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12 UNITED STATES DISTRICT COURT

13 DISTRICT OF ARIZONA

14 Roy and Josie Fisher, et al.,

15 Plaintiffs,

16 v.

17 United States of America,

18 Plaintiff-Intervenors,

19 v.

20 Anita Lohr, et al.,

21 Defendants,

22 Sidney L. Sutton, et al.,

23 Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS' RESPONSE  
AND OBJECTION TO TUSD  
SUPPLEMENTAL NOTICE AND  
REPORT OF COMPLIANCE (DOC.  
2501)**

Hon. David C. Bury

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1 Maria Mendoza, et al.,  
2 Plaintiffs,  
3 United States of America,  
4 Plaintiff-Intervenor,  
5 v.  
6 Tucson United School District No. One, et al.,  
7 Defendants.

Case No. CV 74-204 TUC DCB

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10 **INTRODUCTION**

11 The Mendoza Plaintiffs submit herein their response to the District’s Supplemental  
12 Notice and Report of Compliance (Doc. 2501) (“Magnet Notice”) relating to criteria to be  
13 applied to magnet schools that have received an AzMerit grade of “C” to determine  
14 whether they may be classified as “MagnetMerit B” schools pursuant to this Court’s Order  
15 of 6/4/20 (Doc. 2471) as amended in its Order of 6/22/20 (Doc. 2486) and their objection  
16 to the District’s selection of the standard of integration to be applied in assessing magnet  
17 school (and, it appears, all District schools’) success in achieving integration.  
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20 **MAGNET SCHOOL “MAGNET/MERIT B” CRITERIA**

21 Mendoza Plaintiffs understand why the District has determined to apply four readily  
22 determined criteria to determine whether a magnet school that has received an AZMerit  
23 grade of “C” may be classified as a “MagnetMerit B” school or whether it must be put on a  
24 targeted academic improvement plan. Accordingly, they have no objections to the criteria  
25 but they do question the manner in which the Minimally Proficient Criterion and Free and  
26 Reduced Lunch criteria are explained. Further, and related to their concern about how  
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1 these criteria are explained, Mendoza Plaintiffs believe that the District must expressly  
2 commit to retaining as a goal for all of its magnet schools (indeed, for all District schools)  
3 the closing of the achievement gap between white students, on one hand, and African  
4 American and Latino students on the other.

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6 In the document Academic Criteria for “C” Magnet Schools (Doc. 2501-1),  
7 criterion # 3 (Minimally Proficient), the District states that by “focusing on the  
8 improvement of student performance among MP students, TUSD will address the learning  
9 gap caused largely by socio-economic status.” (Doc. 2501-1 at ECF 4; emphasis added.)  
10 Mendoza Plaintiffs are aware of research that suggests a correlation between socio-  
11 economic status and academic achievement but are very concerned about a statement that  
12 suggests poverty **causes** poor school performance; however, there is a larger issue where  
13 the instant litigation is concerned. As important as it may be to ensure that the effects of  
14 poverty on a student’s academic performance (*e.g.*, access to laptops in a period of on-line  
15 teaching and low teacher expectations for their poorer students<sup>1</sup>) be ameliorated, the issue  
16 before this Court and under the USP is the achievement gap between white students, on  
17 one hand, and African American and Latino students on the other.  
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23 <sup>1</sup> In that regard although they do not assert an objection to criterion # 4 (Free and Reduced  
24 Lunch), they are very concerned that the criterion, which gives a magnet school “credit”  
25 against a “C” grade for enrolling relatively more students who qualify for free and reduced  
26 lunch than the district average, carries within it an acceptance of the “fact” that students  
27 from poorer households will perform less well academically than students from wealthier  
28 homes. (Unlike criterion # 3, criterion # 4 does refer to correlation rather than causation in  
the relationship between socio-economic status and academic achievement but,  
unfortunately, also says that the “wealthier the famil[y is], the higher the student  
performance” (Doc. 2501-1 at 5 ECF), thereby suggesting, for example, that TUSD  
expects that the student from a home with annual family income of \$200,000 will  
outperform a student from a home with annual family income of \$100,000.)

1 All magnet schools, including Tully, Booth-Fickett, and Palo Verde, the three  
2 schools that the District states have not met the criteria to be categorized as Magnet Merit  
3 B, currently have explicit goals that relate to closing that achievement gap (not a gap  
4 determined in relation to relative socio-economic status). (See Magnet School Plans for 20-  
5 21 SY (Doc. 2493-1) at 27, 234, and 318.)<sup>2</sup> Mendoza Plaintiffs therefore request that the  
6 Court condition approval of the Academic Criteria for “C” Magnet Schools on an express  
7 commitment from the District that it will continue to set as a goal for all of its magnet  
8 schools (indeed, for all schools) that they regularly assess and have as an explicit goal the  
9 closing of the academic achievement gap between white students, on the one hand, and  
10 African American and Latino students, on the other. Further, as set forth in the Mendoza  
11 Plaintiffs’ Objection to the Special Master’s Report and Recommendation on the District’s  
12 Supplemental Petition for Unitary Status (Doc. 2476 (“R&R Objections”) at 12-14 and 25-  
13 27), that goal should apply to the achievement gap as between all white, African American  
14 and Latino students, and not the gap between white, African American and Latino students  
15 who qualify for free and reduced lunch.  
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## 19 **THE DEFINITION OF INTEGRATION**

20 The Mendoza Plaintiffs recognize that the Court stated that the definition of  
21 integration that the District has chosen (“an integrated school is any school in which no  
22 racial or ethnic group varies from the district average for that grade level (Elementary  
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25 <sup>2</sup> Under Goal # 2, referencing the enhancement of academic quality by the end of the 2020-  
26 21 school year, each plan states: “Academic Performance (African American and Latino  
27 Students)... The size of the achievement gap in mathematics and English language arts  
28 (ELA) comparing test scores throughout the district with similar grade structures... The  
size of the achievement gap in mathematics and English language arts (ELA) comparing  
test scores of white students to those of African American and Latino students. The extent  
to which the school has narrowed or eliminated achievement gaps....”

1 School, Middle School, K-8, High School) by more than +/- 25 percentage points, and in  
2 which no single racial or ethnic group exceeds 70% of the school's enrollment" (Magnet  
3 Notice at 1:20-23) was acceptable. (6/22/20 Order (Doc. 2486) at 8:7-10.) However, they  
4 are constrained to object for the reasons set forth in their R&R Objections (Doc. 2476 at  
5 6:5-7:9) and their Motion to Strike the Portions of the Special Master's 6/12/2018  
6 Response to Objections to 2016-17 Annual Report Containing Findings and/or Discussion  
7 Relating to a "25% Plus/Minus" Standard to Assess Integration. Further, they observe  
8 that notwithstanding the Court's statement in its 6/22/20 Order that the "District may use a  
9 more commonly accepted definition of Integration going forward" (Doc. 2486 at 8:2-3),  
10 neither the Special Master nor the District has presented any evidence that the definition  
11 the District now has adopted commonly accepted, much less more commonly accepted  
12 than that in the USP.

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15 **CONCLUSION**

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17 For the reasons set forth above, the Court should require the District to rephrase its  
18 rationales for the choices of Criteria #3 and #4 in its statement of Academic Criteria for  
19 "C" Magnet Schools, condition approval of the Criteria on an express commitment by the  
20 District to continue to set as a goal for its magnet (and all schools) the closing of the  
21 achievement gap for all of its African American and Latino students in relation to its white  
22 students, and either reject the District's selection of the definition of integration or defer a  
23 ruling on this issue until it rules on Mendoza Plaintiffs' objections to the Special Master's  
24 report and recommendation relating to TUSD's supplemental petition for unitary status.

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Respectfully submitted,

Dated: August 12, 2020

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 12, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE AND OBJECTION TO TUSD SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE (DOC. 2501)** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: August 12, 2020

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