconsideration of the
16 Court’s order dated June 4, 2020 (ECF 2481).

17 **RESPECTFULLY SUBMITTED** this 27th day of July, 2020.

18
19 **DICKINSON WRIGHT PLLC,**

20 By: /s/ P. Bruce Converse
21 P. Bruce Converse
22 Timothy W. Overton

23 **TUCSON UNIFIED SCHOOL DISTRICT**
24 **LEGAL DEPARTMENT**

25 Robert S. Ross
26 Samuel E. Brown
*Attorneys for Tucson Unified School
District No. 1*

CERTIFICATE OF SERVICE

The foregoing document was filed with the Court electronically through the CM/ECF system this 27th day of January, 2020, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ P. Bruce Converse
Employee of Dickinson Wright PLLC

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