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22
23 **IN THE UNITED STATES DISTRICT COURT**
24 **FOR THE DISTRICT OF ARIZONA**

25 Roy and Josie Fisher, et al.,
26 Plaintiffs,
v.
Tucson Unified School District No. 1, et al.,
Defendants.
Maria Mendoza, et al.,
Plaintiffs,
v.
Tucson Unified School District No. 1, et al.,
Defendants.

4:74-cv-0090-DCB
(Lead Case)

4:74-cv-0204 TUC DCB
(Consolidated Case)

27
28 **DISTRICT REPLY**
29 **TO MENDOZA PLAINTIFFS' OBJECTION (ECF 2524)**
30 **TO SECOND SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE**
31 **RE: MAGNET SCHOOL CRITERIA AND SCHOOL INTEGRATION PLANS**
32 **(ECF 2517)**

1 Subject to and without waiving its objections previously stated and referenced
2 herein, the District hereby replies to the Mendoza Plaintiffs' objection (ECF 2524) to the
3 District's Second Supplemental Notice and Report of Compliance related to Magnet
4 School Criteria and School Integration Plans (ECF 2517).

5 **A. THE CMP REVISIONS COMPLY WITH THE COURT'S ORDERS.**

6 The Court ordered the District to make various revisions to the CMP related to
7 supporting existing magnet programs and eliminating magnet programs. The District
8 made the requisite revisions and no party objected. Instead, Mendoza Plaintiffs object to
9 the inclusion of a new integration definition and new academic criteria, both developed
10 in conjunction with Dr. Hawley, as directed by the Court.

11 **1. Integration**

12 The CMP is clear about the process of classification to identify and provide
13 differentiated levels of support for integration. After analyzing data, the Magnet Review
14 Committee "categorizes each magnet school into one of three levels for each of the
15 magnet criteria (integration and student achievement), based on identified needs..."
16 including classifying a magnet school as Level B if it "needs additional support and
17 monitoring" in its integration efforts (CMP, 2517-1 at 7). Thus, a Level B school is
18 defined as one that needs additional support and monitoring, above and beyond the
19 standard level of support provided to a Level A school, in its efforts to improve
20 integration. Level A and B schools must be integrated, but it is the degree of identified
21 need, not the degree of integration, that determines the level of support provided.¹

22
23 ¹ For example, the magnet review committee might label as Level B a magnet school that
24 is integrated but is eight percentage points from racial concentration, and a magnet school that
25 is integrated but only two percentage points from racial concentration if the analysis of need
reveals that both schools need additional support for the implementation of integration strategies.

1 Level C schools must develop targeted integration improvement plans, but Level
2 A and B schools must still develop actions that support integration goals based on their
3 status. This component of the CMP is designed specifically to ensure that all magnet
4 schools attain and maintain integrated status. The District requests that the Court reject
5 the Mendoza Plaintiff suggestion that the CMP must be revised to clarify how magnet
6 schools are classified and monitored with respect to integration.

7 **2. Academic Achievement Gap**

8 As the Mendoza Plaintiffs acknowledge, “All magnet schools ... currently have
9 explicit goals that relate to closing [the] achievement gap” (Mendoza Objection to Magnet
10 Academic Criteria, ECF 2507 at 4:1-4). Indeed, the District has for the last seven years
11 consistently acted on, monitored, and reported on achievement gaps in past annual reports
12 and other filings. Despite this, the Mendoza Plaintiffs nonetheless demand that
13 elimination of achievement gaps be stated as a goal in the Comprehensive Magnet Plan.
14 The District believes the CMP is the appropriate place to set broad and constant goals for
15 magnet school academic achievement (A or B letter grade); the magnet school plans are
16 the appropriate place to set specific, school-by-school goals for alternative measures of
17 academic achievement such as growth for the lowest 25% of students, and closing the
18 achievement gap.² The District respectfully objects to this request, and does not believe
19 that it is required by prior orders or appropriate in the circumstances.

20 **B. THE MAGNET PROJECT PRIORITIES PLAN COMPLIES WITH THE** 21 **COURT’S ORDERS.**

22 ² The Court “relies on the state AZMerit scores for two reasons 1) they reflect the
23 academic performance of a school and 2) the scores are readily apparent and easily understood
24 by students and parents. ... The AZMerit grades are the only readily apparent measurement of
25 school performance that exists at this time... [a magnet school] with an AZMerit grade A or B is
per se a magnet in respect to student achievement” (*Id.*).

1 The District assessed various data points including the prior magnet theme study,
2 potential magnet candidates, transportation, costs, and other factors to develop the MPPP.
3 Mendoza Plaintiffs do not object to the process, the identified theme, or the ultimate
4 determination to being the new magnet process next year. They do, however, object to
5 the selection of Cragin and Whitmore as the primary potential magnet candidates because
6 Cragin is integrated, both are “C” schools, and they claim that both are in the northwest
7 quadrant of the District and thus will not be able to attract Hispanic students.

8 The purpose of creating a new magnet program is to increase the number of
9 students benefitting from an integrated education. The District achieves this by
10 improving access for “students of all racial and ethnic backgrounds to have the
11 opportunity to attend an integrated school,” as stated in the USP (see USP II.A.1, ECF
12 1713 at 8). The goal is not, as Mendoza Plaintiffs propose, to increase the number of
13 integrated schools. Increasing the number of schools without increasing the number of
14 students benefitting from an integrated education is pointless.³

15 The District spent considerable time evaluating potential magnets using multiple
16 criteria. The District objects to the Mendoza plaintiffs’ suggestion that it should rule out
17 any school that is already integrated, and any school that is not currently and A or B
18 school – neither of which were among the criteria the Court directed the District to
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20
21 ³ In 2013, the District created a second, more-integrated fine arts feeder for Utterback
22 magnet by creating a fine arts magnet at Cragin. This strategy was not designed to increase the
23 number of integrated schools, but to increase the number of students attending an integrated
24 Cragin and to help integrate Utterback. Unfortunately, based in part on Mendoza Plaintiffs’
25 objections, Cragin never became an integrated fine-arts magnet feeder to Utterback – and we
will never know if Utterback could have become an integrated magnet school as designed by
the District, having received an integrated population through Cragin’s fine arts pipeline for the
past few years.

1 consider in evaluating potential magnet schools.⁴ The Mendoza Plaintiffs argue both that
2 a new magnet should only be used to convert a non-integrated school into an integrated
3 school, and that it should not be used to move a school from a C to an A or B.

4 Though there are no current letter grades for Cragin or Whitmore (no schools took
5 the state assessment in SY2019-20), Whitmore was only 1.35 points away (on a 100 point
6 scale) from a B letter grade in SY2018-19. The Mendoza Plaintiffs’ statement that both
7 schools would need a “dramatic change” in student performance to avoid starting their
8 magnet (in SY2023-24) on a targeted academic plan is based on unsubstantiated
9 conjecture, not data or evidence.

10 The Mendoza Plaintiffs also mischaracterize the location of Cragin and Whitmore
11 as being in the “northwestern quadrant” of the District. The District is separated into five
12 geographic regions: Silverbell (west), Santa Cruz (west-central), Arroyo Chico (central),
13 Arcadia (east-central), and Pantano (east). Cragin is in the central Arroyo Chico region,
14 a region with seven integrated schools, including Mansfeld magnet school. Whitmore is
15 in the east-central Arcadia region, a region with ten integrated schools, including Bonillas,
16 Booth-Fickett, Dodge, and Palo Verde magnet schools. The suggestion that Cragin or
17 Whitmore will not be able to attract Hispanic students defies all logic and evidence: in
18 SY2019-20 Cragin was 47% Hispanic; Whitmore was 41% Hispanic. The Court should
19 reject the suggestion that Hispanic students only live in the southern and western parts of
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21
22 ⁴ The Court found “the District may use a more commonly accepted definition of
23 Integration going forward, including its development of the 3-Year PIP MPPP...” (Order on
24 Student Assignment, ECF 2486 at 8). The Mendoza argument would eliminate five of the six
25 elementary magnet candidates as all but Tolson are integrated by the new definition of
Integration (rendering all other considerations moot, including location, transportation, school
readiness, proximity to community partners, etc.).

1 the District or that centrally located schools will be unable to recruit Hispanic students⁵.
2 If adopted, such antiquated assumptions will operate to work against integration efforts.

3 The Court should also reject the Mendoza plaintiffs' request for a directive from
4 the Court ordering TUSD to justify its selection of Cragin and Whitmore over Tolson.

5 This Court has recognized the primary importance of location for new magnet schools,
6 "to have an effective Magnet School Plan, the District must strategically place magnet
7 schools in central locations, generally, within an eight mile radius of the center of the
8 District, because parents will not send their children where travel time exceeds
9 approximately 20 minutes" (Order on Unitary Status, ECF 2123 at 27). The three
10 schools' distance from the District's geographic center (Broadway and Country Club) is
11 as follows: Cragin (3.2 miles, six minute travel time), Whitmore (5.3 miles, ten minute
12 travel time), Tolson (6.8 miles, 15 minute travel time). Cragin and Whitmore are
13 surrounded by transportation hubs that can facilitate faster transportation for students, and
14 express shuttles; Tolson is not near a transportation hub, lies on the west side of A-
15 mountain, and is difficult to access from the rest of the city. Many students attending
16 Tolson would have bus rides longer than 20-30 minutes. Even with the distance and travel
17 advantages for Cragin and Whitmore, Tolson was one of three of the most promising
18 candidates. In making its final decision, as outlined in the MPPP, the "Magnet department
19 conducted interviews of the principals from all three schools in order to collect and
20 analyze additional information to assess the schools' capacity, readiness, and overall
21 positioning to consider becoming a new magnet school," and based on the analysis,

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23 ⁵ See Davidson Integration Action Plan, Recruitable Students K-4th Map (ECF 2517-5 at
24 37)(revealing that Davidson is between, and equidistant to Cragin and Davidson. Cragin and
25 Whitmore, like Davidson, are high-potential integration schools close to multiple incentive zones
with 30 or more recruitable Hispanic students).

1 Cragin and Whitmore emerged as the top candidates. The District has now explained its
2 reasoning here and in the MPPP, an additional explanation for why the District did not
3 select Tolson is not necessary. Again, as pointed out by the Mendoza objection, the
4 Marzano study recommended that new magnets be located in the “central region of the
5 city.” Survey results indicated strong preference for this region for magnet schools for a
6 variety of themes. Further, preference for the central region tended to be more consistent
7 across racial and ethnic groups than preference for other regions” (Mendoza Objection,
8 ECF 2524 at 7, fn. 6). Tolson is not located in a central region of the city; Cragin and
9 Whitmore are so located. Tolson is in the western Silverbell region; Cragin and Whitmore
10 are in the central and central-east Arroyo Chico and Arcadia regions. Moreover, nine of
11 the District’s 13 magnet schools are located in the west-central part of the District; four
12 are located in the central and east-central area of the District. That Tolson would add
13 another magnet school in the western portion of the District is not persuasive given that
14 most magnet schools are already in that area.

15 Finally, Mendoza Plaintiffs argue that integration is barely mentioned in the MPPP
16 and that certain staff were apparently not part of the 2020 Magnet Development
17 Committee. The entire purpose of the MPPP is to prioritize new magnet schools:
18 integration is so fundamental to the MPPP that it did not need to be restated. Further, the
19 Director of Desegregation not only participated but, along with the Magnet Director, led
20 the 2020 Magnet Development Committee. Recommendations considered by the MDC
21 were developed in conjunction with the Desegregation Research Project Manager. As
22 directed, the District identified two viable projects for expanding the CMP after assessing
23 magnet themes, candidates, and transportation costs and considerations. The Mendoza
24 Plaintiffs’ objection should be overruled.

1 **C. THE TARGETED INTEGRATION IMPROVEMENT PLAN FOR**
2 **ROSKRUGE COMPLIES WITH THE COURT'S ORDERS.**

3 As directed, the District developed a targeted integration improvement plan for
4 Roskruge, the only remaining racially concentrated magnet school. Mendoza Plaintiffs
5 seek further unnecessary revisions to that plan, arguing that the plan should not include
6 an effort to collect data to accurately reflect student diversity at Roskruge. They propose
7 that the plan must explicitly state, as an integration strategy, the fundamental purpose for
8 the school's existence – improved academic achievement. They also complain that the
9 plan does not include the specific benefits of dual language program and of an integrated
10 education – despite that site staff and leadership are well-versed in those benefits.
11 Generally, the objections are based on an inaccurate characterization of the plan as a
12 stand-alone plan. As the Mendoza Plaintiffs are well aware, the integration improvement
13 plan is a supplement to, not a replacement of, the existing Roskruge magnet school plan
14 which includes an entire section devoted to improving integration with additional
15 strategies and resources, including strategic recruitment in target areas, promotion of dual
16 language program and benefits, and monitoring for effectiveness and impact (*see*
17 Roskruge MSP, ECF 2493-2 at 263-264).⁶

18 A year ago, Mendoza Plaintiffs purported to advocate for “the views of the Richey
19 community inclusive of the Pascua Yaqui Tribe whose students attended Roskruge as part
20 of the Roskruge neighborhood ‘annex’ following the closure of Richey Elementary
21 School” (Mendoza Objection to Roskruge Boundary NARA, ECF 2249 at 6). As stated

22 ⁶ In the past, Mendoza Plaintiffs have objected to various Roskruge plans as insufficient
23 for not engaging U of A and downtown employees, not including adequate outreach to other
24 TWDL schools or local daycares, and lacking references to the Knowledge Changes
25 Everything campaign. The current plan includes all these components (and more), but they still
find other reasons to deem it insufficient. The plan is adequate and need not be revised.

1 in the NARA, the Richey neighborhood annex enrolled nearly twice as many K-5 students
2 (42) as did Roskruge's original neighborhood boundary (22) (see Ex. 1, Proposal, ECF
3 2236-1 at 1). The District's Native American Student Services department (NASSD), as
4 part of its mandate to serve Native American students, is seeking to accurately identify
5 the number of Native American students attending Roskruge. The NASSD is not doing
6 so "to improve the school's integration numbers," but the magnet school has identified
7 that this effort will also, as a byproduct, operate to reflect the true levels of diversity at
8 Roskruge more accurately.

9 Mendoza Plaintiffs also express disappointment that the District did not identify as
10 an integration strategy the many efforts to improve academic achievement at Roskruge.
11 Again, these efforts are detailed extensively in the Roskruge magnet school plan, it was
12 not necessary to repeat those efforts in the integration plan (*see* Roskruge MSP, ECF
13 2493-2 at 267-278). These efforts are also detailed extensively in the TWDL plan, and
14 the Court has recognized that "TWDL is a solid academic program aimed at improving
15 student achievement, especially for English Learner (EL) students and that the District
16 has been and is committed to its implementation, growth, and success now and in the
17 future" (Order on TWDL Plan, ECF 2483 at 2). It is also true that improved integration
18 has been proven to enhance academic achievement – but the academic plans will not
19 include integration as a strategy. The absence of academic strategies in the Roskruge
20 integration plan does not render it insufficient.

21 The Roskruge plan explicitly states that plan is founded on the Knowledge
22 Changes Everything campaign, which "celebrates the power of diversity, seeks to educate
23 parents and students about the research-based benefits of learning from each other, and
24 encourage[es] parents to consider these benefits for their student when making decisions

1 about where to enroll their child” (ECF 2517-2 at 5-6). The plan also states that
2 Roskruge’s “marketing and outreach will continue to highlight the bilingual, biliterate,
3 and bicultural learning environment fostered by its two-way dual language Program” (Id.
4 at 6), and that it will provide professional development to Roskruge staff specifically on
5 the benefits of an integrated education and real-life recruitment scenarios ahead of the
6 2021-22 recruitment season this November (see Id.).

7 Mendoza Plaintiffs complain that the plan does not detail all the benefits of dual
8 language and an integrated education. Roskruge, as a magnet, has been promoting these
9 benefits for years. Unlike the non-magnet integration school plans, which include a
10 delineation of the benefits of an integrated education, a magnet school with a magnet
11 coordinator, supported by the magnet department and by the language acquisition
12 department, does not need such a list to be explicitly included in a plan for its recruiters
13 to be effective.⁷

14 Similarly, Roskruge is a magnet school whose staff members and recruiters are
15 well-aware of how many non-Latino students it needs in its entry grades to become
16 integrated. The CMP details the high-level of support and monitoring Roskruge receives
17 as a Level C magnet school (*see* CMP, ECF 2517-1 at 7-10). The targeted integration
18 improvement plan is incorporated into the Roskruge magnet school plan, which also
19 delineates specific strategies related to outreach and recruitment at daycares and
20 preschools, strategically identified areas for school based recruitment, partnerships with
21 community members that assist in recruiting, and other strategies. The absence of a

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23 ⁷ Mendoza Plaintiffs both complain that the Roskruge plan is insufficient because it is
24 shares the same template as the non-magnet plans, and that it is insufficient because it does not
25 include the same content as the non-magnet plans – here, the delineation of specific integration
benefits.

1 specific number of kindergarten students needed to integrate, or the decision not to repeat
2 all the strategies already listed in the MSP, does not reflect a plan deficiency. Rather, it
3 reflects the skill, knowledge, and experience of District administrators and educators: a
4 good way to make a plan less effective is to load it with too much data, information, and
5 details – particularly details that are already included in complementary plans.

6 Finally, Mendoza Plaintiffs argue the plan lacks peer-to-peer recruiting. The plan
7 includes a strategy to utilize Roskrige Alumni (including parents) as brand ambassadors
8 to conduct peer-to-peer recruiting. The Roskrige MSP includes strategies to engage
9 community members (including parents) as peer-to-peer recruiters (“Magnet Coordinator
10 will create partnerships with community members that assist in recruitment events and
11 school magnet Visibility,” ECF 2493-2 at 264). While the District appreciates the
12 Mendoza suggestion to use video testimonials of current families and students, the
13 District has in the past, and will continue to, use video of TWDL students, staff, and
14 families in its marketing and recruitment efforts – this is not a new strategy.

15 **D. THE INTEGRATION IMPROVEMENT ACTION PLANS COMPLY**
16 **WITH THE COURT’S ORDERS**

17 The Mendoza Plaintiffs begin by objecting to the District’s use of the revised
18 definition of integration, despite that this Court expressly permitted such use: “the District
19 may use a more commonly accepted definition of Integration going forward, including its
20 development of the 3-Year PIP MPPP and Action Plans” (Order on Student Assignment,
21 ECF 2486 at 8).

22 Roskrige staff decided to include a separate plan section outlining its COVID
23 approach. The Mendoza Plaintiffs seize on this, and argue that all schools (including non-
24 magnet schools) should have such a section. The District does not agree. The Roskrige

1 plan is being implemented immediately; only four of the twelve non-magnet integration
2 plans are being implemented this year. It would make no sense for the other eight schools
3 to include a COVID section when there is no indication that COVID will be an issue in
4 year two or three when those plans are implemented. The District can adjust the other
5 eight plans prior to year two and year three, if needed.

6 Roskruge is also a magnet school, with more resources and more involved and
7 detailed integration strategies (in the TIIP and the MSP). It makes sense for them to
8 outline a specific COVID-related plan in the year they are facing possible magnet
9 elimination. Roskruge recruits students from all over the city and is supported by
10 transportation districtwide, expanding the necessary planning and scope of its integration
11 strategies. The four year-one non-magnet priority schools have very small and defined
12 targeted areas of recruitment, eliminating the need for a specific COVID-related section.

13 All twelve non-magnet plans require a site integration team that reports to the
14 Director of Desegregation monthly, and requires a specific training in the fall to “engage
15 in real-life recruitment scenarios, and delve deeper into the planning and preparation for
16 [school name]’s strategies for the forthcoming enrollment period.” This provides an
17 opportunity for schools and central leadership to strategize about COVID-related
18 approaches.⁸

19
20

21 ⁸ After complaining that the Roskruge plan followed the same template as the non-
22 magnet integration plans, Mendoza Plaintiffs also complain that the non-magnet integration
23 plans did not follow the Roskruge template by adding a COVID section. Apparently, plans are
24 deficient both if they follow the same template, and if they do not. Educators are trained to
25 differentiate their teaching based on the needs and circumstances of different students. District
leadership likewise differentiated plans based on the needs and circumstances of magnet versus
non-magnet schools.

1 Next the Mendoza Plaintiffs raise issues with the plans for Kellond elementary
2 school and University High School. The first objection relies on a mistaken premise:
3 that the Kellond and UHS plans “must be assessed against TUSD’s USP obligation to
4 expand access to ALEs” (Mendoza Objection, ECF 2524 at 16). They do not need to be
5 so assessed: these plans are integration plans, and were not intended or designed to be
6 school specific ALE plans. The expansion of ALE opportunities is adequately addressed
7 on a District basis by the ALE Policy Manual, and the ALE Status Report (ECF 2500-1
8 and 2520-1). Further, this objection proves too much: if the integration plans for these
9 two schools need to address ALE expansion, then so too do all the other integration plans
10 for schools with ALE offerings, such as Doolen, Lineweaver and Wheeler (Self-
11 Contained GATE), Cholla (IB), and Bloom (Dual-Language). Indeed, the argument
12 demonstrates that the Mendoza Plaintiffs have no real substantive objections to the
13 integration provisions of any of the non-magnet integration plans, and instead demand
14 something more than the Court ordered. The requested directives should be denied.

15
16 **E. THE TRANSPORTATION PLAN COMPLIES WITH THE COURT’S ORDERS.**

17 In its orders related to both magnets (ECF 2486) and ALE (ECF 2474 and 2512),
18 the Court directed that the District revise the Transportation Plan to make clear all of the
19 various transportation which the District provided to students without charge. This the
20 District did, including a description of magnet transportation, incentive transportation,
21 and transportation provided in support of various ALE programs. The Mendoza Plaintiffs
22 complain this is a “statement of current transportation policies.” It is indeed exactly such
23 a statement, because that is what the Court requested that the District provide, so that all
24

1 transportation programs were described in one place. It ill behooves the Mendoza
2 Plaintiffs to complain that the District has done what the Court requested.

3 The Mendoza Plaintiffs next complain about a statement in the Transportation Plan
4 regarding the possible impact that transportation to one school might have on the
5 attractiveness of a nearby magnet. First, and most importantly, this has nothing to do
6 with cost savings, as the Mendoza Plaintiffs incorrectly assume: this is a general
7 observation, which may apply whether or not existing routes are used, and regardless of
8 cost, so there are no “cost savings” to outweigh the risk of this impact, and no criteria to
9 be devised. It is also hypothetical, as the District has not observed a circumstance in
10 which transportation to any one school has impacted the attractiveness of a nearby
11 magnet.

12 The Mendoza Plaintiffs next object to the use of incentive zones in the incentive
13 transportation, apparently concerned that the new student who seeks to climb on the bus
14 may be of the wrong race or ethnic group to help integrate the receiving school. The
15 District targets areas where the demographics suggest that there are sufficient students of
16 target racial or ethnic groups to warrant offering free transportation. However, once
17 transportation is offered to a target area, however, the District does not intend to prohibit
18 a new student from riding an incentive bus because of race or ethnic group – particularly
19 in a District that is two-thirds Hispanic. TUSD rejects any suggestion that it should deny
20 students an available seat on a bus due to race or ethnic group.

21 The Mendoza Plaintiffs next demand that the District adjust transportation to self-
22 contained GATE programs, because of the response to a survey listing “transportation”
23 as a reason for not sending qualified students to a self-contained GATE program. But
24 they misunderstand the meaning of the survey response – it is not that transportation could

1 be better, it is that parents frequently do not want to have to send their qualified student
2 to a different school at all: they don't want any transportation to be involved.

3 The District's response to this issue is twofold: first, pull-out GATE services are
4 provided in every school, so that every qualified student who chooses not to change
5 schools for a self-contained program has access to GATE services; second, the District is
6 focusing on expanding its cluster GATE program: whenever a new cluster GATE
7 program is opened at a school, all of the qualified students at that school who formerly
8 had to be transported to another school, if they chose a full-time (self-contained) GATE
9 program, now no longer need such transportation, because full-time GATE services are
10 available at the neighborhood school without transportation. In short, the answer to the
11 survey response is not more transportation planning, but expansion of the cluster program
12 and provision of pull-out GATE services at every school. Moreover, the Mendoza
13 Plaintiffs have again ignored that the existing size and scope of the GATE program at the
14 District is substantially larger than required by state and federal statutes, and larger on a
15 per capita basis than any other district program of which District staff are aware.

16 The Mendoza Plaintiffs next complain that the District has not separately
17 addressed transportation for the open-access program at Tully (but then acknowledge that
18 it is in fact addressed because Tully is a magnet), and assert that the District has not
19 addressed transportation to the open-access GATE strand at Roberts-Naylor in grades 6-
20 8 (but then acknowledge that the District does provide transportation to Tully students
21 matriculating onwards to the GATE program at Roberts-Naylor as part of the magnet
22 incentive package). With neighborhood and Tully student enrollment in the GATE strand
23 at Roberts-Naylor, enrollment from other sources is minimal, and the District does not
24 believe that this issue need be addressed by the Court. The District certainly does not

1 believe it is appropriate for an order to provide such transportation, in the absence of any
2 evidence that this is an issue at all, much less an issue that has some causal relationship
3 to the prior segregation ending 70 years ago (long before GATE programs existed) that
4 would merit ordering new remedies that must have a constitutional foundation.

5 The Mendoza Plaintiffs next turn to non-ALE dual language and complain that
6 transportation is not addressed in the context of expansion of the dual language program.
7 But the District has explained on prior occasions that transportation costs and issues are
8 simply not a consideration in deciding where and when to expand the dual language
9 program. In its Dual Language Action Plan, filed on December 20, 2019, the District
10 explained:

11 The District anticipates that additional students for these programs will come
12 from within the existing attendance boundaries of each school, as is the case
13 with the TWDL programs at the eleven existing program schools. Thus there
14 would be little or no additional transportation and associated costs from this
15 planned expansion of TWDL programs.

16 [ECF 2401-1, p. 103.] Selection of the particular school at which to expand (either by
17 increasing the number of strands at an existing school, or by starting a strand at a new
18 school) is guided by factors other than transportation:

19 The expansion plan was developed with a realistic assessment of a number of
20 limiting factors, including cost, the difficulty in getting “entry point” students
21 given state statutory requirements for the Structured English Immersion
22 instruction for non-English proficient students, and the importance of an
23 identified and workable feeder pattern providing a continuous TWDL pathway
24 through all grade levels. The District is also mindful of the need to follow the
25 District’s TWDL Framework with fidelity, in order to achieve the benefits of
the program, including adherence to the enrollment policy ensuring entry points
for students in the TWDL program at Kindergarten and 1st grade. Notably, as
discussed below, the availability of bilingual endorsed teachers for the program
does not appear to be a limiting factor.

1 Individual schools identified in this plan were selected based on these factors,
2 and consideration to additional concerns including integration impact, location
and neighborhood demographics, school leadership, school staff, parent
interest, physical capacity.

3 [ECF 2401-1, p. 102 (footnote omitted).] The District submits that transportation costs
4 are simply not a material factor in expansion decisions for the Two-Way Dual Language
5 program. The District believes that this adequately responds to the Court's order, in light
6 of the factors which actually do come into play in expanding the dual language program.

7 The Mendoza Plaintiffs next focus on express shuttles. As directed, the District
8 provided information on ridership, with complete point-to-point data on ridership, by race
9 and ethnic group. The demographic status of the point from which the shuttle originates
10 is well known. The District believes that its shuttle program overall is justified; the
11 District is constantly evaluating ridership and will continue to make changes in shuttles
12 offered as needed. The District has complied with the Court's directive.

13 The shuttle data is not, as the Mendoza plaintiffs assert, incomplete. The
14 Wakefield shuttle about which the Mendoza Plaintiffs complain has not yet even started
15 (the ridership data for other shuttles presented was from 2019-20, before Wakefield
16 opened); because Wakefield opened this year (2020-21) in a fully on-line mode, there is
17 no ridership data to report as of yet.

18 There was no "failure to fully edit" the Transportation Plan, as the Mendoza
19 Plaintiffs assert. As stated above, there are five regions in TUSD, including the central
20 region, Arroyo Chico, to which Doolen belongs. Doolen is not in the east or northeast of
21 the District, it is in the north central, and a shuttle from Doolen to Cholla is in any event
22 at the outer limits of what might be effective. There is a shuttle from Cholla to Tucson
23 High School, and another shuttle (using the same bus) goes from Tucson High School to
24

1 Sabino. If a student were to climb on the bus at Cholla, stay on the bus through the stop
2 at Tucson High School, he or she would not arrive at Sabino until 50-60 minutes after
3 leaving Cholla, far more time than the Court has permitted with its 30- minute travel-time
4 limit. That is why the District properly says, from years of experience, that a shuttle from
5 the east or northeast of the District to Cholla is not an effective way to promote or
6 integrate Cholla or the IB program. To claim that this is a “failure of editing” reflects
7 only a lack of familiarity with Tucson geographic reality by counsel for the Mendoza
8 Plaintiffs.

9 Finally, the Mendoza Plaintiffs complain that they do not understand why
10 transportation cost are simply not a factor in expansion of the GATE programs to new
11 locations. It is not a question of data, it is a matter of simple logic: The number of
12 qualified GATE students is reasonably constant, determined as it is by testing and
13 percentiles. Adding additional transportation to serve existing programs, by definition
14 clearly does involve added transportation costs. But opening a cluster GATE program at
15 a new school does not require additional transportation costs – in fact it reduces
16 transportation needs overall –again, by definition, no data needed.

17 Perhaps an example will dispel counsel’s confusion: assume School A does not
18 have a full-time GATE program, so all of its GATE-qualified students must be
19 transported to a different school with a self-contained GATE program if they wish to
20 attend a full-time GATE program. Opening a cluster GATE program at School A means
21 that all of the GATE-qualified students at School A who previously needed transportation
22 to get to a full-time GATE program now no longer need transportation, since there is a
23 full time GATE program at their home school. This reduces the overall need for
24 transportation. No GATE-qualified students from other schools will be transported to

1 School A, since by definition, the cluster GATE program is designed to serve only
2 students at School A.

3 Finally, since it is unlikely that there will be enough GATE-qualified students to
4 fill any one class at School A, non-qualified students are clustered in with the GATE-
5 qualified students, in GATE classrooms, and get the benefit of GATE teaching methods
6 and curriculum, significantly expanding the reach of the GATE program.

7 The District does not currently anticipate expanding its self-contained GATE
8 program, so there is no need to consider expansion plans. As the cluster GATE program
9 expands, more and more students that had been transported to self-contained GATE
10 programs, now stay in new cluster GATE programs in their home schools, reducing both
11 demand and need for self-contained GATE programs. Moreover, because of the value in
12 expanding the reach of GATE services, and for other reasons, the trend nationally is to
13 move away from self-contained GATE towards other models such as cluster GATE.

14 This is one manifestation of the overall logical imperative that each time an ALE
15 program is added somewhere in the 85 schools of the District, the overall District-wide
16 need to travel to reach some location for that program is by definition reduced. That is
17 why transportation costs are generally not a factor in expansion or growth of ALE
18 programs.

19 **Conclusion**

20 For the reasons stated above, the District respectfully requests that the Court deny
21 the Mendoza objections and requests for additional multiple directives and find, as
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24

1 demonstrated above, that the District has complied with this Court's June 2020 Order [ECF
2 2486].⁹

3 **DATED** this 22nd day of September, 2020.

4 Respectfully submitted,

5 /s/ P. Bruce Converse

6 P. Bruce Converse

7 Timothy W. Overton

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12 *District No. 1*

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21 _____
22 ⁹ The District is complying with the orders at issue subject to and without waiving
23 its general objections set out in previously filed documents, incorporated herein by
24 reference. These include in particular, but are not limited to, its objection to the Special
25 Master's 2018 Report and Recommendation (ECF 2099), its Supplemental Petition for
Unitary Status (ECF 2460 and 2464), its objection to the Special Master's Report and
Recommendation (ECF 2477), and its motion for reconsideration of the Court's order
dated June 4, 2020 (ECF 2481).

CERTIFICATE OF SERVICE

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I hereby certify that on the 22nd day of September, 2020, I electronically transmitted the attached foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ P. Bruce Converse