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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 THIRD
SUPPLEMENTAL NOTICE AND
REPORT OF COMPLIANCE:
TARGETED ACADEMIC
IMPROVEMENT PLANS (MAGNET) &
STUDENT ACHIEVEMENT ACTION
PLANS (NON-MAGNET)**

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.
 8

Case No. CV 74-204 TUC DCB

9
10 **INTRODUCTION**

11 The Mendoza Plaintiffs submit herein their response to the District’s Third
 12 Supplemental Notice and Report of Compliance: Targeted Academic Improvement Plans
 13 (Magnet) & Student Achievement Action Plans (Non-Magnet) (“TUSD Notice”) (Doc.
 14 2530) and the improvement/action plans attached thereto (Docs. 2530-1 and 2530-2).
 15 This submission also addresses the Student Achievement Action Plans portion of TUSD’s
 16 Non-Magnet Priority Improvement Action Plans submission (Doc. 2517-4) and the
 17 template document and plan improvement preparation guide (Docs. 2518-1 and 2518-2)
 18 attached to TUSD’s request for additional time to file the improvement and action plans.
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21 **ARGUMENT**

22 Magnet School Targeted Academic Improvement Plans

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 24 The Mendoza Plaintiffs object to the three magnet school academic improvement
 25 plans on a number of grounds: (1) There is virtually nothing in those plans that reflects the
 26 fact that these are magnet schools much less that each has a magnet school scheme
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1 intended to contribute to the academic achievement of its students¹. (2) There is nothing in
2 those plans to suggest any involvement with the Magnet Department and its role in magnet
3 school oversight. (3) There is nothing in those plans to suggest any alignment of the
4 improvement plans with the fuller magnet school plans that were prepared for each school
5 for 2020-21, that presumably have been implemented since the start of the fiscal year, and
6 that are attached hereto as Exhibits A (Tully), B (Booth-Fickett) and C (Palo Verde). (4)
7 It is unclear -- and certainly not stated in the plans -- that the achievement goals set in
8 each of the three improvement plans will be sufficient to move the schools to
9 Comprehensive Magnet Plan (“CMP”) Student Achievement Level 1 or 2 (or evidence
10 “substantial progress”, that is halfway to AzMerit letter grade A or B or TUSD
11 MagnetMerit Grade B (CMP at 15)), as is required by the CMP to avoid being placed in
12 Transition Status (CMP at 14-15). All of these objections will be discussed below.

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16 *Failure to Address Magnet School Themes*

17 Tully is a wholeschool open access GATE magnet. (Exhibit A at 1.) Yet, nowhere
18 in its improvement plan is there any discussion of why GATE pedagogy has not led to
19 higher achievement by Tully students or how that GATE pedagogy could be more
20 effectively implemented to support better academic outcomes. Booth-Fickett is a STEM
21 magnet school that, according to its 2020-21 magnet school plan, “places special emphasis
22 on math and science”. (Exhibit B at 1.) Yet, nowhere in the school’s improvement plan is
23 there any discussion of such emphasis, why that emphasis has not led to higher
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27 ¹ In this regard it is noteworthy that the District has stated that all of the improvement
28 plans are intended to be “school-specific, based on the needs, implementation strategy,
and/or **focus areas of each particular school.**” (TUSD Notice at 4:2-3; emphasis added.)
Yet, as noted, the “focus areas” of the magnet schools are not even mentioned, much less
addressed, in their plans.

1 achievement in math by Booth-Fickett students, or how the STEM theme and the school's
2 math curriculum could be more effectively implemented to support better academic
3 outcomes². Similarly, Palo Verde has a STEAM theme. (Exhibit C at 1.) Yet, again,
4 nowhere in that school's improvement plan is there any discussion of why focus on
5 science, tech, engineering, and math has not led to higher achievement in math by Palo
6 Verde students or how the school's math curriculum and STEAM theme could be more
7 effectively implemented to support better academic outcomes.³

8
9 Although it is possible that the Mendoza Plaintiffs missed some references in their
10 review of the three magnet school improvement plans, the only references they have seen
11 to any of the three schools' magnet status is in the Booth-Fickett plan where it refers to
12 "Magnet Coaches"⁴ as being among those who will "review and monitor Reading ELA
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14
15 ² Although there is very little discussion of the current magnet school curriculum in the
16 Booth-Fickett plan, there is a suggestion that that curriculum has been found wanting
17 because the improvement plan does state that the school will seek to accomplish its
18 improvement plan goals by implementing "with fidelity district's adopted curriculum:
19 Eureka Math..." and make "effective use of district provided Curriculum Guides and
resources." (Booth-Fickett improvement plan, Doc. 2530-1, at ECF 35.) This seems to
20 suggest that the curriculum the school has been offering has not been successful in
21 promoting student academic achievement and raises questions about how the school and
22 the District have overseen implementation of the school's magnet theme curriculum.

23 ³ The failure to assess the efficacy of magnet school theme course implementation and
24 include magnet theme specific pedagogy (in the case of Tully) or magnet theme specific
25 course work (in the case of Booth-Fickett and Palo Verde) in the improvement plan also
26 raises the issue of whether and to what extent the District considered modification of the
27 magnet theme in connection with the preparation of these schools' targeted improvement
28 plans. (See August 2020 Comprehensive Magnet Plan, Doc. 2517-1 at 13 ("When a
magnet school is in targeted improvement, the Magnet Department may consider, analyze,
and propose a modification to the targeted school's magnet theme as a mechanism for
supporting the...targeted academic improvement plan....").)

25 ⁴ Mendoza Plaintiffs do not know what "Magnet Coaches" are and see no reference to this
26 role elsewhere in the improvement plan or in the Booth-Fickett 2020-21 magnet school
27 plan (Exhibit B) although they do see references in the magnet school plan to instructional
28 coaches who are, *inter alia*, to review lesson plans. (See, e.g., Exhibit B at 7.) This is not
however the role assigned in the improvement plan to the "Magnet Coaches". In the
improvement plan they are assigned the task of reviewing and monitoring teacher's goals.
(Doc. 2530-1 at ECF 36.)

1 and Math goals with teachers”. (Doc. 2530-1 at ECF 36.) Additionally, although it does
2 not expressly reference the magnet school theme curriculum, in its list of recent
3 improvements, the plan notes that the school added an “Environmental Science class as we
4 reopened our on-campus Habitat” (*id.* at ECF 34) but does not say how the new course is
5 intended to lead to improvement in students’ ELA and math achievement.
6

7 *Absence of Collaboration with Magnet Department and Alignment of*
8 *Improvement Plans to Requirements of the CMP and with 2020-21*
9 *Individual School Magnet Plans*

10 Mendoza Plaintiffs understand TUSD’s desire to align the work it was doing
11 districtwide on improvement plans and to provide the three magnet schools developing
12 academic improvement plans with the benefit of the overall approach recommended by its
13 outside consultant (TUSD Notice at 4:5-8); however, they object to the failure of that
14 process and the resulting plans to have included collaboration with the Magnet Department
15 and alignment of the magnet school improvement plans to the requirements of the CMP
16 and with the 2020-21 individual school magnet plans.
17

18 *No Participation or Role for the Magnet Department*

19 The District’s description of the improvement plan development process fails to
20 identify the Magnet School Director or anyone else from the Magnet School Department
21 as having had any role in that process as it related to the magnet schools. Instead, it
22 indicates that all 20 schools (three magnet; 17 non-magnet) were provided identical
23 guidance and direction. (TUSD Notice at 2:9-4:8), with the only difference being that the
24 three magnet school plans are called Targeted Academic Improvement Plans while the
25 non-magnet school plans are called Student Achievement Action Plans. This omission is
26 not insignificant. Not only would the Magnet School Director and her department be
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1 expected to be far more familiar with the three magnet schools in issue than other District
2 administrators, having been expressly charged with responsibility for supporting and
3 monitoring those schools (*see e.g.*, CMP at 6 and 9 (“The District Magnet Department and
4 magnet schools work together to improve academic achievement through an organized
5 series of support, observation, reflection, assessment, and adjustment”)), and, therefore,
6 well-positioned to help the three magnet schools develop their plans⁵; under the CMP, they
7 also are to provide “intense” support, including weekly visits, to Level 3 schools like
8 Tully, Booth-Fickett, and Palo Verde that are subject to targeted academic improvement
9 plans. (CMP at 9, 13.)
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12 A number of consequences flow from the failure to have included the Magnet
13 Director and the Magnet Department in the development of the magnet school targeted
14 improvement plans and to have developed those plans in alignment with the CMP.
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16 No Alignment of CMP Requirements With Improvement Plan Goals

17 First, the CMP sets a clear endpoint for such plans: they must bring a magnet
18 school to a Level 1 or Level 2 academic status or the school must be halfway to AzMerit
19 scores of A or B or TUSD MagnetMerit Grade B. (CMP at 14, 15.) Yet, that necessary
20 endpoint is not referenced in any of the three magnet school targeted academic
21 improvement plans. Nor is it clear to the Mendoza Plaintiffs that the specific goals⁶ that
22 are set in the plans will move the schools to those required levels.
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25 ⁵ Although the CMP refers to schools developing targeted academic improvement plans
26 (CMP at 15), it also says that the Magnet Department “develops” the plan. (CMP at 13,
27 14.) Plainly, regardless of which entity initially “develops” the plan, the CMP
28 contemplates close involvement by the department with plan development and oversight.

⁶ For purposes of this discussion, Mendoza Plaintiffs focus on the SMART goals set out in
the plans rather than the “desired reality” since they understand those SMART goals to be

1 Of particular concern is Booth-Fickett which states that its overall goal is to
2 increase its students' benchmark examination scores in ELA and math by 5% by the end of
3 the 2020-21 school year. (Doc. 2530-1 at ECF 35.) Notably, its goal is not framed in
4 terms of scores on the AzMerit which is the score that determines CMP academic levels.
5 Mendoza Plaintiffs are concerned that for a school that received an F on the 2018-19
6 AzMerit, even with improvements in student benchmarks reported since the time of that
7 testing and the assessment by TUSD that the school would have received an AzMerit score
8 of C had testing gone forward in 2020 (TUSD Motion for Reconsideration, Doc. 2481, at
9 1:1-4:3), the 5% goal may not be sufficient for Booth-Fickett to attain even a
10 "MagnetMeritB" grade (CMP at 5) for the current school year. Mendoza Plaintiffs
11 respectfully suggest that even if a 5% increase in benchmark scores may turn out to be
12 sufficient, it was incumbent on the District to develop and present its targeted academic
13 improvement plan for Booth-Fickett (as well as such plans for Tully and Palo Verde)⁷ in a
14 manner that directly addressed the CMP requirements, and, more importantly, confirmed
15 that the school principal and staff at each school (as well as the parent community)
16 understood what is required at the school in order for it to maintain magnet status.
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21 No Alignment With 2020-21 Magnet School Plans

22 the ones against which a school's progress will be assessed for purposes of continued
23 magnet status.

24 ⁷ The Tully goals appear more ambitious (3rd through 5th graders to move from 38% to
25 47% proficiency in ELA and 43% to 58% proficiency in math on benchmark exams by
26 May 2021) (Doc. 2530-1 at ECF 9), but whether they are sufficient to move Tully to Level
27 1 or 2, or what the CMP defines as "substantial progress" is not stated. The Palo Verde
28 goal is stated confusingly (students "will score at or above the district average in the
quarterly ELA [and math] benchmark exams...by 5% by the end of 20-21 SY" (*id.* at ECF
55)) but, again, whether attainment of that goal, be it at or above district averages or a 5%
increase from SY 19-20 scores, or scores 5% above the SY 20-21 district average, is
sufficient to move Palo Verde to Level 1 or 2, or "substantial progress", is not stated.

1 Second, the targeted academic improvement plans have not been aligned with the
2 schools' existing magnet school plans. Even were it not the case that the CMP says that a
3 school's targeted academic improvement plan is to be incorporated in its magnet school
4 plan (CMP at 15), such incorporation or alignment should have occurred. Because it did
5 not, the targeted academic improvement plans raise a number of unanswered issues and
6 conflicts with the magnet school plans. Some of this also may have implications for the
7 magnet school budgets.
8

9 Each magnet school plan provides for the magnet coordinator to have a role in
10 supporting instruction and teacher collaboration and/or professional development.
11 (Exhibits A (Tully) at 22, B (Booth-Fickett) at 23, and C (Palo Verde) at 9, 10, 13, 14, and
12 23 ("The Magnet Coordinator supports all curriculum and instructional initiatives and
13 efforts".)) Yet, the targeted academic improvement plans assign no responsibilities to
14 those magnet coordinators in their lists of personnel responsible for carrying out the
15 various instructional improvement tasks set out in those plans.⁸ (See, action steps sections
16 of the respective reports at 2530-1 ECF 13-18 (Tully), 42-45 (Booth-Fickett), and 58-60
17 (Palo Verde).) If the magnet coordinator is to play a role, that should be stated in the
18 targeted academic improvement plans just as the roles of the CSPs, data interventionists,
19 MTSS coordinators, and others are plainly set out. And, if the magnet coordinator is not to
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25 ⁸ Nor do magnet coordinators appear to be included in the "leadership" group when a task
26 is so assigned given that the magnet school plans appear to distinguish magnet
27 coordinators from "leadership." (See, e.g., Palo Verde magnet school plan, Exhibit C at 10
28 ("Leadership team, CSP, and Magnet Coordinator will participate in a continuous
walkthrough and reflection cycle to support teachers to plan and implement quality Tier 1
instruction."))

1 have a role, the schools and the District need to redefine the job responsibilities of the
2 magnet coordinator in the magnet school plans.

3 In certain areas there appear to be conflicts between the schools' 2020-21 magnet
4 school plans and their targeted academic improvement plans. For example, the Booth-
5 Fickett magnet school plan, which the school presumably has been implementing since the
6 beginning of the school year in August, states that it is using “*Teach Like A Champion*’
7 strategies...to support climate and culture and academic excellence.”⁹ (Exhibit B at 11.)
8 And, \$25,000 is allocated in the Booth-Fickett magnet school budget for a Teach Like a
9 Champion consultant to provide “training and Climate and Culture development.” (*Id.* at
10 23.) Although there is extensive discussion of professional development and of
11 professional learning teams in the Booth-Fickett targeted academic improvement plan
12 (Doc. 2530-1 at ECF 36, 39, 41-45), there is no reference to Teach Like a Champion in the
13 plan. Instead, the improvement plan states that the school has “hired a third party
14 contractor, Solution Tree, to provide in depth PD in the PLT cycle.” (*Id.* at ECF 39.)
15 According to the Solution Tree website, solutiontree.com, Solution Tree works to
16 “transform education...by empowering educators to raise student achievement” and
17 transform school cultures and features its own set of books by what it refers to as “its
18 authors”.

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⁹ It goes on to say: “PLC-CTTs watch and reflect on “*Teach Like a Champion*” video series to reinforce teacher collaboration on strengthening relationships (teacher to student and student to teacher) and creating learning environments that are conducive to learning...The Leadership Team will provide professional development and a book study on “*Teach Like a Champion Field Notes*” by Doug Lemov. Teachers will be responsible for implementing strategies that are introduced through this book study that specifically fit their needs for growth and the strategies...that have been determined to be implemented school-wide...Leadership Team will conduct monthly observations to ensure strategies from professional development and “*Teach Like A Champion*” are utilized in instruction and provide feedback to teachers.” (*Id.* at 11.)

1 It is unclear from the Booth-Fickett targeted academic improvement plan whether
2 Solution Tree is intended to supplement or replace Teach Like a Champion, which
3 presumably, has been guiding teachers at the school to date, and whether teachers now are
4 to implement strategies in the “Teach Like a Champion Field Notes” book or those in
5 books by Solution Tree’s authors. Further, it is unclear what the budgetary implications of
6 the school’s retention of a new third party contractor will be.¹⁰ In this regard Mendoza
7 Plaintiffs note that the improvement plan says under “Budget”: “Verify we still have
8 Solution Tree. May need to run it through the new budget protocol if it’s in the budget as a
9 consultant.” (Doc. 2530-1 at ECF 52.) Plainly, had the improvement plan been aligned
10 with the existing magnet school plan, not only would there be greater clarity but the issue
11 of how teachers were to transition from Teach Like a Champion to Solution Tree or meld
12 the two, depending on the District’s intent, would have been addressed.

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16 In its targeted academic improvement plan, Booth-Fickett identified as one of its
17 SMART goals the creation of mutual respect among all stakeholders. (Doc. 2530-1 at ECF
18 37.) It set as its “Improvement Goal” that by the end of the 2020-21 school year
19 “stakeholder participation will increase by 5% as measured by participant sign-in
20 sheets/logs.” (*Id.*) The Booth-Fickett magnet school plan states as one of its Family
21 Engagement Objectives that by the end of the 2020-21 school year “30% of families will
22 have participated in a meeting/conference to update them on their child’s academic and/or
23 behavioral progress and to learn from families how best to meet the needs of their
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¹⁰ The Booth-Fickett magnet school plan includes a \$25,000 entry for a consultant for “Teach Like a Champion training and Climate and Culture development”. (Exhibit B at 23.) It is unclear whether whatever portion of that \$25,000 has not yet been spent now is to be allocated to the Solution Tree contractor.

1 students.” (Exhibit B at 17.) Evidence of progress is to include parent and community
2 outreach attendance sheets. (*Id.* at 19.) Because the two plans have not been aligned, it is
3 unclear whether the goals in the two plans are actually the same but phrased differently or
4 whether the new “Improvement Goal” is more ambitious than the magnet school plan goal.
5 If there has been a change of goal (in either direction) or merely a restatement of the same
6 goal, an explanation appears warranted.

7
8 The targeted academic improvement plan also identifies Evidence to be Used to
9 Assess Progress and Accomplishments in attaining the increased stakeholder participation
10 goal. (Doc. 2350-1 at ECF 37.) Much of that evidence parallels actions that were
11 identified in the magnet school plan. (*Compare id. with Exhibit B at 17-18.*) But there are
12 certain magnet school plan actions that are not on that targeted academic improvement
13 plan list. Among them are (1) that teachers will have a method of communication with
14 families to inform them of the following information: grades, student progress,
15 celebrations, and concerns and (2) that meetings with parents will include information
16 about how best to meet the needs of their students and that such information shall be
17 incorporated in individual student’s academic and behavioral plans. (Exhibit B at 18.)
18 Absent an alignment of the two plans, there is no assurance that these important actions
19 will continue to be pursued particularly because they have not been called out in the
20 improvement plan as evidence against which progress will be measured.

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24 Absence of alignment also raises concerns with respect to the Tully targeted
25 academic improvement plan. As noted above, there is no reference to GATE pedagogy in
26 the Tully improvement plan. Yet the school’s magnet school plan says that the Magnet
27 Department will be working with a GATE consultant on the implementation of a Proposed
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1 Strategic Plan “prepared especially for Tully” and that at each monthly professional
2 development meeting, the consultant will train school personnel on a new GATE strategy.
3 (Exhibit A at 9.) There is nothing in the academic improvement plan to indicate whether
4 this specially prepared strategic plan is to be implemented, whether that plan will address
5 the areas for improvement set forth in the improvement plan, how it relates to the academic
6 improvement strategies set forth in the improvement plan, or how the new GATE
7 strategies outlined in the strategic plan will be folded into those in the improvement plan.¹¹

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9 The Palo Verde magnet school plan says that “ongoing professional development
10 on Tier 1 instructional strategies will focus on AVID modeling....” (Exhibit C at 8.)
11 However, because the targeted academic improvement plan and the magnet school plan
12 have not been aligned, it is unclear whether and to what extent AVID modeling will
13 continue to be a focus of the school’s professional development. Yet, there plainly is a
14 place for AVID in school improvement plans developed using the District’s current
15 template as is demonstrated by the student achievement action plans for Pistor Middle
16 School and Catalina High School. Pistor’s plan states that there will be a “Written AVID
17 site plan with Writing goals across content to improve overall AzMerit scores.” (Doc.
18 2530-2 at ECF 116.) Catalina’s plan specifically says that its schoolwide strategies for
19 math will include AVID tutorials and that AVID teachers will train all teachers in AVID
20 strategies. (*Id.* at ECF 16, 19.)

21 Non-Magnet School Achievement Action Plans

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27 ¹¹ This also has budgetary consequences since the magnet school plan includes \$27,000 for
28 the consultant as well as \$10,000 to cover the costs of added duty to participate in GATE professional development. (Exhibit A at 23.)

1 Mendoza Plaintiffs’ objections to the student achievement action plans for the 17
2 “D” and “F” schools relate to their goals and their gap analyses.

3
4 *Issues Relating to Achievement Action Plan Goals*

5 Each of the schools whose achievement action plans now is before the Court was
6 selected for the improvement plan process because it received an AzMerit grade of “D” or
7 “F” in the most recent testing cycle. Yet, the goal of raising that grade to at least a “C” is
8 nowhere addressed in the plans or the materials guiding preparation of those plans.
9 Instead, the directives relating to goal-setting state that each school “first describe the
10 school [it] aspires to be” and “articulat[e] a vision for the future of what a school would be
11 doing and achieving if it were living by its core values and achieving its mission.” (Student
12 Achievement Action Plan, Doc. 2518-1, at ECF 4 and A Guide to Equity-Oriented
13 Continuous School Improvement Planning, Doc. 2518-2, at ECF 6.) Such an approach
14 may make for an inclusive planning process but it fails to set a districtwide performance
15 standard and creates no expectation that a school should strive to attain at least an AzMerit
16 grade of “C”.
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20 Under the process the District followed, schools came up with a varied set of
21 achievement goals. For example, Blenman, which had an AzMerit grade of “D” in 2018-
22 19¹², sets goals for each grade level at the school and says in its plan, for example, that
23 “23.8% of 3rd graders will increase their percent passing from Minimally Proficient to
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26 _____
27 ¹² AzMerit scores are set forth on Exhibit D, ADE Final Letter Grades 2018-19 Official.
28 (That report no longer is available on the TUSD website. A copy of the report that the
Mendoza Plaintiffs downloaded from the site before it was removed, and that has some
handwritten notations redacted, is therefore attached as the exhibit.)

1 Proficient in both ELA and Math as demonstrated on quarterly district benchmarks.” (Doc.
2 2530-2 at ECF 5.) Grijalva, which also had an AzMerit grade of “D”, says that “by May
3 2021, 90% of 3rd-5th graders will increase reading skills, fluency, and comprehension by
4 two levels as measured by NSGRA” and that in math “Kindergarten-5th graders will
5 increase the percent correct of questions assessing NBT standard by 10% as measured by
6 quarterly benchmark assessments.” (*Id.* at ECF 61.) Lawrence 3-8, which received an
7 AzMerit grade of “F”, says that its goal is to increase student achievement in both math
8 and ELA “by 15% mastery as measured by benchmarks and AZ2 by the end of 20-21
9 academic year.” (*Id.* at ECF 71.) Magee, which also had an AzMerit grade of “F”,
10 performed what it referred to as an analysis of “bubble students” that it stated “refers to
11 MP [minimally proficient] students who are close to partially proficient, and partially
12 proficient students who are close to proficient” (*id.* at ECF 79, n.1) and set as its goal
13 moving “5 percent of our bubble students from minimally proficient to partially proficient
14 and from partially proficient to proficient” “[b]y third quarter benchmark....” (*Id.* at ECF
15 79-86.)
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20 There is nothing in any of these plans to indicate whether the attainment of any of
21 these goals is likely to result in the school attaining a grade of at least a “C” after the May
22 AzMerit exams are administered. There also is nothing in the plans or the way in which
23 they were developed to indicate whether the different measures or articulations of goal
24 attainment being used by the schools are equally ambitious (but attainable). Further, with
25 the District having set out to “align work” across the District (Doc. 2530 at 4), Mendoza
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1 Plaintiffs questions whether it is administratively sound to now have plans that assess
2 improvement and success using different indicia of success and different time frames.

3
4 *Issues Relating to Gap Analyses and Strategies to Address Gaps*

5 The Guide to Equity-Oriented Continuous Improvement that the District adopted
6 states that the “process directs attention to the learning opportunities and outcomes of all
7 students and to differences by grade level, racial and ethnic group, ability and disability,
8 language and culture.” (Doc. 2518-2 at 5.) It then directs those developing the
9 improvement or achievement action plans to perform gap analyses “comparing outcomes
10 for students of different grade levels, different racial and ethnic groups, different abilities,
11 and primary language.” (*Id.* at 11.) It does not explicitly direct that the plans include
12 strategies to address differences in outcomes among subgroups, and many do not. Indeed, a
13 number fail to address differences in outcomes among subgroups at all. For example, the
14 Davidson plan is silent on all differences in outcomes except by grade level¹³, reports gaps
15 only by grade level between its students’ proficiency and what presumably are the
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20 ¹³ That subgroups of students whose relative outcomes should have been noted exist at
21 Davidson is confirmed by its 2019-20 SY Integration and Academic Achievement Plan,
22 Doc. 2270-3 at ECF 28-32. That plan reported that as of the 2019-20 school year, 12% of
23 Davidson students were classified as ELL students and 16% were exceptional education
24 students. (*Id.* at ECF 28.) It further reported that a lower percentage of African American
25 students were rated proficient on the 2018 AzMerit in ELA and math than the percentage
26 of all students in the school taken as a whole (as was true as well for white students on the
27 ELA portion of the AzMerit). (*Id.* at ECF 30.)

28 Grijalva is an example of another school that is silent on all subgroups except grade levels
(Doc. 2530-2 at ECF60-67) but whose 2019-20 SY Integration and Academic
Achievement Plan (Doc. 2270-3 at ECF 52-55) shows that as of that school year, 17% of
its students were ELL students and 11% were exceptional education students (*id.* at 52)
and that, for example, the percentage of its Hispanic/Latino students who scored proficient
on the math AzMerit in 2018 was below the percentage for the school as a whole and
significantly below the percentage of white students at the school who had scored
proficient. (*Id.* at ECF 54.)

1 districtwide proficiency percentages at those grade levels, and then sets goals and adopts
2 strategies to address that single set of gaps¹⁴. (Doc. 2530-2 at ECF 23-33.) The Dietz plan
3 identifies gaps between the performance of all of its students and its desired performance
4 level on a number of assessments as well as instances in which the gap is greater for its
5 African American, ELL, and exceptional education students (Doc. 2530-2 at ECF 35-35)
6 but then sets one overall goal for all students and articulates no strategies to address the
7 greater gaps being reported for some subgroups of its students. (*Id.* at ECF 39-41.) By
8 contrast, the Magee plan not only specifically identifies gaps in the performance of its
9 ELL, exceptional education, African American, and Hispanic/Latino students that are
10 larger than the gap between the performance of all of its students taken as a whole and the
11 proficiency standards with which it is comparing its students (*id.* at ECF 82-85); it also
12 identifies specific strategies to address those larger gaps. (*Id.*)

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16 Mendoza Plaintiffs suggest that if indeed “[e]quity is infused throughout the
17 improvement process” as the TUSD Guide to Equity-Oriented Continuous Improvement
18 states (Doc. 2518-2 at 5), comparable gap analysis and focused strategies belong in each of
19 the plans.
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24 ¹⁴ Mendoza Plaintiffs also note that the Davidson plan is another plan that appears not to
25 set goals that will materially raise its AzMerit score. For example, the plans says that
26 students in grades 2-4 scored between 22 and 26% proficiency on questions related to text
27 evidence on the 2019-20 benchmark assessments and that the gap was from 39 to 43%. It
28 then set as its goal increasing proficiency by 5%, from 27 to 31%. (*Id.* at ECF 23, 25.) The
plan similarly reported that students in grades 2-4 scored between 5 and 40% proficiency
on questions relating to fractions on the 2019-20 benchmark assessments and that the gap
was from 25 to 40%. It then set as its goal increasing proficiency by 5%, from 10 to 45%.
(*Id.* at ECF 24, 25.)

1 **CONCLUSION**

2 For the reasons set forth above, the Court should sustain the Mendoza Plaintiffs’
3 objections to the magnet school targeted academic improvement plans and the non-magnet
4 school student achievement action plans and direct the District to revise those plans to
5 meet those objections.
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8 Respectfully submitted,
9

10 Dated: October 14, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE AND OBJECTION TO TUSD THIRD SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE: TARGETED ACADEMIC IMPROVEMENT PLANS (MAGNET) & STUDENT ACHIEVEMENT ACTION PLANS (NON-MAGNET)** 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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