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12

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

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

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

**MENDOZA PLAINTIFFS' RESPONSE
AND OBJECTION TO TUSD SECOND
SUPPLEMENTAL NOTICE AND
REPORT OF COMPLIANCE (DOC.
2486) RE: MAGNET SCHOOL
CRITERIA AND SCHOOL
INTEGRATION PLANS**

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

9
10 **INTRODUCTION**

11 The Mendoza Plaintiffs submit herein their response to the District’s Second
12 Supplemental Notice and Report of Compliance (Doc. 2517) concerning magnet school
13 criteria and individual school integration plans (“CMP/IP Notice”) responding to this
14 Court’s Order of June 4, 2020 (Doc. 2471) as amended by its Order of June 22, 2020 (Doc.
15 2486) (“June Magnet Order”). The District’s filing takes the form of a revised
16 Comprehensive Magnet Plan (“CMP”), a Targeted Integration Improvement Plan for
17 Roskrige Bilingual K-8 Magnet School (“Roskrige Plan”), a Magnet Priorities Project
18 Plan (“MPPP”), a Non-Magnet Priorities Plan that currently lacks Court-ordered
19 individual school student achievement plans¹, Integration Improvement Plans for schools
20 called out in the June Magnet Order and the Court’s Order of June 15, 2020 (Doc. 2474),
21 and a revised Transportation Plan. Mendoza Plaintiffs will discuss these plans in the
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26 _____
27 ¹ TUSD has received an additional 30 days to complete these plans. Mendoza Plaintiffs
28 reserve the right to further comment on the academic achievement portion of the Non-
Magnet Priorities Plan, specifically the setting of priorities, after they have had an
opportunity to review the individual school plans.

1 sequence in which they appear in TUSD’s filing except that they discuss the Roskruge
2 Plan together with the other Integration Improvement Plans.

3 **ARGUMENT**

4 **Revised CMP**

5 The District has made a number of revisions to the CMP as outlined in the CMP/IP
6 Notice at 1:13-2:2. Included in those revisions are a new definition of integration and new
7 academic criteria to be applied to all magnet schools.
8

9 The CMP Definition of Integration

10 The new integration definition is identical to the definition included in the District’s
11 July 29, 2020 filing on magnet school criteria. (Doc. 2501; *see* CMP, Doc. 2517-1, at 5).
12 The Mendoza Plaintiffs asserted their objection to the definition in response to that filing.
13 (*See* Mendoza Plaintiffs’ Response and Objection to TUSD Notice and Report of
14 Compliance, Doc. 2507.) Rather than repeat that objection here, they respectfully invite
15 the Court’s attention to Doc. 2507 at 3:19-4:13 and their earlier articulations of that
16 objection cited therein.
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19 Without waiving their objection, Mendoza Plaintiffs note the following
20 inconsistencies or lack of clarity in the CMP’s treatment of magnet schools’ progress
21 toward integration and suggest that irrespective of what definition of integration ultimately
22 is applied, further clarity is needed in the CMP. On page 6 of the CMP, TUSD purports to
23 identify three levels of support and monitoring to be provided to the magnet schools based,
24 presumably, on their success in achieving integration. Although the CMP itself is silent in
25 this regard, Level A (receiving “standard” support and monitoring) presumably relates to
26 magnet schools that are integrated and seek to maintain that status. Level C schools are
27
28

1 both Racially Concentrated schools and schools that are “not integrated”. (CMP, Doc.
2 2517-1, at 6 under the heading “Integration”.²) There is no definition given of what leads a
3 school to be categorized as “Level B”, and it is difficult to understand what such a
4 definition would be if Level A schools are integrated and all schools that are not integrated
5 are Level C schools. Yet, the CMP also says that “each magnet school also develops
6 actions that support integration goals based on integration status (A, B, C).” (*Id.* at 8.) As
7 noted above, Mendoza Plaintiffs believe the CMP must be further revised to present clarity
8 in how TUSD magnet schools are to be classified and monitored with respect to the overall
9 goal that all magnet schools attain and maintain integrated status.
10
11

12 Academic Criteria

13 In the revised CMP, the District repeats the academic criteria for determining
14 whether a magnet school that received an AzMerit score of C may receive a MagnetMeritB
15 grade that it set forth in its June 29, 2020 filing on magnet school criteria. (Doc. 2501; *see*
16 CMP, Doc. 2517-1, at 5). The Mendoza Plaintiffs set forth their concerns relating to those
17 criteria in response to that filing. (*See* Mendoza Plaintiffs’ Response and Objection to
18 TUSD Notice and Report of Compliance, Doc. 2507.) Rather than repeat their concerns
19 here, they respectfully invite the Court’s attention to Doc. 2507 at 1:20-3:18.
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22 In Doc. 2507, Mendoza Plaintiffs also requested that the Court condition approval
23 of the Academic Criteria for “C” Magnet Schools on an express commitment from the
24 District that it will continue to set as a regularly assessed goal for all of its magnet schools
25 (indeed, for all schools) the closing of the academic achievement gap between white
26

27 ² *See also*, CMP at 9 under heading “Targeted Integration Improvement Plans (TIIPs)”: “If
28 a magnet school is not integrated in year one, the Magnet Department categorizes the
school[] as being in Integration Level C....”

1 students, on the one hand, and African American and Latino students, on the other.³ (*Id.* at
2 3:6-18.) That request now has increased urgency because the revised CMP sets as the **only**
3 “academic student achievement goal for all magnet schools and programs⁴...to attain a
4 state letter grade of ‘A’ or ‘B’ or a TUSD ‘MagnetMeritB grade.’” (CMP, Doc. 2517-1, at
5 5, under the heading Student Achievement.)
6

7 Mendoza Plaintiffs believe that this revision of magnet school academic
8 achievement goals is a significant step backward. Not only does it omit any reference to
9 closing the achievement gap, it now also entirely eliminates the long-existing goals of
10 securing the growth of the bottom 25% of the students of the school at a rate higher than
11 the state median goal and improving proficiency rates for African American and Latino
12 students. (*Compare* CMP, Doc. 2517-1, at 5 *and* August 2019 CMP, Doc. 2270-1, at 5.)

13 Accordingly, they believe the Court should decline to approve the revised academic
14 criteria set forth in the August 2020 version of the CMP, Doc. 2517-1 and direct the
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18 ³ Further, as set forth in the Mendoza Plaintiffs’ Objection to the Special Master’s Report
19 and Recommendation on the District’s Supplemental Petition for Unitary Status (Doc.
20 2476, at 12-14 and 25-27), they also requested that the Court direct that that goal should
21 apply to the achievement gap as between all white, African American and Latino students,
22 and not just to the gap between white, African American and Latino students who qualify
23 for free and reduced lunch.

24 Mendoza Plaintiffs do not believe that the District’s response to their expressed concerns --
25 that there is a Governing Board Policy to reduce disparities (District Response to Mendoza
26 Plaintiffs’ Objections (ECF 2507) to the District’s Supplemental Notice and Report of
27 Compliance (ECF 2501), set forth in Doc. 2515 at 2:8-14) -- is sufficient to meet those
28 concerns. The well-known cliché that what gets measured gets done speaks to the need to
expressly hold each magnet school (and, indeed, each TUSD school) responsible for
measuring and reporting on the progress of its bottom 25% of students as well as its
African American and Latino students in relation to their white peers, and to the
insufficiency of relying instead on a general policy guideline.

26 ⁴ It is unclear to the Mendoza Plaintiffs how a “program” attains a state letter grade of A or
27 B. As a practical matter, Mendoza Plaintiffs understand that TUSD in fact looks at the
28 AzMerit score of the whole school in which a program is placed (for example, Tucson
High) rather than attempting to parse the scores of the subset of students in the school who
are enrolled in the magnet program.

1 District to include the goals of closing achievement gaps as well as the other now omitted
2 goals among the academic performance goals that it sets for its magnet schools.

3 **Magnet Project Priorities Plan (“MPPP”)**

4 Mendoza Plaintiffs do not challenge the District’s identification of a magnet theme
5 for a potential new magnet school or its decision not to go forward with the launch of a
6 new magnet until the fall of 2023. They do, however, object to the selection of Cragin and
7 Whitmore elementary schools as the “primary potential magnet candidates.” (MPPP, Doc.
8 2517-3, at 6.)
9

10 As this Court will recall, for a short period of time during the pendency of the USP,
11 Cragin was a magnet school (with a performing arts theme⁵ rather than the environmental
12 health services theme now proposed). (See CMP Revised 7.15.14, Doc. 1686-7, at 31-32
13 (adding Cragin as a new magnet school) and Revised CMP 6.10.15, Doc. 1808-3, at 5
14 (reciting that Cragin’s magnet status was eliminated in the 2015-16 school year).)
15
16

17 When in 2013, the District first proposed adding Cragin as a new magnet school,
18 the Mendoza Plaintiffs objected, asserting that an already integrated school should not be
19 the site of a new magnet program expressly intended to increase the number of integrated
20 schools in the District (as well as to increase the number of students attending integrated
21 schools). (See Mendoza Plaintiffs’ Initial Comments on the June 7, 2013 TUSD Proposed
22 Magnet School Plan, attached to an email dated June 27, 2013 from Nancy Ramirez,
23 counsel for the Mendoza Plaintiffs, to all parties and the Special Master at 3-4, attached as
24
25

26 _____
27 ⁵ That theme was consistent with the school’s engagement with the arts and its on-going
28 commitment to its Opening Minds through the Arts (“OMA”) arts integration program.
(MPPP, Doc. 2517-3 at 6; see also TUSD website, Catalogue of Schools: Cragin
Elementary School, What Makes Us Special.)

1 Exhibit 1.) Mendoza Plaintiffs asserted that same concern and objection in the Mendoza
2 Plaintiffs' Objections to the Special Master's Report and Recommendation on the
3 District's Supplemental Petition for Unitary Status, Doc. 2476, at 9:14-10:4, and now do
4 so once again. Rather than repeat their previously expressed concerns and objections, they
5 respectfully invite the Court's attention to their June 2013 comments and their objections
6 to the Special Master's Report and Recommendation. They also ask that those same
7 objections and comments be considered with respect to Whitmore, which the TUSD Non-
8 Magnet Integration and Academic Plans filed with the Court in August 2019, reported to
9 be integrated. (Doc. 2270-3 at 2 and 159.)
10
11

12 In 2013, the Mendoza Plaintiffs also objected to the designation of Cragin as a
13 magnet school because it was a "C" school and they questioned why parents would seek to
14 enroll their children in a new program in a school that was not successful academically.
15 (See Exhibit 1 at 3.) Unfortunately, Cragin remains a "C" school, as does Whitmore, each
16 of which was a "C" school in the 2017-18 and 2018-19 school years.. Therefore, unless
17 there is a dramatic change in the performance of their students or they are able to meet the
18 definition of a MagnetMeritB school, each of these schools if selected to be the site of a
19 new magnet program will be required to develop a Targeted Academic Improvement Plan
20 even as it is rolling out its new magnet theme and classes. (See CMP, Doc. 2517-1, at 13.)
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23 Finally, given the locations of the two schools in the northeastern quadrant of the
24 District, Mendoza Plaintiffs question whether they will be able to attract a sufficient
25 number of Latino students to maintain their integrative status if they indeed grow as a
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1 consequence of adopting the new magnet scheme.⁶ This, they believe, is of particular
2 concern with respect to Whitmore which is even further east than Cragin and as to which
3 the District noted in the school's 2019-20SY Integration and Academic Achievement Plan:
4 "Although integrated, Whitmore should continue to attract additional Hispanic students in
5 order to maintain integration." (Doc. 2270-3 at 159.)
6

7 In the MPPP, TUSD identifies Tolson elementary school as another "promising"
8 candidate (Doc. 2517-3 at 6) but provides no description of the school and states only that
9 of the three "promising" candidates, "Cragin and Whitmore emerged as the top
10 candidates." (*Id.*) Yet, Tolson is a "B" school (in both school years 2017-18 and 2018-19)
11 and is a racially concentrated school that even without the addition of an attractive new
12 magnet program was viewed by the District as having a moderate potential to become
13 integrated. (Doc. 2270-3 at 136.) As stated by the District in its August 2019 filing: "As a
14 high performing school, Tolson has the ability to attract a more diverse population through
15 marketing and outreach; **Tolson is accessible to geographical areas with targeted**
16 **population.**" (*Id.*; emphasis added.) Moreover, were Tolson to be designated a magnet
17 school, it would result in the addition of a new magnet school in the west-central portion of
18 the District (as distinct from the northeast quadrant). Further, and most importantly, it
19 would create the opportunity for the District to transform a racially concentrated school
20 into an integrated school.
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25 ⁶ Significantly, the locations of Cragin and Whitmore run counter to the recommendation
26 of the consultant the District engaged to evaluate its magnet schools. In its Tucson Magnet
27 Schools Evaluation Final Report, November 11, 2016, Marzano Research wrote: "If the
28 district decides that it can support new magnet schools, consider locating them in the
central region of the city. Survey results indicated strong preference for this region for
magnet schools for a variety of themes. Further, preference for the central region tended to
be more consistent across racial and ethnic groups than preference for other regions."
TUSD 2016-17 Annual Report, Appendix II-31, Doc. 2058-3, at ECF 118.

1 Given the important role magnet schools play “as one of two primary means for
2 promoting integration in the district” (June 22, 2020 Order at 7:11-12), the Mendoza
3 Plaintiffs believe that it is noteworthy and a cause for concern that the MPPP fails to state
4 that promoting integration was one of the factors that was taken into account in
5 determining the most promising candidates for a new magnet program. In fact, integration
6 is barely mentioned in the MPPP and, while the Director of Desegregation and the
7 Desegregation Research Project Manager served on the 2018-19 committee to identify
8 potential magnet schools and themes, they apparently were not part of the 2020 Magnet
9 Development Committee that set magnet priorities. (*Compare* Doc. 2517-3 at ECF 2 *and*
10 Doc. 2517-3 at ECF 10.)
11

12 For all the reasons set forth above, the Mendoza Plaintiffs therefore request that the
13 Court direct the District to reassess the schools that are to be priority candidates for new
14 magnet programs based on which such schools, if designated magnet schools, in addition
15 to meeting the other factors TUSD has considered, will best promote integration in the
16 District and that it document why Tolson is not the preferred candidate to become the
17 District’s next elementary magnet school.
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20 **Integration Improvement Plans**

21 Roskruge

22 The Mendoza Plaintiffs will discuss the Roskruge Targeted Integration Action Plan
23 (Doc. 2517-2) more generally below. However, because the plan includes one integration
24 “strategy” to which they strongly object, they begin their discussion of the plan with that
25 “strategy”.
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1 The Roskruge plan includes as an integration “strategy”: “Continue to work with
2 T.U.S.D.’s Native American Student Services to complete Release of Information (ROIs)⁷
3 on current students that have not been registered under a tribe but rather as Hispanic.”
4 (Doc. 2517-2 at 6.) As Mendoza Plaintiffs understand this “strategy”, the District is
5 seeking to reclassify current Roskruge students who have self-identified or are otherwise
6 recognized as Hispanic/Latino to “Native American” in order to improve the school’s
7 integration numbers. As much as Mendoza Plaintiffs wish to see Roskruge preserve its
8 status as a magnet school, they object to an approach that simply manipulates the numbers
9 the school reports about the race/ethnicity of its student body, does not change its students’
10 experience of diversity/integration one whit, may seek to impose a racial/ethnic identity on
11 a child counter to the self-identification of the child and his/her family, and appears to
12 misuse a form intended for an entirely different purpose to serve as the basis for TUSD’s
13 integration reporting.

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17 The Roskruge plan follows the same template as all the integration plans the
18 District prepared pursuant to the Court’s Orders of June 22, 2020 (Doc. 2486) and June 15,
19 2020 (Doc. 2474). (These plans are grouped together in Doc. 2517-5.) Unfortunately,
20 perhaps as a consequence of having shared a common template, the Roskruge plan fails to
21 adequately address integration challenges - - and opportunities -- unique to Roskruge.

22
23 As a preliminary matter, while the Mendoza Plaintiffs understand that under the
24 magnet school rubric now in place Roskruge is not subject to the requirement that it have a
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26 ⁷ Mendoza Plaintiffs understand this to be a reference to a form provided by the TUSD
27 Native American Student Services Department pursuant to which a parent or guardian
28 consents to the release of TUSD information about a student to the federal Tribal
Education Department for a program of support to Pascua Yanqui students. A copy of that
form, located on the TUSD website, is attached as Exhibit 2.

1 Targeted Academic Improvement Plan because it is an AzMerit “C” school that has
2 received a TUSD MagnetMerit grade of “B” (Doc. 2517-1 and Doc. 2501-1 (reporting on
3 MagnetMerit grade of “B” analysis as applied to Roskruge and other AzMerit “C” magnet
4 schools)), the fact nonetheless remains that strong academic achievement is important to
5 increasing the “magnetism” of the school and its potential to become integrated.⁸
6

7 Therefore, they are disappointed to see that an enhanced effort to improve the academic
8 achievement of Roskruge students is not expressly identified as a strategy Roskruge will
9 pursue not only for its own critical importance but also to advance integration.
10

11 Like all the other plans, the Roskruge plan begins with the anodyne statement that
12 the “foundation” of the school’s marketing and recruitment efforts will be the District’s
13 Knowledge Changes Everything campaign identifying the benefits of attending school in a
14 diverse environment. (*Compare* Doc. 2517-2 at 4-5 *and* Doc. 2517-5 at ECF 22-23.) Like
15 the other integration improvement plans, the Roskruge plan then has a short additional
16 statement of the particular attributes of the school that it also will highlight in its
17 marketing. (*See* 2517-2 at 5 (Roskruge) and, *e.g.*, 2517-5 at ECF 7 (Banks) and 15
18 (Cholla).) In the case of Roskruge, this includes the following: “Roskruge...will continue
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21 ⁸ This Court has been explicit on that point. (*See, e.g.*, Order dated 1/1/2015 (Doc. 1753)
22 at 10: 3-12 (“Integration and student achievement are linked together because the goal of a
23 magnet school is by definition to ‘attract a racially diverse student body by creating a
24 school so distinctive and appealing – so magnetic – that it will draw a diverse range of
25 families from throughout the community eager to enroll their children, even if it means
26 having them bused to a different, and perhaps distant neighborhood. To do so, the magnet
27 schools must offer educational programs of high caliber that are not available in other area
28 schools.’ (2011 Magnet Study (Doc. 1738) at 3.) In the best magnet schools, the magnet
components, many of which are associated with effective schools, add up to higher student
achievement. *Id.* In other words, high academic standards will draw students to a magnet
school, and an effective magnet program will improve student achievement.”)) As to
Roskruge in particular, this Court has said: “Roskruge...will be required to have a
competitive academic program” and “Roskruge...must provide a high-quality
education...” (Order dated 2/26/19, Doc. 2205, at 4:27-5:1 and 5:17-18.)

1 to highlight the bilingual, biliterate, and bicultural learning environment fostered by its
2 two-way dual language program.” (Doc. 2517-2 at 5.) Mendoza Plaintiffs respectfully
3 suggest that such an approach is a missed opportunity. As this Court has repeatedly noted,
4 a magnet school’s theme is intended to make a school so distinctive and appealing that it
5 “pulls” families to the school. (*See, e.g.*, Order dated 1/1/2015, Doc. 1753, at 10: 4-8,
6 quoted above in footnote 8.) Therefore, Mendoza Plaintiffs submit, Roskruge should be
7 aggressively marketing the benefits of a dual language education to the families of
8 potential students, not simply tagging a description of the learning environment at the
9 school onto a presentation of the benefits of attending a school with a diverse student body
10 – something that fails to distinguish Roskruge from the already integrated schools in the
11 District and others on the cusp of integration (including the 12 schools whose integration
12 plans are included in Doc. 2717-5).

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16 As the Court no doubt will recall, the Mendoza Plaintiffs have repeatedly pressed
17 the District to front the benefits of dual language education in its descriptions and
18 marketing of the dual language program, specifically that at Roskruge. Addressing that
19 issue, the Court expressly ordered that the “District “shall ensure that its District website
20 provides a comprehensive representation of the advantages of its dual language
21 programs....” (Order dated 2/26/2019, Doc. 2205, at 4:24-25.) Therefore such
22 information is readily available to the District for inclusion in the Roskruge plan
23 notwithstanding that it currently is absent from that plan.⁹
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28 ⁹ The Roskruge plan also is notably silent on the benefits of an education in an integrated
school. (*Compare* Roskruge plan, 2517-2 at 4-5 *and* Banks plan, 2517-5 at ECF 7.) Not
only does this raise a concern about how prepared the recruiters for Roskruge will be to
champion the benefits of attending an integrated school; it also underscores what is
missing from Roskruge’s plan: a point by point statement of the educational benefits of a

1 Compounding this deficiency is the fact that, like all the other integration
2 improvement plans, the Roskruge plan says that its administrative and office staff and all
3 other “relevant” staff took online training to understand the benefits of “integrated
4 education” (see Doc. 2517-2 at 5 and e.g., Doc. 2517-5 at ECF 23 (Maxwell) and 31
5 (Robins)) but, significantly, is silent on any training to ensure that all administrative, office
6 and other “relevant” staff know and are able to communicate the benefits of a bilingual
7 education. Such professional development should be an express component of the
8 Roskruge plan.
9

10 Also of concern is the failure of the Roskruge plan to address the realities of a dual
11 language program: that is, that the key entry points for the K-5 program are at kindergarten
12 and first grade (and that in higher grades a student who does not live in the neighborhood
13 but is seeking to enter the program should be able to demonstrate Spanish language
14 ability)¹⁰. The plan recites (as does every other elementary and K-8 school integration
15 plan) that the school will be deemed to be making progress toward integration if it is
16 integrated in kindergarten and such integration is maintained through first grade.
17

18 (*Compare* Doc. 2517-2 at 1 and, e.g., Doc. 2517-5 at ECF 51 (Kellond).) Yet, no data is
19 presented on the Roskruge 2019-20 enrollment broken down by race and ethnicity for
20 these grades and no “goal” is set in relation to those crucial years. Instead, based on total
21 K-8 enrollment, the plan states that the school’s “Targeted Recruitment Goal” is “106 non-
22

23 bilingual education like that included in the Banks plan concerning education in an
24 integrated school.

25 ¹⁰ Mendoza Plaintiffs frame the issue this way because it remains unclear to them whether
26 the District is in fact requiring that non-neighborhood children applying to the dual
27 language magnet schools, Roskruge and Davis, must demonstrate language ability as a
28 prerequisite for acceptance or whether this remains a preference but not a requirement.

1 Hispanic students” (over all grades) (Doc. 2517-2 at 3). Indeed, while the plan says that its
2 “analysis and strategies focus on K-5 integration, starting at entry levels kindergarten and
3 1st grade” (*id.* at 2), as noted above, its “analysis” omits any indication of how many non-
4 Latino students should be recruited for kindergarten and first grade to integrate those grade
5 levels (where, Mendoza Plaintiffs submit, the school should be particularly focused) and
6 virtually nothing is said about reaching families of children who might enter at
7 kindergarten or first grade beyond planning to distribute brochures to 13 **neighborhood**
8 preschools¹¹ and to drop off flyers and pamphlets at other otherwise unspecified daycares
9 and preschools. (*Id.* at 7, emphasis added.) For example, nothing is said about targeting
10 with more than a drop off of paraphernalia¹² and brochures preschools or other locations
11 that serve families in the **non-neighborhood** “targeted zone” “to the east of
12 Roskrige...with 30 or more recruitable white students in grades K-4.” (Doc. 2517-2 at 2.)
13 Indeed, none of the strategies set out in the plan seem to focus on that targeted zone (or the
14 specific goal of recruiting non-Latino students) at all.

15
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18 Notably lacking as well is any “peer to peer” recruitment – a strategy the Court has
19 repeatedly endorsed as a way to encourage families to participate in ALEs and attend
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23 ¹¹ Mendoza Plaintiffs fully understand that many marketing and outreach strategies must
24 be adapted or deferred while schools and communities are wrestling with the challenges
25 presented by the coronavirus, and the plan contains “during COVID” components (Doc.
26 2517-2 at 6.) However, the other (non “during COVID”) plan components are put forth
27 for consideration in a non/post COVID world and must be evaluated in that context.

28 ¹² Mendoza Plaintiffs question whether the “giveaways” referenced under the plan’s first
integration strategy are of significant value particularly in what is intended to be a
“**targeted** integration action plan,” and suggest that the money expended on such
“giveaways” might be more effectively spent on the creation of videos that provide
testimonials from students and parents about the value of the Roskrige dual language
education. (*See* discussion on videos below.)

1 UHS. Indeed, families (both for input on what works¹³ and as partners in its
2 implementation) are notably absent from the plan. Mendoza Plaintiffs therefore suggest
3 that particularly “during COVID”, families of currently enrolled non-Latino students
4 should be enlisted to be ambassadors for the school, reaching out to non-Latino friends to
5 encourage them to consider Roskruge for their children and being “matched” with families
6 of non-Latino families who have shown an interest in the school.
7

8 Mendoza Plaintiffs also note in the “COVID plan” section of the plan a strategy
9 that, they suggest, should be expanded and implemented both “during COVID” and
10 beyond. Apparently, it was only the onset of COVID that led the District to propose that
11 Roskruge create a “Roskruge Alumni” video “where former students make short clips of
12 what they most appreciate from what the dual language program taught them”. (Doc.
13 2517-2 at 7-8.) Mendoza Plaintiffs suggest that the video initiative should be expanded to
14 include testimonials from current families and students as well as information from
15 authoritative sources about the educational advantages of dual language study.¹⁴
16
17

18 For all the reasons set forth above, the Mendoza Plaintiffs ask that the District be
19 directed to expeditiously revise the Roskruge Targeted Integration Action Plan.
20

21 Other School Integration Plans

22 As a preliminary matter, Mendoza Plaintiffs object to the integration standard set
23 forth in all of the individual school integration plans for all of the reasons they have
24

25 ¹³ Indeed, notwithstanding that Roskruge has been under a mandate to integrate for years it
26 is only now proposing to “create a survey [in 2020-21] that will go to all new Roskruge
27 families asking them to provide information about how they heard about Roskruge for
28 enrollment...” (Doc. 2517-2 at 7.)

¹⁴ Mendoza Plaintiffs provide this level of detail not because they are seeking to “micro
manage” but because when they critique a District initiative they frequently are challenged
to suggest something better. Therefore, they undertake to do so above.

1 previously asserted. As with their objection to the definition of integration in the CMP,
2 above, rather than repeat those objections here, they respectfully invite the Court's
3 attention to their most recent statement of those objections in Doc. 2507 at 3:19-4:13, and
4 their earlier articulations of those objections cited therein.

5
6 Mendoza Plaintiffs further object to the fact that none of the school plans grouped
7 together within Doc. 2517-5 have a "during COVID" component like that in the Roskruge
8 plan. Plainly, "during COVID" adjustments were called for and should have been part of
9 each plan included in Doc. 2517-5 just as they are part of the Roskruge plan.

10
11 With respect to the individual school plans, Mendoza Plaintiffs here focus on the
12 plans for two schools in particular, Kellond and UHS, because the plans for those schools
13 must be assessed against TUSD's USP obligation to expand access to ALEs in addition to
14 its obligation to further integrate its schools.

15
16 Kellond

17 Kellond is one of the schools in TUSD that offers the self-contained GATE
18 program. (See the Court's discussion of the GATE program in its Order dated 6/15/20,
19 Doc. 2472, at 6:18-7:1.) As the Court noted in the 6/15/20 Order, "the limited number of
20 these programs limits availability." (*Id.* at 6:6-7:1.) Unfortunately, TUSD has failed to use
21 the development of an integration (and related transportation) plan for Kellond as an
22 opportunity to also plan for expansion of the school's self-contained GATE program.

23
24 In this regard, what is noteworthy about Kellond is that it has significant capacity to
25 grow its school population. While it had a 2019-20 enrollment of 479 (Doc. 2517-5 at
26 ECF 51), it has an enrollment capacity of between 700 and 714. (Doc. 2476-12, TUSD
27 Planning Services, Building Capacity, a copy of which is filed herewith as Exhibit 3.) Yet,
28

1 although it is on the cusp of meeting the USP definition of integration (Doc. 2517-5 at
2 ECF 51-52), and likely can obtain and maintain integrated status if it acts proactively to do
3 so, the District has not used the creation of an integration improvement action plan for
4 Kellond as an opportunity to simultaneously expand the school's self-contained GATE
5 program to reach more qualified African American and Latino students.
6

7 According to the District's most recent ALE filing, of the 572 students who
8 qualified to participate in self-contained GATE in 2019-20, only 162 actually enrolled.
9 (Status Report for Advanced Learning Experiences, September, 2020, Doc. 2520-1 at ECF
10 12.) Of these, 199 were Latino and 29 were African American. (*Id.*)¹⁵ That many of these
11 students may have then participated in pull-out or resource GATE (*id.*), both of which
12 offer a less robust experience than self-contained GATE, does not mean that the District
13 should not be doing more to facilitate participation in the self-contained GATE program
14 particularly when a school like Kellond – an “A” school (Doc. 2517-5 at ECF 55) that
15 already has a successful GATE program in place – has room to expand, and when the
16 District committed (albeit half-heartedly, as Mendoza Plaintiffs will discuss further in their
17 responses and objections to the District's September 8, 2020 ALE filing, Doc. 2520, and
18 the ALE Policy Manual, Doc. 2500-1, filed on July 27, 2020) to “introduce an enrollment
19 opt-out policy... in the self-contained GATE program for SY 2020-21.” (Order dated
20 6/15/20, Doc. 2474, at 9: 19-20.)¹⁶
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25 ¹⁵ Mendoza Plaintiffs believe that these numbers establish that the District's assertion, on
26 which the Court relied in its Order dated 8/17/20 (Doc. 2512 at 11:1-6), that the existing
27 self-contained GATE programs can accommodate all potential GATE qualifying students
28 is unfounded, as they will further demonstrate in their response to the District's September
8, 2020 ALE filing (Doc. 2520).

¹⁶ Briefly put, according to the ALE Policy Manual, the District applied the opt-out policy
only to “students who are already enrolled” at White and Pistor (Doc. 2500-1 at 8) rather

1 For the reasons set forth above and as will be further demonstrated in the Mendoza
2 Plaintiffs' response and objections to TUSD's September 8, 2020 ALE filing, the Court
3 should direct the District to revise the Kellond integration plan to include expansion, in an
4 integrated environment, of its self-contained GATE program.

5
6 UHS

7 The UHS integration improvement plan (Doc. 2517-5 at ECF 57-64) suffers from
8 two major deficiencies:

9 First, it ignores the critically important fact that as an all-school ALE, UHS is
10 subject to an ALE participation goal in addition its obligation, like all TUSD schools, to
11 seek at a minimum to recruit and enroll a study body that meets the definition of
12 integration.¹⁷ As this Court noted in its 6/15/20 Order relating to the ALE Policy Manual:
13 "The enrollment at UHS continues to fall below the ALE Action Plan enrollment goals of
14 7% African American and 38.9% Latino students." (Doc. 2474 at 20:22-23.; UHS
15 integration improvement plan showing African American enrollment of 4% and Latino
16 enrollment of 34%, Doc. 2517-2 at ECF 57.) This UHS failure is nowhere addressed in
17 the UHS integration improvement plan.

18
19
20
21 Secondly, in effort to minimize the work that UHS still must do to reach those
22 enrollment targets and attain integrated status, the District strains to demonstrate that it
23 already has satisfactorily integrated UHS by comparing the enrollment numbers of its
24 African American and Latino students at UHS with total African American and Latino
25
26 than to all students who qualified for self-contained GATE and at all TUSD schools
27 providing a self-contained GATE program.

28 ¹⁷ Mendoza Plaintiffs have separately objected to the District's use of a +/- 25% range to
measure integration, as discussed above.

1 residential population in the District notwithstanding that that has never been the test in
 2 this case or under the USP. (Doc. 2517-5 at 58-59.) Thus, it suggests that it has achieved
 3 a satisfactory result in enrolling African American students as four percent of the UHS
 4 student body because that “matches” demographic data indicating that four percent of the
 5 total residential population of TUSD is African American. However, in 2019-20, African
 6 American students comprised 10% of the District’s total enrollment and 9% of its total
 7 high school enrollment. (TUSD Enrollment 40th Day 2019-20, attached as Exhibit 4.)

9 The District does something similar in its discussion of the Latino enrollment at
 10 UHS, asserting that the school’s 34 percent Latino enrollment is within six percent of the
 11 40 percent Latino/Hispanic total residential population “within District boundaries” (Doc.
 12 2517-5 at ECF 58) rather than compare UHS Latino enrollment to total Latino high school
 13 enrollment of 59% in 2019-20 (or total Latino TUSD enrollment of 61%). (Exhibit 4.)
 14 Tellingly, what the District also fails to address is the fact that the chart it has presented
 15 shows that the percentage of Latino students at UHS actually declined from 2017-18 to
 16 2019-20 (albeit by a single percentage point). (Doc. 2517-5 at ECF 59.) (And additional
 17 data recently provided by the District indicates that notwithstanding some growth in total
 18 UHS enrollment in recent years, the total Latino enrollment at UHS was essentially the
 19 same in 2019-20 as it was in 2016-17 (in fact, it was one student less (393 vs. 394)) (Status
 20 Report for Advanced Learning Experiences, September, 2020, Doc. 2520-1 at ECF 26) .)¹⁸

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 25 ¹⁸ Mendoza Plaintiffs do not want to unduly burden the Court but cannot help but comment
 26 on the fact that in its zeal to convince this Court to accept its plans (and grant unitary
 27 status), TUSD invokes data that includes the UHS enrollment of Asian and Multi-Racial
 28 students (groups not before this Court) to support its assertion that it has met its burdens in
 this case because, *inter alia*, the data in the chart to which it refers “shows that, averaged
 over three school years, approximately 55 percent of UHS students are non-white.” (Doc.
 2517-5 at 58, citing chart on that page. It is impossible to get to 55% based only on the
 enrollment figures for African American and Latino/Hispanic students. Rather, one must

1 Significantly, this is not for lack of qualified candidates. The UHS integration plan reports
2 that 49 qualified Latino students (and six qualified African American students) chose not
3 to attend UHS in 2019-20. (Doc. 2517-5 at ECF 58.)

4 These numbers serve to point up a major deficiency in the UHS integration plan.
5 Following the model of all of the other integration plans, in its marketing and outreach
6 section, the UHS plan states that its outreach will highlight the benefits of education in a
7 diverse academic community, the scholarships its students win, the availability of clubs
8 and sports activities, etc. Mendoza Plaintiffs respectfully suggest that this approach
9 reveals a failure to focus on whom UHS is seeking to recruit to meet its ALE enrollment
10 goals and achieve true integration: African and American and Latino students who have
11 qualified to attend UHS but may elect not to do so. Particularly if the Special Master's
12 concerns about "stereotype threat" are to be credited, the outreach and marketing message
13 that UHS should be communicating is that these students can attend UHS **and** succeed,
14 academically and socially. Therefore, Mendoza Plaintiffs suggest, the marketing and
15 outreach strategy should be tailored to convey that message. They note that there are
16 aspects of this message included in the plan (for example, a recruiting message that UHS
17 has more National Hispanic Scholars than any other high school in the country (*id.* at ECF
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22 include the enrollment numbers for UHS Asian and Multi-Racial students.) TUSD's major
23 argument is that UHS is more diverse than the other exam schools it has elected to
24 compare itself to based, as noted above, not on school district enrollment numbers, but,
25 rather, overall residential population. That aside, such data does not establish that TUSD
26 has met its obligations under the USP. *See, Little Rock School Dist. v. Arkansas*, 664 F.3d
27 738, 751 (8th Cir. 2011) (stating that "mere comparisons" with other school districts are
28 "insufficient to satisfy *Freeman*" when determining whether the school district has
satisfactorily met its obligations in the area of advanced placement under the governing
consent decree). Moreover, as the press has reported at great length, many of the schools
TUSD has elected to compare to UHS, particularly those in New York City, are under
great pressure to better integrate. *See, e.g., "Opinion: It's Time to Integrate New York's
Best Schools"*, www.nytimes.com/interactive/2018/06/24/opinion/editorials/new-york-specialized-school.html.

1 62) and a strategy that would have the Recruitment and Retention Coordinator bring
2 African American and Latino UHS students back to their middle schools to tell their
3 stories of success when recruiting at those schools (*id.* at ECF 63))¹⁹ but the message does
4 not appear to be a “highlight” or centerpiece of the recruitment strategy.

5
6 Similarly, given the particular recruitment challenges faced by UHS, the standard
7 (to the TUSD integration plans grouped in Doc. 2517-5) statement in its plan that all
8 administrative, office, and other “relevant” staff have received training on the benefits of
9 education in an integrated learning environment (*id.* at ECF 62) falls short when the need
10 is for such staff to have been trained to recruit in a culturally competent manner that
11 anticipates and addresses concerns about being able to succeed and feel accepted at UHS.

12
13 Finally, the Mendoza Plaintiffs object to the portion of the transportation section of
14 the plan (*id.* at ECF 61) that states that the District will “explore” if express routes “can
15 make an impact” and that the “District will also explore the possibility of adding an
16 express shuttle from the south or west side of the District to serve racially concentrated
17 neighborhoods if such could be shown to improve acceptance rates.” While the Mendoza
18 Plaintiffs understand that such “exploration” may be difficult “during COVID”, the
19 District has had the obligation to grow African American and Latino enrollment at UHS
20 for many years that preceded the onset of the pandemic. Therefore, that it has yet to
21 undertake a survey or other outreach to African American and Latino students qualified to
22 attend UHS who are living in racially concentrated neighborhoods but declined to attend to
23 determine if the availability of an express bus would have affected their decision suggests
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27 ¹⁹ Again, Mendoza Plaintiffs understand that this cannot happen “during COVID” but
28 UHS could be preparing videos of these students to post on its website and send to students
who have qualified for admission, etc.

1 that the District has yet act to integrate UHS to the extent practicable. Moreover, Mendoza
2 Plaintiffs do not believe that the failure to have engaged in such analysis can be justified
3 on the basis that TUSD has determined to classify UHS as a “Year 2 Priority” school (Doc.
4 2517-4 at ECF 3) for integration improvement purposes given the District’s independent
5 obligations under the USP to increase access to UHS as an ALE.
6

7 **Transportation Plan**

8 Mendoza Plaintiffs object to the Transportation Plan on the grounds that it is not
9 really a plan but, rather, a statement of current transportation policies. (Mendoza Plaintiffs
10 tendered the same objection to the Transportation Plan as originally filed in August 2019.
11 (See Mendoza Plaintiffs’ Response to TUSD Notice of Filing of 3-Year Plus Integration
12 Plan (Doc. 2275) (“Mendoza 2019 Transportation Response”) at 9:20-10:17 and the
13 August 2019 Transportation Plan (Doc. 2270-4).))
14

15 One example of this is of particular concern to the Mendoza Plaintiffs. In the
16 section discussing the limiting of costs by utilizing existing routes rather than adding
17 routes, TUSD says that a “challenge with this strategy is that it may make it harder to
18 integrate a magnet school if the District is also offering free transportation to a nearby non-
19 magnet school – it may diminish the attractiveness of the magnet as the free transportation
20 ‘carrot’ is key to recruiting.” (Transportation Plan, Doc. 2517-6, at 5.) Tellingly, the plan
21 fails to set forth any criteria according to which the District will determine whether the
22 cost saving outweighs the risk of reducing integration of a given magnet school or what
23 steps it will put in place to reduce such a risk. Mendoza Plaintiffs believe these matters
24 must be addressed in the plan.
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Incentive Transportation

1
2 The section entitled Proposed Change to the Interpretation of Incentive
3 Transportation (Doc. 2517-6 at 2) lacks needed clarity and, depending on what the plan
4 actually intends, may be subject to objection. As Mendoza Plaintiffs understand the text,
5 the District may create an incentive zone if it concludes that the relevant census tract
6 includes at least 30 students who do not then attend TUSD schools whose attendance at the
7 designated receiving school would help integrate that school. What is unclear is whether
8 the District is undertaking to provide free transportation from the incentive zone to the
9 designated receiving school even if some or all of the students who actually seek to take
10 advantage of that free transportation will NOT help integrate the receiving school. If that
11 is the case, the Mendoza Plaintiffs object to the provision and suggest that it fails to
12 comply with the Court’s June Magnet Order. In that Order, the Court explicitly stated that
13 it was approving the District’s proposal to create “incentive zones” “based upon the same
14 eligibility criteria currently applied to students residing in racially concentrated
15 neighborhoods” (Order dated 6/22/2020, Doc. 2486, at 14, n.12), that is, that their
16 “enrollment will enhance integration at the receiving school.” (USP, Section II, G, 2, b.)

Transportation in Support of Advanced Learning Experiences

Self-Contained GATE

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24 With respect to transportation to self-contained GATE programs, Mendoza
25 Plaintiffs remain concerned that the District has not demonstrated in the Transportation
26 Plan that routes have been adjusted to address the concern that “one of the main reasons
27 given for not sending qualified students to Self-contained GATE programs is
28

1 access GATE program at Tully because Tully is a magnet school (and arguably included in
2 the Transportation Plan’s discussion of magnet school transportation). However, it is only
3 by reading the ALE Policy Manual (Doc. 2500-1 at 13) that one can learn that the District
4 limits free transportation to Roberts-Naylor to participate in the open-access GATE middle
5 school program to those students who have attended Tully. Mendoza Plaintiffs object to
6 this limitation and request that the District be ordered to provide free transportation to all
7 participants in the Roberts-Naylor open-access GATE strand if they live outside the
8 school’s “walk zone”. They additionally object to the failure of the Transportation Plan to
9 reference transportation for open access GATE or to discuss the role of transportation in
10 decisions regarding growth or expansion of the open access GATE program.
11
12

13 Dual Language

14 The Transportation Plan fails to comply with the Court’s direction relating to
15 planning for transportation for attendance at TWDL schools. It includes the statement that
16 TUSD provides free transportation to any student enrolled in a TWDL program who lives
17 outside the “walk zone” for the school in which that student is enrolled (Transportation
18 Plan, Doc. 2517-6, at 3), but fails to include any discussion of the role of transportation in
19 decisions regarding growth or expansion of TWDL programs notwithstanding that the
20 Court’s Order dated 6/15/20 expressly required the Transportation Plan to “clarify
21 transportation as a criterion for selecting future candidates for ...non-ALE dual language
22 TWDL schools.” (Doc. 2474 at 25:1-3.) The Court should now require compliance with
23 that Order.
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25
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Express Shuttles

1
2 As an initial proposition, Mendoza Plaintiffs note that TUSD has failed to comply
3 with so much of the Court’s 6/15/20 Order as required TUSD to clarify that the express
4 shuttles are “transporting students from racially concentrated school neighborhoods or
5 incentive zones to schools where the student’s enrollment is improving integration of the
6 receiving school. Alternatively, free express shuttles may transport students, living beyond
7 school attendance boundaries, to schools hosting qualifying programs.” (6/15/20 Order,
8 Doc. 2474, at 24:2-8.)
9

10 The Plan lists the race and ethnicity of the students riding the express shuttles
11 serving non magnet schools Sabino and Santa Rita but fails to indicate whether they are
12 traveling from racially concentrated school neighborhoods. (Doc. 2517-6 at 4.) Yet, the
13 Plan also expressly states that the Sabino express shuttle is “part of the incentive
14 transportation program”. (*Id.*) The District tries to justify the Santa Rita express shuttle on
15 the alternative ground that it is providing transportation to a school that hosts “qualifying
16 programs.” However, it points primarily to the school’s programs for career readiness
17 which are not qualifying programs because they are not ALEs. It also says that the
18 express shuttle affords access to the school’s dual credit courses but fails to show that the
19 four students in question actually are enrolled in dual credit courses.
20
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22

23 It also appears that the information on express shuttles is incomplete. According to
24 the TUSD website, the District offered students who planned to attend the newly reopened
25 Wakefield Middle School the opportunity to take an express shuttle to the school from
26 Pistor and Booth-Fickett Middle Schools. Although the express shuttle is presented on
27
28

1 both the TUSD express shuttle website and the Wakefield school website, it is omitted
2 from the Transportation Plan.²¹

3 Cost

4 The District’s statement in 2017 that it was unable to create alternative routes to
5 reduce travel time to self-contained GATE schools due to budget constraints (9/6/18
6 Order, Doc. 2123, at 65:23-66:5) calls into question the statements in the Transportation
7 Plan that transportation costs are “generally not a factor” in the growth or expansion of the
8 self-contained GATE program or any other ALE program. (Transportation Plan, Doc.
9 2717-6, at 7-8.) Further, Mendoza Plaintiffs do not understand, and the District has
10 provided no data to support, the assertion that expansion of self-contained GATE and
11 GATE cluster programs to a new school or adding a classroom to an additional school
12 “does not increase transportation costs, as fewer students need transportation to access a
13 self-contained GATE program” or a full time GATE cluster program. (*Id.* at 7, 8.)
14 Mendoza Plaintiffs do not understand how expansion to a new school or addition of
15 additional classrooms leads to fewer students needing transportation. By way of example,
16 Mendoza Plaintiffs do not understand how the addition of grades 7 and 8 to the Hollinger
17 TWDL GATE program and the movement of students from the Pistor TWDL GATE

21
22
23 ²¹ Likely as a consequence of having failed to fully edit the revised Transportation Plan,
24 the District also currently says, under the plan heading “IB Program” (Doc. 2517-6 at 8),
25 that it would be impractical to add routes to serve Cholla High School from the
26 east/northeast portions of the District even as the section “Transportation as a criteria for
27 selecting future candidates for Integrated schools” (*id.* at 6) says that it is planning an
28 express shuttle from Doolen Middle School to Cholla. Further, even as the plan states that
the District does not believe “there is a practical potential for a shuttle from the northeast
area of the District to Cholla” (*id.* at 8), the Cholla integration improvement plan reports
that the shuttle to Sabino, in the far east corner of the District, initiates at Cholla. (Doc.
2517-5 at ECF 13.) Presumably, if a shuttle can run from Cholla to the northeast, one also
can run from the northeast to Cholla.

1 program to Hollinger would not have entailed transportation costs (even assuming that a
2 significant number of the participants in the program had attended Hollinger through grade
3 6) since, assuming Mendoza Plaintiffs are reading the boundary maps correctly, students
4 who might have been in the “walk zone” for Pistor, would not be in the “walk zone” for
5 Hollinger.
6

7 Similarly, with respect to the creation of the 7th and 8th grade open access GATE
8 strand at Roberts-Naylor, Mendoza Plaintiffs do not understand how the provision of free
9 transportation to students who had attended Tully to enable them to participate in the
10 program would not have entailed cost. (And, as noted above, Mendoza Plaintiffs believe
11 that that cost might need to be greater to meet their objection to the District’s current
12 policy of limiting the offer of free transportation to only those program participants who
13 attended Tully.)
14

15 Finally, as noted above in their discussion of the Kellond integration improvement
16 plan, Mendoza Plaintiffs believe that costs will need to be incurred to expand the Kellond
17 program to accommodate more of the many TUSD students who have qualified for self-
18 contained GATE but elected not to participate in the program, particularly when the
19 District implements the full opt-out approach that, Mendoza Plaintiffs believe, already has
20 been ordered by the Court.
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1 **CONCLUSION**

2 For the reasons set forth above, the Court should sustain the Mendoza Plaintiffs’
3 objections to the District’s Revised Comprehensive Magnet Plan, Magnet Program
4 Priorities Plan, Integration Improvement Plan, including the individual school plans for
5 Roskruge, Kellond, and UHs, and the Transportation Plan.
6

7
8 Respectfully submitted,
9

10 Dated: September 15, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, I electronically submitted the foregoing
**MENDOZA PLAINTIFFS' RESPONSE AND OBJECTION TO TUSD SECOND
SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE (DOC. 2486) RE:
MAGNET SCHOOL CRITERIA AND SCHOOL INTEGRATION PLANS**
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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