

TUCSON UNIFIED SCHOOL DISTRICT NO. 1

**Information Addressing Objections to the
2015-16 Special Master's Annual Report**

An Annex to the Annual Report

for the

2016-2017 Academic Year

Fisher, Mendoza, et al. v. Tucson Unified School District, et al.

United States District Court, District of Arizona

74-CV-00090 TUC DCB and 74-CV-00204 TUC DCB

submitted to:

Honorable David C. Bury, United States District Court

prepared by:

Tucson Unified School District No. 1
Gabriel Trujillo, Ed.D., Superintendent

TUSD Governing Board:

Michael Hicks, President; Dr. Mark Stegeman, Clerk;
Adelita S. Grijalva; Kristel Ann Foster; Rachael Sedgwick

On June 16, 2017, the Special Master filed his 2015-16 Annual Report (SMAR). [ECF 2026.] The parties filed Responses and Objections over the summer.

On August 15, 2017, the Court adopted the Special Master's recommendation (see ECF 2049) that Objections to the SMAR be taken up in the context of the 2016-17 annual reports (see ECF 2050).

The Court further directed the District to "review the concerns of the Plaintiffs and the Special Master expressed this past year and other years, especially specific alleged deficiencies which have been identified and especially where alternative remedies have been suggested by the parties or Special Master or the subject of Court Orders." [ECF 2050 at 2.] The District filed the 2016-17 District Annual Report (DAR) on September 1, 2017. [ECF 2057-1.] The District submits the following in compliance with the Court's directive to address prior objections, concerns and suggestions, highlighting new information and data relevant to the SMAR.

I. The District Continues to Comply in Good Faith with the USP.

The Plaintiffs' ongoing concerns, and the alleged deficiencies they raise, are based in large part on speculation and misunderstandings (or misrepresentations) of data and information provided by the District, and on simple disagreements regarding the best way to help the District's students and their families. The Special Master and his Implementation Committee have unfettered access to the District's data and information. The Plaintiffs have nearly the same access, though there are laws that protect certain student information from disclosure. In addition to the hundreds of pages in each annual report and the thousands of pages of appendices, the Special Master and Plaintiffs have asked for and have received answers to more than a thousand requests for information during the 2016-17 school year alone, and they have played a regular role in developing processes and procedures in the District. Neither the Special Master nor the Plaintiffs have lacked access to the information needed to inform their analyses. The fact that the

District analyzes that data and comes to different conclusions than the Plaintiffs does not mean the District is not complying in good faith with the USP.

Four of the key misunderstandings or misrepresentations included in the Mendoza Plaintiffs' objection are the assertions that the District has allegedly: (1) granted improper consideration to the children of District employees in the lottery process agreed to by all parties; (2) changed the definition of "exclusionary discipline" in ways that affect due process; (3) secretly changed the MORE and DPG plans; and (4) reported race under codes that made comparisons difficult. All of these allegations fall apart upon minimal scrutiny.

A. The District has not granted improper special consideration to children of District employees in the lottery process.

The Mendoza Plaintiffs argue the Special Master failed to admonish the District for an alleged change to the party-approved Policy granting special consideration to children of District employees in the student placement lottery process. However, there has been no change to the Policy or consideration given to children of District employees. **District Policy JFB (Open Enrollment and School Choice) has not been changed.** That Policy affords the same consideration to children of District employees that it has since the parties agreed to it. Rather, the District's *Regulation JFB – R4 (School Choice: Admissions Process for Oversubscribed Schools)*, contains several enrollment-related definitions, assignment rules, and explanations of the District's lottery program and process, addressing issues not addressed in Policy JFB.

Regulation JFB – R4 did not replace Policy JFB, and the explanations in *Regulation JFB* do not change the District's student placement policy, which gives priority to children of District employees only in those situations agreed to by the Parties, as follows:

1. Students who are siblings of students currently enrolled at the requested school.

2. Any student, including any non-resident student, who is the child of an employee as defined above and whose enrollment at the receiving school will help that school meet integration targets.
3. District resident students who live in the attendance zone of a racially concentrated school and whose enrollment at the receiving school will help that school meet integration targets.
4. District resident students whose enrollment at the receiving school will help that school meet integration targets.
5. Any student, including any non-resident student, who is the child of an employee as defined above.
6. All other District resident students.
7. Non-resident students whose enrollment at the receiving school will help that school meet integration targets.
8. All other non-resident students.

The Plaintiffs do not point to a single child of a District employee who has been given purportedly improper preference in school assignment. If additional clarification is desired, the District remains willing to discuss with the Plaintiffs and Special Master the consideration given to children of District employees.

B. The District has not changed the definition of exclusionary discipline to deny any students due process.

The Mendoza Plaintiffs incorrectly assert that the District has changed its definition of “exclusionary” discipline. Simply put, the District has **not** changed the definition of “exclusionary discipline.” That term is defined in the USP, and the District has not tried to amend the USP or create a new definition of exclusionary discipline outside of the USP.¹

Nor does the District’s December 23, 2016 memorandum support an inference that the District changed the definition of exclusionary discipline. As the Special Master and

¹ The USP, (USP App. A, ECF 1450-1, p. 3), defines exclusionary discipline as follows:

“Exclusionary Discipline” refers to any disciplinary consequence that removes a student from classroom instruction, including, but not limited to, in-school suspension, out-of-school suspension, placement in an alternative setting or program, and expulsion.

Plaintiffs will recall, that District memorandum was prepared in response to the Special Master's inquiry in the context of developing a new code of conduct *to be utilized in the future*.

Accordingly, the District's December 2016 memo discussed its position on exclusionary discipline in the context of whether that term would apply to specific alternatives to suspension under a Code of Conduct to be used in the future, not in the context of how the District was implementing the existing policy. The memo refers frequently to Jim Freeman, the Working Group, and other clear statements that the position described applied to potential, future application in the context of the then-developing Code of Conduct.² In fact, the District highlighted that its existing In-School Intervention ("ISI") Manual (an expression of existing policy) describes ISI as exclusionary discipline, contrasting the *existing* policy (where ISI is described as exclusionary) with the *proposed* Code of Conduct (where the outside consultant and Working Group recommended that ISI should not be deemed exclusionary). Based on the District's position as to the future treatment of ISI, the Mendoza Plaintiffs mistakenly extrapolated that the District has changed the definition of exclusionary discipline. This is incorrect.

The Mendoza Plaintiffs also erroneously contend that because the District considers In-School Interventions ("ISI") and the District's Alternative Education Placement Program ("DAEP") to be alternatives to suspension (and because the District proposed its position on ISI/DAEP in the context of developing a new code of conduct), that means students who choose to participate in DAEP or who are assigned to ISI (instead of being suspended and sent home) do not receive due process.

² E.g. "ISI and DAEP *should not* be deemed exclusionary discipline nor subject to the USP limits on exclusionary discipline," and "the Code proposed by Jim Freeman and the Working Group" do not refer to ISS and ISI as exclusionary discipline. [ECF 2047 at 121 and 123].

First, as the Mendoza Plaintiffs are well aware, DAEP is an option for students who have already been suspended and who have already been provided the formal due process procedures for exclusionary discipline discussed in the GSSR. DAEP referrals occur *after* a long-term hearing officer has conducted a hearing and determined the conduct warrants out of school suspension. Then, the student can choose to participate in DAEP. Nothing in the District's policies or regulations modifies or eliminates a student's right to appeal any disciplinary consequence, regardless of whether the student chooses to accept DAEP placement.

Second, every student who receives any level of discipline, even the lowest levels of discipline, is afforded due process. District Policy JK is clear that all students whose conduct may warrant discipline will receive due process: "To ensure fairness, a student whose conduct may warrant discipline, suspension or expulsion will be provided due process as required by law." District Policy JK, *available at* <http://govboard.tusd1.org/PoliciesandRegulations/PolicyCodeJK/tabid/78774/Default.aspx>.

The District has not seen evidence that any student has been denied due process with respect to any level of discipline, including ISI. While the District is certainly willing to discuss specific due process steps and procedures with the Plaintiffs and Special Master, there is no truth in the allegation that the District has manipulated the definition of the term "exclusionary discipline" in order to deny due process.

C. The District has not secretly changed the MORE Plan or DPG Plan.

The District has not changed the MORE Plan or the DPG Plan. Rather, the District has developed strategies to better implement those plans. Regarding the MORE Plan, the Special Master correctly and importantly found:

Had the District described its actions that the Mendoza and Fisher plaintiffs feel represent a revision of the plan as strategies to more effectively implement the plan --which I believe that the actions represent--there would be no justification for arguing that the plan was revised. **Surely, if the District discovers ways to better implement plans and provisions of the USP that do not change the intent [or]**

significantly alter resources, the District should be credited with improvements rather than charged with noncompliance.

[December 12, 2016 Memo, ECF 2035-1, p. 2.] The same MORE Plan that was in effect in 2014 remains in effect today, and can be found on the District's website. <http://deseg.tusd1.schooldesk.net/Portals/TUSD1/Deseg/docs/main/20141103OPERATIVEMOREplan.pdf>.

Likewise, the DPG Plan was not changed in the 2015-16 school year, and it has not been changed since that time. The DPG Plan that was in effect in 2014-15 remained in effect in 2015-16, and it still remains in effect today. [See DPG Plan, AR 15-16, App. V- 95, ECF 1963-5, pp. 11-37; AR 16-17, App. V-105, ECF 2061-9, pp. 44-70.]

Of course, before any substantive changes take effect, the District will consult with the Plaintiffs and Special Master. But, regarding the position that the District cannot make any changes to any plans or policies (including necessary adjustments to improve the impact of various strategies) without first consulting the Plaintiffs and Special Master, the District echoes the words of the Special Master on this topic:

Effective organizations constantly change in response to experiences, new insights and changing events. If the District needed to consult with the plaintiffs and the Special Master with respect to any changes it makes in plans and procedures, its ability to improve as it moves forward to implement the provisions of the USP would be seriously hindered.

[December 12, 2016 Memo, ECF 2035-1, p. 2.]

D. Ethnic Coding.

1. "Standard" Race and Ethnicity Reporting.

In 2007, the U.S. Department of Education released guidance on collecting student race/ethnicity information ("Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education"):

The Secretary is issuing final guidance to modify the standards for racial and ethnic data used by the Department of Education (Department). This guidance provides educational institutions and other recipients of grants and

contracts from the Department with clear and straightforward instructions for their collection and reporting of racial and ethnic data.

This guidance was effective on December 3, 2007, and required Districts to use a “two-part question” beginning in the 2010-11 school year to meet the following objectives:

- To establish consistent government-wide guidance at the Federal level for collecting and reporting racial and ethnic data.
- To obtain more accurate information about the increasing number of students who identify with more than one race.
- To measure more accurately the race and ethnicity for the general population of students, including the population of students identifying themselves as being members of more than one racial or ethnic group.
- To ensure equal access to education for all students, including collecting racial and ethnic data about the educational progress of students from various racial and ethnic groups in our nation’s schools.

Pursuant to the Department’s guidance, starting in the 2010-11 school year, the District moved from a single race/ethnicity question with five mutually exclusive categories (White, African American, Hispanic, Native American, or Asian American) to the mandatory two-part race/ethnicity question (“standard reporting”):

- | |
|--|
| <ol style="list-style-type: none">1. <i>Is the student Hispanic/Latino?</i><ul style="list-style-type: none">○ <i>Yes</i>○ <i>No</i>
2. <i>What is the student’s race (mark all that apply)</i><ul style="list-style-type: none">○ <i>Black or African American</i>○ <i>White</i>○ <i>American Indian or Alaskan Native</i>○ <i>Asian</i>○ <i>Native Hawaiian / Other Pacific Islander</i> |
|--|

The District collects data using the two-part question and uses it to create six mutually exclusive “standard” reporting categories - White, African American, Hispanic,

Native American, Asian/NHOPI³, or Multi-Racial). The District uses this standard race/ethnicity categorization for all state and federal required reporting.

Table 1 shows the impact of the change on reporting students' race/ethnicity in TUSD before and after 2010.⁴

Table 1 – Pre-2010 Reporting and Standard Reporting

	Race/Ethnicity Reporting using Prior to 2010-11		“Standard” Race/Ethnicity Reporting Post 2010-11	
	N	%	N	%
White	17,984	28.6%	15,883	25.3%
African-American	4,839	7.7%	3,519	5.6%
Hispanic	35,423	56.4%	37,982	60.4%
Native American	2,934	4.7%	2,231	3.5%
Asian/NHOPI	1,674	2.7%	1,384	2.2%
Multi-Racial	0	--	1,855	3.0%
Total	62,854	100.0%	62,854	100.0%

As Table 1 shows, the major effects of the change to “standard” reporting included an increased number of students identified as Hispanic, the addition of approximately 1,800 multi-racial students, and reductions in all other race/ethnic categories.

2. USP Student Race/Ethnicity Reporting.

In consultation with the Plaintiffs, the Special Master, and the DOJ, the District negotiated an agreement to apply two additional guidelines to its USP-related data collection and reporting procedures:

1. For desegregation monitoring, reporting and implementation purposes, non-Hispanic multi-racial Black students will be categorized as Black.

³ If a student is identified as Native Hawaiian/Other Pacific Islander, they are coded as Asian/NHOPI.

⁴ Using a “matched” student sample, the data reflects students' race/ethnicity responses for the same group of students both prior to and after 2010-11.

2. For desegregation monitoring, reporting, and implementation purposes, students identified as ethnically Hispanic and racially Black will be asked to state a primary identification. Students who are not primarily identified as Hispanic or Black will be coded as multiracial.

The District revised its two-part question into a three-part question:

A. *Is the student Hispanic/Latino? (Choose only one)*

- Yes*
- No*

The above question is about ethnicity, not race. No matter what you selected above, please continue to answer the following by marking one or more boxes to indicate what you consider your student's race to be.

B. *What is the student's race (Choose one or more)*

- American Indian or Alaskan Native*
- Asian*
- Black or African American*
- Native Hawaiian or Other Pacific Islander*
- White*

C. *If the student is both Hispanic and Black (meaning you checked yes in Part A, and also checked Black or African American in part B), please indicate whether you primarily identify the student as Black or as Hispanic? (Choose only one)*

- Black or African American*
- Hispanic*
- Both (the student does not have a primary identification and is identified equally as both Black and Hispanic)*

At the beginning of the 2012-13 school year, the District began utilizing the revised three-part question and made efforts to gather additional information from existing students to provide them an opportunity to self-identify using the new rules. In the fall of 2012, the District received many responses and updated its "USP Database" but was not able to capture responses from all parents. Further, many parents were confused by the new third question; particularly the fact that it only addressed two groups, Black and Hispanic students.

As a result, and in order to gather responses from all students, the District revised the third question for the 2013-14 school year as follows:

C. Student’s PRIMARY racial/ethnic identity (choose only one)

- *American Indian/Alaskan Native*
- *Asian*
- *Black or African American*
- *Hispanic/Latino*
- *Native Hawaiian/Pacific Islander*
- *White*
- *Multiracial*

The District then used responses to the third question to create six mutually exclusive “USP” reporting categories in cases where parents report multiple race categories. Table 2 shows the effect of this change on the race/ethnicity of students in the matched sample by comparing students’ race/ethnicity using the standard practice to the USP reporting rules.

Table 2 – Standard Reporting and USP Reporting

	Race/Ethnicity Reporting Prior to 2010-11		“Standard” Race/Ethnicity Reporting Post 2010-11		“USP” Race/Ethnicity Reporting ⁵	
	N	%	N	%	N	%
White	17,984	28.6%	15,883	25.3%	15,883	25.3%
African-American	4,839	7.7%	3,519	5.6%	4,826	7.7%
Hispanic	35,423	56.4%	37,982	60.4%	36,769	58.5%
Native American	2,934	4.7%	2,231	3.5%	2,231	3.5%
Asian/NHOPI	1,674	2.7%	1,384	2.2%	1,384	2.2%

⁵ The data only includes students who gave responses under all three reporting measures (they answered the one-part question prior to 2010-11, they answered the two-part question, and they answered the three-part question after it was developed).

Multi-Racial	0	--	1,855	3.0%	1,761	2.8%
Total	62,854	100.0%	62,854	100.0%	62,854	100.0%

As Table 2 shows, the major impact of these reporting changes was an increase in the number of African American students and reductions in Hispanic and Multi-Racial categories under USP reporting. Most importantly, the adoption of the “third” question and re-categorization of student race/ethnicity brought the counts and percentage of African American students back to the level it had been prior to the federally mandated changes in 2010-2011.

Under the standard reporting, students previously identified as African American were classified as Hispanic or Multi-Racial. The use of the third question in data collection and the adoption of the USP race/ethnicity coding guidelines in data reporting operated to ensure that students identified as African American prior to 2010-11 would continue to be identified as African American using “mutually exclusive” categories.

Data reported for 2011-12 (cited in the USP Appendices) preceded the changes to the three-part question and the finalization of data collection based on the new USP guidelines. Similarly, the 2012-13 data did not utilize the finalized USP coding guidelines (as of the 40th day of 2012-13, the District had only recently finalized the agreement on coding guidelines and begun to gather needed information from parents). In 2013-14, the District’s revised the three-part question, and aggressive efforts to identify all students using the new guidelines resulted in the first “complete” set of collected data using the new three-part question. Thus, the 2013-14 school year is the first true “baseline” year for student data that was completely aligned with the USP data collection and reporting guidelines. The District therefore has four complete years of consistent USP student race/ethnicity data for measuring the District’s progress in implementing the USP provisions (from 2013-14 to 2016-17).⁶

⁶ Some of the Plaintiffs’ concerns rely on references to 2011-12 school year as the “baseline” year. Data from the 2011-12 school year is not the best source of “baseline” data because such data used “standard coding” that is not comparable to subsequent

Below, organized in the order addressed by the USP, the District addresses several issues and concerns raised by the Plaintiffs and Special Master related to the District's USP compliance.

II. Student Assignment.

A. Integration [Fisher Objection 3⁷ and Mendoza Objection 2].

The SMAR and related objections include concerns, alleged deficiencies, and alternative suggested remedies related to the District's progress and efforts made to integrate its schools. The following information shows some of the substantial progress the District has made toward integrating its schools.

1. The District has Made Significant Progress Integrating Schools over the Last Four Years.

Contrary to the assertions of the plaintiffs, assessments of progress cannot rely solely on the numbers of racially concentrated and integrated schools, or the total percentage of students attending those schools, because truly integrating schools and reducing racial concentration occurs over several years and in several ways.

For example, in 2014-15, one racially concentrated magnet school had a Hispanic student population of 84% throughout six grade levels (kindergarten through fifth grade). Between 2014-15 and 2016-17, the District successfully integrated the incoming entry-level grade, kindergarten, while the upper-level grades remain racially concentrated. That school is currently on target to have its kindergarten through 2nd grade levels integrated this year, though the school overall will likely remain racially concentrated (estimated 74% Hispanic). Despite substantial progress improving integration at half of the grade levels in the school (kindergarten, 1st and 2nd grade), and despite reducing racial

“USP coding.” For consistent analysis over time, the Special Master's reliance on three-year trend data from 2014-15 to 2016-17 is reasonable.

⁷ The District has numbered the Fisher objections as follows: (1) Academic Achievement; (2) Diversity, Effectiveness, and Development of Administrators; (3) Magnet Schools; (4) [Discipline] Disproportionality; and (5) “Pioneering Work.” [See ECF 2031.]

concentration by ten percentage points (from 84% to 74%), the overall data will still reflect the same number of students at a racially concentrated school and the overall numbers of integrated or racially concentrated schools in the District will remain unchanged between 2014-15 and 2017-18.

The Special Master and the Court have recognized the fundamental flaw in measuring progress towards integration by counting whether an entire school is integrated:

The Court recognized that it would be very difficult to integrate an entire school that was not integrated – i.e. that was “racially concentrated” – so it required that the criteria that magnet schools needed to meet would only apply to the entry grade in that school (i.e., K, 6 and 9) and that that goal should be sustained as the student cohort moved through the school.

Special Master’s R&R re Withdrawal of Magnet Status [ECF 1971 at 2].⁸

The SMAR states, “A primary tool for integration are magnet schools.” [ECF 2026 at 6.] The following chart highlights some of the *progress* the District has made towards the 2016-17 magnet school integration goals.

PROGRESS TOWARDS 2016-17 MAGNET SITE PLAN INTEGRATION GOALS

School	2016-17 Integration Goals	
Bonillas ES	4 of 5 goals met	80%
Booth-Fickett K-8	12 of 18 goals met	67%
Borton ES	3 of 3 goals met	100%
Carrillo ES	4 of 5 goals met	80%
Davis ES	4 of 5 goals met	80%
Dodge MS	1 of 1 goal met	100%
Drachman K-8	4 of 5 goals met	80%
Holladay ES	4 of 5 goals met	80%
Mansfeld MS	3 of 5 goals met	60%
Palo Verde HS	1 of 1 goal met	100%

⁸ The District has been working to integrate schools under the USP since 2013. At the elementary level, efforts initiated in 2013-14 affected the entry-level grades for 2014-15 (kindergarten), 2015-16 (kindergarten and first grade), and 2016-17 (kindergarten through second grade). In other words, positive integration data in 2016-17 reflects the culmination of efforts from 2013 through 2017.

School	2016-17 Integration Goals	
Roskruge K-8	4 of 8 goals met	50%
Tucson HS	3 of 5 goals met	60%
Tully ES	3 of 3 goals met	100%
Cholla HS	2 of 5 goals met	40%
Ochoa ES	1 of 5 goals met	20%
Pueblo HS	1 of 5 goals met	20%
Robison ES	2 of 5 goals met	40%
Safford K-8	1 of 8 goals met	13%
Utterback MS	1 of 5 goals met	20%

As shown in this chart, thirteen of nineteen magnet schools (approx. 70%) met at least 50% of their integration goals (and 10 of the 13 met at least two-thirds of their integration goals) in 2016-17. [See also 2016-17 DAR, ECF 2057-1 at 55-60.]

The District has also made substantial progress towards reducing racial concentration at several schools, including by reducing concentration by five percent or more in 10 schools.

RACIAL CONCENTRATION TRENDS OVER FOUR YEARS

School	Hispanic Student Enrollment		
	2013-14	2016-17	Change (5% or Greater)
Tully ES (now integrated)	74%	64%	-10%
Robison ES	83%	74%	-9%
Maldonado ES	86%	78%	-8%
Davis ES (on track to become integrated in 1-2 years)	82%	75%	-7%
Holladay ES (now integrated)	70%	63%	-7%
Carrillo ES	85%	79%	-6%
Maxwell K-8	81%	75%	-6%
Bonillas ES (on track to become integrated in 1-2 years)	76%	71%	-5%
Cavett ES	86%	81%	-5%
Mansfeld MS (on track to become integrated in 1-2 years)	78%	73%	-5%

Though the number of racially concentrated schools did not change between 2013-14 and 2016-17, the District's reduction of racial concentration by five percent or more at 10 schools shows significant progress toward integration. Despite the fact that eight of these ten schools remain "racially concentrated" in 2016-17, the District's progress

toward integration is noteworthy and encouraging. [See also 2016-17 DAR, ECF 2057-1 at 52-55.]

Indeed, the District's substantial work toward integration has helped integrate 60% of the entry-level grades at the District's 13 magnet schools. In 2016-17, there were 45 entry-level grades at 13 magnet schools (excluding transition schools).⁹ All thirteen have integrated at least one entry-level grade and 27 of the 45 entry-level grades are integrated. In 2014-15, only six of these schools had integrated at least one entry-level grade, and only 12 of the 45 entry-level grades were integrated (based on 2014-15 integration ranges). Thus, in three years the District went from six of thirteen schools to thirteen of thirteen schools with at least one integrated entry-level grade. In the same period, the District has more than doubled the total number of integrated entry-level grades from 12 to 27. This is clear evidence of progress toward integration at these sites even if the sites have not yet become fully integrated.

As described above, data from 2014-15 through 2016-17 shows the District has made significant progress integrating schools over the last four years. Recent data further supports this progress, even by the standards set forth in the SMAR and the Mendoza Plaintiffs' objections (including the percentages of total students attending integrated schools, and the total numbers of African American and Latino students attending integrated schools).

In 2014-15, 19% of District students attended integrated schools; in 2017-18, the District estimates 22% of its students will attend integrated schools.¹⁰ This substantial

⁹ Entry-level grades include K-2 at the elementary level, K-2 and 6-8 at the K-8 level, 6-8 at the MS level, and 9-11 at the HS level.

¹⁰ These numbers are based on 10th day enrollment data for 2017-18, because official 40th day data is not yet available.

increase in the number of students attending integrated schools is clear evidence of progress.

The District estimates that there are over 600 additional students at integrated schools in 2017-18 (9,955) compared to 2014-15 (9,288). The District estimates that close to 6,900 African American and Latino students will attend integrated schools in 2017-18, up from 6,100 in 2014-15. And, the District has increased these numbers *even as overall District enrollment declined from 47,959 in 2014-15 to 45,643 in 2017-18.*¹¹

TABLE 4.2 NUMBERS OF STUDENTS ATTENDING INTEGRATED SCHOOLS

	2014-15	2017-18 (10 th Day)
Banks Elementary	319	0
Blenman Elementary	435	327
Bonillas	0	380
Borton Magnet Elementary	436	407
Cragin Elementary	333	315
Davidson Elementary	313	258
Davis	0	294

¹¹ There are also other major factors that, despite the District's significant good faith efforts to achieve integrated schools, drastically limit the District's ability to achieve desired integration and diversity goals. First and foremost, because the Court found a decade ago that any vestiges of any intentional discrimination in the District already had been eliminated, there exists no current compelling state need providing constitutional justification for remedial student assignment policies based primarily on race. Second, state law mandates open enrollment (a) across District lines to other school districts, and (b) across attendance boundaries within a District, subject only to certain limitations. See A.R.S. § 15-861.01. Because there has been no finding of inter-district discrimination, neither the District nor the Court has the constitutional or jurisdictional authority to impose additional limits or conditions on inter-district open enrollment. See *Missouri v. Jenkins*, 515 U. S. 70 (1995). Third, for more than twenty years, state law has authorized tuition-free charter schools, funded by state tax dollars, within the geographic area of the District. See A.R.S. § 15-181 et seq. Growth in charter schools within the District has been explosive. The close proximity of other school districts with substantially different demographics serves as a significant limiting factor on the effectiveness of student assignment policies that are not popular with particular racial/ethnic groups. Finally, residential patterns across the District are highly racially concentrated within particular geographic areas. The absence of active community and/or housing policies (policies that must be enacted by other entities, rather than the District) promoting integration and diversity—leaving families to choose primarily their local neighborhood schools—leads to significant racial concentration in many District schools.

	2014-15	2017-18
Erickson	0	393
Holladay Magnet Elementary	0	204
Howell Elementary	325	297
Hudlow	278	232
Hughes Elementary	0	355
Lineweaver	560	0
Myers/Ganoung Elementary	386	353
Sewell Elementary	317	0
Steele	0	277
Tully Elementary Magnet	0	334
Whitmore	367	0
Wright	410	0
Drachman	0	356
Roberts-Naylor	628	0
Dodge	421	415
Mansfeld	0	958
Vail Middle School	642	650
Catalina Magnet High School	884	764
Palo Verde High Magnet School	1077	1140
Rincon High School	1088	1070
Project More	0	68
Teenage Parent (TAP)	69	70
	9288	9917

NUMBERS OF AFRICAN-AMERICAN AND LATINO STUDENTS AT INTEGRATED SCHOOLS

	2014-15	2017-18 (10 th Day)
Banks Elementary	225	0
Blenman Elementary	277	209
Bonillas	0	301
Borton Magnet Elementary	311	284
Cragin Elementary	210	217
Davidson Elementary	204	161
Davis	0	215
Erickson	0	276
Holladay Magnet Elementary	0	171
Howell Elementary	204	184

	2014-15	2017-18
Hudlow	150	140
Hughes Elementary	0	209
Lineweaver	291	0
Myers/Ganoung Elementary	309	271
Sewell Elementary	210	0
Steele	0	167
Tully Elementary Magnet	0	263
Whitmore	232	0
Wright	279	0
Drachman	0	263
Roberts-Naylor	501	0
Dodge	292	299
Mansfeld	0	731
Vail Middle School	379	391
Catalina Magnet High School	549	489
Palo Verde High Magnet School	704	756
Rincon High School	713	774
Project More	0	52
Teenage Parent (TAP)	55	51
	6095	6874

Increasing the overall number of students attending integrated schools by more than 600 students, and increasing the overall number of African American and Latino students attending integrated schools by more than 800 students, is clear evidence of progress toward integrating schools.

Additionally, in 2017-18, the estimated number and percentage of District students who will attend racially concentrated schools is down four percent (more than 2300 students).

STUDENTS IN RACIALLY CONCENTRATED SCHOOLS***10th Day Data is Fluid (it changes as data is updated)**

2014-15 (40th Day)	#	2017-18 (10th Day)	#
Banks	0	Banks	324
Bonillas	410	Bonillas	0
Carrillo	294	Carrillo	302
Cavett	262	Cavett	290
Davis	345	Davis	0
Grijalva	664	Grijalva	589
Lynn/Urquides	562	Lynn/Urquides	482
Maldonado	364	Maldonado	271
Manzo	283	Manzo	301
Miller	602	Miller	521
Mission View	210	Mission View	189
Ochoa	209	Ochoa	187
Oyama	398	Oyama	373
Robison	364	Robison	303
Tolson	321	Tolson	321
Tully	345	Tully	0
Van Buskirk	355	Van Buskirk	263
Vesey	599	Vesey	678
Warren	272	Warren	280
White	728	White	680
Drachman	306	Drachman	0
Hollinger	560	Hollinger	533
Pueblo Gardens	414	Pueblo Gardens	374
Robins	574	Robins	498
Rose	772	Rose	798
Morgan Maxwell	456	Morgan Maxwell	456
McCorkle	786	McCorkle	933
Safford	843	Safford	647
Roskruge	685	Roskruge	657
Mansfeld	761	Mansfield	0
Pistor	930	Pistor	851
Utterback	570	Utterback	385
Valencia	993	Valencia	891
Cholla	1724	Cholla	1942
Pueblo	1541	Pueblo	1734
Tucson	3325	Tucson	3135
Project MORE	77	Project MORE	0

2014-15 (40th Day)	#	2017-18 (10th Day)	#
36 RC Schools	22904	31 RC Schools	20188
Total Enrollment	47959	Total Enrollment	45643
% of Students at Racially Concentrated	48%	% of Students at Racially Concentrated	44%

Clearly, these statistics represent significant and important progress towards integrating schools, particularly when other urban schools and districts in Arizona and around the country are becoming less integrated.

In 2014-15, the District had 19 integrated schools; in 2017-18, the District will likely have at least 22 integrated schools. [Id.] In 2014-15, the District had 36 racially concentrated schools; in 2017-18, the District will likely have 31 racially concentrated schools. [Id.] This is additional evidence of progress integrating schools – by the very standards set forth in the SMAR finding that such progress did not exist.

By the start of the 2016-17 school year, the District had moved two schools from racially concentrated to integrated schools (Tully and Holladay). For the 2017-18 school year, the District estimates it will have moved at least six magnet schools¹² from “racially concentrated” to “integrated” – clear evidence that the magnet tool has assisted in integrating schools. This information and additional information in the DAR for the 2016-17 school year strongly contradict the SMAR’s statement that the District has made “relatively little progress” integrating its schools. Rather, this information shows some of the positive results of the District’s good faith efforts to integrate its schools.

¹² Bonillas ES, Davis ES, Drachman K-8, Holladay ES, Mansfeld MS, and Tully ES.

2. The District has “Worked to Integrate its Schools.”

As shown above, the District’s good faith efforts and diligent work to integrate its schools are bearing fruit, even though the District is still working toward accomplishing several of its ambitious integration goals. In the 2015-16 school year alone, the District’s efforts included:

- Facilitating a Student Assignment Committee (including Plaintiff representation) to develop and propose grade reconfigurations at Borman and Drachman Magnet so that more students “have the opportunity to attend an integrated school” (USP §II(A)(1)). *See* AR 15-16, pp. X-369-70 [ECF 1958-1, pp. 398-99].
- Revising the application and selection process to create integrated entry grades at multiple schools. *See* AR 15-16, p. II-14 [ECF 1958-1, p. 43].
- Developing and Implementing Express Shuttles. *See* AR 15-16, p. III-60 [ECF 1958-1, p. 89].
- Rolling out the Enrollment Bus to increase marketing, outreach, and recruitment efforts. *See* AR 15-16, p. II-47 [ECF 1958-1, p. 76].
- Expanding ALE/GATE opportunities (Wheeler ES and Roberts-Naylor K-8) in a manner that promotes integration. [Id.]
- Expanding Dual-Language opportunities (Bloom ES) in a manner that promotes integration. [Id.]
- Developing and rolling out three targeted marketing and recruitment campaigns (the Positive Reinforcement Campaign, the Priority Enrollment Campaign, and the Continuing Enrollment Campaign). *See* AR 15-16, p. II-16 [ECF 1958-1, p. 45].
- Directing more than 1,000 individual site tours and recruitment events at the 19 magnet schools in 2015-16. *See* AR 15-16, p. II-18 [ECF 1958-1, p. 47].
- Receiving multiple awards for magnet schools and programs.¹³ *See* AR 15-16, p. II-19 [ECF 1958-1, p. 48].
- Developing and implementing a process for monitoring, evaluation, continuous improvement, and professional development for magnet programs and schools. *See* AR 15-16, pp. II-21 to 25 [ECF 1958-1, pp. 50-54].
- Compliance with the November 2015 magnet stipulation to address magnet issues including site budgets, integration initiatives, and magnet teacher vacancies (including a months-long effort to develop a plan for addressing magnet teacher

¹³ The U.S. Department of Education recognized Drachman K-8 as a Blue Ribbon Magnet School. The Arizona Educational Foundation recognized Carrillo K-5 Magnet Elementary School and Dodge Traditional Magnet Middle School as A+ Schools of Excellence. During the annual Magnet Schools of America (MSA) conference in Miami, MSA awarded four Merit Awards to TUSD’s Davis and Ochoa elementary schools, Mansfeld Middle School, and Tucson High Magnet School—the *only awards given in Arizona*.

hiring and retention through incentives and aggressive recruiting). *See* AR 15-16, p. II-27 to 28 [ECF 1958-1, pp. 56-57].

- Development of 19 individual magnet site plans [ECF 1819] and a Comprehensive Magnet Plan [ECF 1898] in SY 2015-16; and the development of six magnet transition plans [ECF 1984] and thirteen revised magnet site plans in SY 2016-17.
- Making improvements in Marketing, Outreach, and Recruitment, including but not limited to the development of school tour videos, school website upgrades, the #TeamTUSD campaign, participation in dozens of community events, and significant improvements of TUSD's marketing presence on social media. *See* AR 15-16, p. II-35 to 40 [ECF 1958-1, pp. 64-69].
- Making significant efforts to support integration through transportation. *See* AR 15-16, p. II-48 to 50 [ECF 1958-1, pp. 77-79].
- Expanding activity buses to support student enrollment at magnet and integrated schools. *See* AR 15-16, p. III-60 to 61 [ECF 1958-1, pp. 89-90].

The Mendoza Plaintiffs assert that “much that was initiated in 2015-16 year was the direct result of pressure from the Plaintiffs...” citing “express shuttles, the enrollment bus, ALE/GATE opportunities at Wheeler ES and Roberts-Naylor K-8, and dual language opportunities at Bloom ES.” [ECF 2048 at 9, referring to the Magnet Stipulation, ECF 1865 from November 2015.] First, the four examples cited by the Mendoza Plaintiffs hardly scratch the surface of the District's efforts initiated in the 2015-16 school year. Consider, for example, many magnet schools made significant gains integrating their entry-level grades in the 2015-16 school year; many of the efforts leading to those outcomes were not directly related to integration initiatives. Second, the assertion is simply incorrect: the District's Boundary Review Committee in 2015, Student Assignment Committee in 2016, and Coordinated Student Assignment committee in 2014-15 and 2015-16, have all worked to develop the referenced ideas (and others) as part of efforts to improve integration – not as a “direct result of pressure from the Plaintiffs.” Moreover, as noted above, the USP requires collaboration with the Plaintiffs; it is disingenuous, at best, to characterize District action stemming from collaboration with the Plaintiffs as occurring only because of “pressure” from the Plaintiffs.

The Mendoza Plaintiffs acknowledge that “there has been improvement” in the revisions to the application and selection process to create integrated entry grades at

multiple schools. [ECF 2048 at 10.] Certainly, this “improvement” should factor into any assessment of whether the District has “worked to improve integration.”

The SMAR takes issue with the District’s opposition to withdrawing magnet status from several schools. [ECF 2026 at 6.] The District stands behind its efforts to provide magnet schools the opportunity to improve integration prior to the removal of magnet status. In 2013, the Special Master recommended removal of magnet status from Davis elementary magnet school – arguing the District would never be able to integrate Davis. By 2016-17, Davis was well on its way to becoming an integrated school, by integrating its kindergarten and first grades and by reducing Latino racial concentration from 85% in 2012-13 to 75% in 2016-17. Preliminary 10th day enrollment data indicates that Davis may very well be an integrated school by the 40th day of the 2017-18 school year. It is unreasonable to characterize the District’s efforts to integrate magnet schools – even those that had been written off by others as impossible to integrate, such as Davis – as evidence that the District has not “worked to integrate schools.”

The SMAR also alleges that “no new magnet schools have been proposed...” [ECF 2026 at 6.] This is incorrect. Since 2013, the District has proposed eight new magnet schools:

- Performing Arts Magnet at Cragin ES [ECF 1550-4 at 13];
- STEM Magnet at Mansfeld MS [*Id.*];
- International Business and Dual Language Studies Magnet at Catalina HS [*Id. at 14*];
- Expeditionary Learning and Dual Language at Kellond ES [*Id.*];
- Global Enterprise and Dual Language at Dietz K-8 [*Id.*];
- Integrated Technology at Roberts-Naylor K-8 [*Id. at 15*];
- Early Middle College/Medical Sciences at Santa Rita HS [*Id.*];
- Roberts-Naylor Open-Access GATE (pending).

With the exception of Mansfeld's STEM magnet, either the Plaintiffs and/or the Special Master opposed the other new magnet proposals.

The record is clear: the District has made significant progress integrating schools over the last four years based on its well-documented work to integrate its schools.

B. Magnet Schools and Programs [Mendoza Objection 2].

The Mendoza Plaintiffs' objection number 2 states that "the DAR is silent on the subject of the educational achievement of students in its magnet schools and on the related subject of whether they are succeeding in reducing the achievement gap." [ECF 2047 at 13.]

The USP sets specific student assignment goals for magnet schools. [See ECF 1713 at 10].¹⁴ The USP does not set specific academic achievement goals for magnet schools, nor does it require reporting on academic achievement for magnet schools. Nevertheless, the District has set magnet goals, and recently reported on those goals in the 2016-17 annual report.¹⁵

By June 2015, the District had developed site-specific academic achievement goals in each Magnet Site Plan ("MSP") and filed those goals and plans with the Court. [See ECF 1816.] In recognition of the "implementation dip," the District designed the MSPs to include academic achievement benchmarks for 2015-16, and academic achievement goals for June of 2017. Accordingly, while the District has actively monitored benchmark and other data on an ongoing basis, it's first report on progress

¹⁴ "The student assignment goal for all magnet schools and programs shall be to achieve the definition of an integrated school set forth above (*see* Section (II)(B)(2)). The District, through its Family Center(s) and other recruitment strategies set forth in this Order, shall recruit a racially and ethnically diverse student body to its magnet schools and programs to ensure that the schools are integrated to the greatest extent practicable." USP §II(E)(2).

¹⁵ The Court has adopted "two goals as measurements for assessing the effectiveness of a magnet school" and has indicated that "a school must show progress ... towards enhancing the educational quality of its magnet programs." [Order on the Revised CMP, ECF 1753 at 9.]

towards academic achievement goals was in its 2016-17 annual report (after having received some of the necessary academic achievement data from the State in the summer of 2017). [See 2016-17 DAR, ECF 2057-1 at 63-68.]

III. Transportation [Mendoza Objection 3].

The Special Master found that the “District is implementing the transportation provisions of the USP satisfactorily.” [ECF 2026 at 7.] The Mendoza objection argues that insufficient data on bus routes and bus pass use was provided or addressed in the SMAR. As discussed above, the Special Master has unfettered access to TUSD data. The Special Master reports on the progress of USP implementation using “the information in any District reports, together with baseline data collected during the Initial Report phase and such other information as the Special Master deems necessary or appropriate from any source, to prepare annual reports...” [ECF 1350 at 7.] It is up to the Special Master, therefore, to determine what “other information” he deems *necessary* to prepare his report. The Special Master did not determine that any additional data on these issues was *necessary* for reporting purposes. The District provided a plethora of transportation data, and there have been no allegations of discrimination in the District’s provision of transportation.

IV. Administrators and Certificated Staff.

A. Principal Diversity [Fisher Objection 2].

The Fisher Plaintiffs assert that the data “do not demonstrate an adequate effort to meet the requirements of the USP” with respect to principal diversity. In an attempt to support this objection, the Fisher Plaintiffs cite the participation of one African American in two of the District’s leadership development programs (the Leadership Prep Academy (LPA) and the U of A Master’s program (Master’s Program)), and incorrectly assert the District did not hire or appoint any African American principals or assistant principals for 2017-18.

Although the SMAR notes that the District implemented the LPA and the Master's Program "to enhance the diversity and effectiveness of school administrators," these two programs do not represent the District's only efforts to increase the numbers of African American site administrators. Further, the number of African American participants in any one program is not probative of the District's efforts to meet USP requirements. In fact, the SMAR concludes that between 2014-15 and 2016-17 "the number of African American school level administrators increased from 8 to 13, a significant change." [ECF 2026 at 14-15.] Moreover, as of August 2017, the District has hired or appointed two new African American principals (Tucson HS and Catalina HS) and one new African American assistant principal (Dietz K-8) for the 2017-18 school year.

B. Teacher Diversity [Mendoza Objection 4].

The SMAR states, incorrectly, that the USP "requires that each school should have a racially diverse faculty – defined as no more than 15% plus or minus the District average at each grade structure level." [ECF 2026 at 8.] The USP does not include such requirement.¹⁶

Based on this misunderstanding, the SMAR states that the Court ordered the District to "implement this provision of the USP no later than 2017-18 in 26 schools." In fact, the Court ordered the District to "develop and implement a plan to reduce by half by the beginning of the 2016-17 school year the number of schools in which there are

¹⁶ Section IV(E)(2) requires the District to "identify significant disparities" in staff diversity, to "assess the reason(s) for the disparities," and to "review and address, to the extent relevant and practicable, its hiring and assignment practices, including enforcing hiring policies and providing additional targeted training to staff members involved in hiring and assignment."

In the 2013-14, 2014-15 and 2015-16 annual reports, the District reported on its efforts to identify significant disparities in staff diversity, to assess the reasons for the disparities, and to review and address "to the extent relevant and practicable" its practices to address identified disparities. [See ECF 1686 at 91-92; ECF 1848 at 103-105; and ECF 1958 at 108-109.]

existing racial disparities, as defined by the USP, among the teaching staffs.” [ECF 1914 at 2 (emphasis added).] The District complied with this directive by developing and implementing the Teacher Diversity Plan (TDP) during the 2015-16 school year – supplementing previous efforts as reported in the prior annual reports.

However, the parties disagreed on the appropriate method for calculating progress towards the plan’s goals: the Special Master proposed measuring diversity using only Hispanic and white teachers; while the District proposed calculating diversity as stated in the USP – using only Hispanic and African American teachers. The Mendoza Plaintiffs object to the District’s method for calculating diversity and assert that the “superseded method” (the USP method) overstates the number of schools that qualify as “diverse” under the TDP. [ECF 2047 at 17.] The District reported to the Special Master that seventeen schools “met the standards for diversity in the USP;” it did not claim seventeen schools qualified as “diverse” under the TDP. Nothing prevents the District from utilizing the USP measure to calculate diversity, and the District did not object to the Special Master’s finding that 11 schools met the TDP measure of diversity.

The relevant question is whether the District complied with the USP, in part through implementation of the TDP, not whether it achieved teacher diversity in 11 schools (per the Special Master) or 10 schools (per the Mendoza Plaintiffs). Whether the correct number is 10 (77% of the goal) or 11 (85% of the goal), both numbers support a conclusion that the District made a good faith effort towards reaching its goal.

C. Professional Development [Mendoza Objection 5].

The Mendoza Plaintiffs acknowledge the USP “requires that professional development related to multiple facets of the District’s operations **be delivered to** TUSD’s certificated and administrative staff...” [ECF 2047 at 20 (emphasis added).] The Special Master found the District satisfied the provisions of the USP related to professional development. [ECF 2026 at 14.] The Mendoza Plaintiffs object to the Special Master’s finding but present no evidence or argument to suggest the District has

failed to **deliver** the required professional development to its administrators and certificated staff. Mendoza Plaintiffs base their objection on alleged “inadequacies” in implementing culturally responsive pedagogy.¹⁷ [ECF 2047 at 21, and 23-24.] Inadequacies, if they exist, might indicate that District implementation has not been perfect, but it does not prove the District has failed to comply in good faith with the USP’s provisions related to the delivery of professional development. In any event, the SMAR considered those alleged inadequacies and nonetheless found the District to be in compliance with the USP.

V. Quality of Education.

A. Advanced Learning Experiences (ALE) [Mendoza Objection 6].

The Mendoza Plaintiffs withdrew a portion of their objections related to ALEs, but did not withdraw the portion of their objection related to setting ALE goals. The Mendoza Plaintiffs’ objected to the development of goals prior to the filing of the Court-ordered ALE R&R, stating that “the filing of the ALE R&R would have carried with it an opportunity for the Mendoza Plaintiffs to object to ALE goals recited in that R&R and Court resolution of any dispute on the issue.” [ECF 2047 at 27.] The Special Master filed the ALE R&R on August 3, 2017, (ECF 2041), the Mendoza Plaintiffs filed an objection to the ALE R&R, (ECF 2069), and the District filed a response to the Mendoza Plaintiffs’ objections, (ECF 2073). Consequently, the District has addressed these objections.

The Mendoza Plaintiffs essentially argue that the SMAR fails to “adequately” address equal *access* to ALEs because it does not require the District to establish goals to compare ALE *participation* of the District’s White students with ALE *participation* of

¹⁷ The SMAR found “TUSD is one of the few Districts in the country that has made a District-wide commitment to culturally responsive pedagogy (CRP).” [ECF 2026 at 11.] This finding reflects the reality that there are few places to go to observe best practices, receive professional development, or replicate programs for implementing CRP in a K-12 setting.

the District's African American and Latino students. The Mendoza Plaintiffs do not argue that there is not equal *access* to ALEs—the USP standard. There are and have been no complaints and no evidence suggesting there is not equal *access* to ALEs. Further, ALE *participation* by African American and Latino students has grown significantly over the past five years.

Nevertheless, the Mendoza Plaintiffs argue that unless the District sets and reaches specific goals comparing the participation of African American and Hispanic students to that of White students (including reaching parity in participation), the District purportedly is not complying with the USP. However, this argument is contrary to law. Good faith compliance with a desegregation decree focuses on the District's actions and consequences, and not by outcomes or results affected by “society's other racial, economic, and educational ills.” *Hampton v. Jefferson County Bd. of Educ.*, 102 F. Supp. 2d 358, 361 (W.D. Ky. 2000).

Consequently, the Mendoza Plaintiffs' calls for specific participation and academic results as a measurement of good faith seek inappropriately to measure the District's good faith compliance with the USP based on the outcome or result of factors beyond the District's control. Indeed, performance-related tests are not the appropriate tests to be applied in deciding whether a previously segregated district has achieved unitary status. *Missouri v. Jenkins*, 515 U.S. 70, 101, 115 S. Ct. 2038, 2055 (1995).

“Just as demographic changes independent of de jure segregation will affect the racial composition of student assignments, so too will numerous external factors beyond the control of the [school district] and the State affect minority student achievement. **So long as these external factors are not the result of segregation, they do not figure in the remedial calculus. Insistence upon academic goals unrelated to the effects of legal segregation unwarrantably postpones the day when the [school district] will be able to operate on its own.**”

Id. (emphasis added and citations omitted).

The USP requires the District to provide equal access and support for ALEs, actions that focus on the District's behavior and processes. The USP does not require the District to reach a result which is completely dependent on the decisions and actions of the students and their parents.¹⁸ And it certainly does not require the District to discourage ALE participation among White students. As stated by the court in *Hampton*, “[p]romoting and achieving academic progress for all students, irrespective of race, is the central purpose of a public school system.” 102 F. Supp. 2d. at 366. Or, as the Special Master concluded:

The point here is that setting goals the achievement of which are beyond the capabilities of schools to achieve is not fair [and] may direct attention away from actions the District can implement to increase participation of Latino and African American students in ALE.

[ALE R&R, ECF 2041, p. 10.]

Although the District gladly sets participation goals, those goals are separate and apart from the USP requirement of equal access (based on a constitutional standard of equal treatment). And while the District strives to attain those higher and more ambitious goals, attainment of those goals is not required to satisfy the USP.¹⁹

¹⁸ As the Special Master explained in the ALE R&R:

“Parity is not a reasonable goal for all students. Participation in ALEs is voluntary and choice is influenced by perceptions of likely attainment of the putative benefits of participating in a given ALE. These perceptions can be influenced by teachers and counselors and other educators, a point returned to later, but family and student perceptions of whether students will benefit from ALEs is importantly influenced by numerous factors including the prior experiences of family members, stereotype threat, and students’ sense of academic confidence and competence.” [ALE R&R, ECF 2041, p. 6.]

¹⁹ The entirety of the District’s Response to the Mendoza Plaintiffs’ ALE R&R Objections was filed as ECF 2073.

B. Dual Language [Mendoza Objection 7].

The Mendoza Plaintiffs argue that “there has been no agreement to or Court approval of the use of the “20% Rule” to set goals and/or assess successful integration of the District’s ALE efforts.” Based on this argument, they object to the “failure of the Special Master in the SMAR” to address the fact that the 2015-16 DAR uses the “20% Rule” as one of several measures to evaluate the District’s progress. But nothing in the USP (or elsewhere) prohibits the District from providing analysis on dual language enrollment using the 20% Rule. The 2015-16 DAR also shows dual language enrollment changes by race and ethnicity, (see Table 5.35, ECF 1958-1 at 208), and dual language enrollment changes by school, (see Table 5.36, ECF 1958-1 at 209). The parties can use various standards to analyze this dual language data.

C. Student Success Specialists [Mendoza Objection 8].

The Mendoza Plaintiffs object to the absence in the SMAR of a detailed discussion about student success specialists. [ECF 2047 at 32.] As reported in the District’s most recent annual report, the District is complying in good faith with the USP requirements for African American Student Services (AASS) and Mexican American Student Services (MASS) departments. [See ECF 2057-1 at 275-307.] The District has supplemented this work with additional systems and personnel, primarily through the Multi-Tiered System of Supports (MTSS) – discussed in detail throughout the 2015-16 and 2016-17 DARs. There is no requirement for the Special Master to report further on the issue of specialists as the District is fulfilling all of the functions required by the USP (and in most cases is going above and beyond USP requirements) related to the provision of support services for African American and Latino students.

In any event, the USP delegates to the District the express authority to “establish the organizational relationships and lines of responsibility for the various offices and positions provided for in this Order....” [ECF 1713 at 7.] Changes to the organization and staffing of these departments (issues addressed in detail by the parties and Special

Master during the 8-9 month-long budget development process) are not the type of issues on which the Special Master must report in the SMAR (even if the District, of its own volition, reports on these issues in the DAR).

D. AASS and MASS Department Tutoring Services [Mendoza Objection 8].

The Mendoza Plaintiffs object to the absence in the SMAR of a discussion about tutoring services, and “request that the Special Master seek confirmation from the District, parallel to the confirmation provided with respect to after-school tutoring discussed in the SMAR in connection with extra-curricular activities (SMAR at 29), that all tutoring (regardless of the time or day offered) through the AASS and MASS Departments also will be provided (or closely supervised) by certified personnel.” [ECF 2047 at 33.]

The USP requires the District to “collaborate with local colleges and universities and identify college students, including District alumni, to provide learning support and guidance to [African American and Latino] students through mentoring, teaching assistance and other methods.” [Id. at 39, 41.] There is no USP requirement that the “learning support and guidance” or “teaching assistance” resulting from collaboration with local colleges must be “closely supervised” by certified personnel. These mentoring and tutoring opportunities often occur simultaneously with non-certified college students.²⁰ The District does not agree with the Mendoza Plaintiffs’ suggestion because it would likely limit students’ access to mentoring and tutoring support from college

²⁰ See 2016-17 DAR, ECF 2057-1 at 295 (“MASS also provided certified academic tutors to facilitate math interventions as a part of the weekly program”); at 318 (“In SY2016-17, the AASS department provided a number of extended learning opportunities through enrichment experiences for students, including Too Cool Tuesdays math tutoring and College and Career Connections.”); and at 319 (“The District also plans to increase the number of schools providing afterschool tutors targeting African American middle and high school students. By increasing the use of college and/or certified tutors, students will receive additional reading and math support.”)

students in situations where certified personnel are not present to “closely supervise” the interactions.

E. African American Academic Achievement [Fisher Objections 1 and 5].

The Fisher Plaintiffs generically argue that “the Special Master – and the District – lack commitment to improve outcomes for African American students.” [ECF 2049 at 3.] As stated by the Special Master, “It is difficult to know how to respond to this general disposition.” [Id.] Nevertheless, the District strongly disagrees with the Fisher Plaintiffs’ generic assertion. Beginning in 2013, the District has implemented strategies to improve academic achievement for African American students, monitored those strategies for effectiveness, and reported on these efforts in extreme detail.

For example, in the 2015-16 DAR, the District reported that as a result of District efforts, African American students in the District graduated at a rate of 79 percent (higher than the national average and substantially higher than the state average of 70 percent for African American students) and dropped out of school at a rate of 2 percent, 50 percent lower than the state average of three percent for African American students (and substantially lower than the national dropout rate for African American students). The District invests tens of thousands of hours and tens of millions of dollars each year to improve African American academic achievement, as detailed in hundreds of pages of annual reports and thousands of pages of appendices to those annual reports each year. The District’s strong commitment to improve outcomes for African American students is evident in its efforts and reports, as well as in the actual improvement in outcomes and level of outcomes that are better than state and national averages.

VI. Discipline.

A. Disproportionality [Fisher Objection 4].

The Fisher Plaintiffs allege the Special Master was complacent in addressing disproportionality in discipline. [ECF 2031 at 5.] The Fisher Plaintiffs apparently ignore both the SMAR and the 2015-16 DAR, as these report that the District not only has made

“considerable progress” in reducing the number of disciplinary actions, but also show that the District has reduced the disproportionality in discipline between African American and White students. Moreover, as reported in the District’s 2016-17 annual report, the District continues to reduce this disproportionality. [AR 16-17, ECF 2057-1, pp. 355-58.] Based on the District’s extensive efforts, the disproportionality rate between African American and White students has been reduced drastically.

Using a proportionality index (“p-index”), which divides the percentage of students within a racial/ethnic group that received a particular consequence (e.g., short- or long-term suspension) with the group’s percentage of enrollment, the District reported on the progress in reducing disproportionality in discipline. As reported in the 2016-17 annual report, ECF 2057-1, at pages 355-58:

P-Index for African American Student Out-of-School Suspensions

		2014-15	2015-16	2016-17
District Enrollment ²¹	%	6%	9%	10%
Short-Term Suspension	%	19%	17%	16%
P-Index		3.17	1.89	1.60

Although African American students still received a disproportionate number of short-term suspensions, as is true across the country, the disproportionality has decreased substantially since SY2014-15.

The District also calculates a likelihood ratio²² that compares the p-index for both African Americans and White students. In SY 2014-15, African American students were 3.2 times more likely to have a short-term suspension than White students. By SY 2016-17, the likelihood ratio had dropped to 1.9 (see Table 6.10, below).

²¹ Enrollment data includes all students who were enrolled at any given point during the school year. It is therefore higher than any single date enrollment such as 40th day.

²² The likelihood ratio is a measure of the relationship between two groups and is calculated by dividing the p-index of one group by another. A likelihood ratio of zero occurs when the p-index is one.

Table 6.10: Likelihood Ratio for Short-Term Suspensions

	2014-15	2015-16	2016-17
AfAm/White Ratio	3.2	2.1	1.9
Hispanic/White Ratio	0.8	1.0	1.1

P-Index for African American Student Out-of-School Suspensions

		2014-15	2015-16	2016-17
District Enrollment ²³	%	6%	9%	10%
Long-Term Suspension	%	16%	19%	19%
P-Index		2.67	2.11	1.90

Progress is also positive for long-term suspensions, as the number of African American students receiving long-term suspensions dropped from 48 in SY2014-15 to 29 in SY2016-17. Although African American students still received a disproportionate number of long-term suspensions, the disproportionality decreased since SY2014-15.

The likelihood that African American students were suspended long-term compared to White students fell from 3.5 in SY2014-15 to 2.3 in SY2016-17 (see Table 6.12, below). Although African Americans were still overrepresented in suspensions, the District has reduced the disparity for African American students and eliminated the disparity in some areas for Hispanic students.

Likelihood Ratio for Long-Term Suspensions

	2014-15	2015-16	2016-17
AfAm/White Ratio	3.5	2.2	2.3
Hispanic/White Ratio	1.2	1.0	1.1

Although the SMAR did not detail all of the positive data related to proportionality in discipline, the SMAR includes an evaluation of the District's efforts to address discipline disproportionality. In conducting his analysis and reaching his finding, the SMAR referred to the DAR, rather than replicating the information contained therein: “[t]he District has made considerable progress in reducing the number of disciplinary

²³ Enrollment data includes all students who were enrolled at any given point during the school year. It is therefore higher than any single date enrollment such as 40th day.

actions in 2015-16 in comparison to previous years. The explanations for this progress are identified in the District’s annual report.” [ECF 2026, p. 23.] The SMAR concludes, accurately, that “the number of incidents involving African American students declined more than for white and Latino students.” [2015-16 SMAR, ECF 2026 at 24.]

B. Discipline Data [Mendoza Objection 9].

The Mendoza Plaintiffs ask the Court to direct the Special Master to revise certain sections of the SMAR related to discipline “if he finds that it is necessary to do so to ensure consistent and accurate data reporting.” [ECF 2047 at 33-34.] Because the Special Master has not found deficiencies in Discipline data reporting, and because the District’s discipline data has been thorough, no additional response is necessary.

C. GSRR Statement [Mendoza Objection 10].

The Mendoza Plaintiffs further ask the Court to “direct the Special Master to revise” his statement in the SMAR that “[a]s of May 2017, no changes in the GSRR had been approved by the Governing Board.” [Id. at 34.] There is no reason to revise this statement because it is true: as of May 2017, the Governing Board had not approved any changes to the Guidelines for Student Rights and Responsibilities (“GSRR”). The Special Master should not revise his statement based solely on the Mendoza Plaintiffs’ perception of “the implication of the statement.” [Id.]

VII. Family Engagement.

A. Magnet Integration, Two-Way Engagement, and Data Monitoring [Mendoza Objection 11].

The Mendoza Plaintiffs object to the “omission” of discussions in the SMAR related to three areas of family engagement, assuming, incorrectly, that the omissions resulted from “an absence of evidence concerning the District’s efforts” in three areas: the use of Family Centers to integrate magnet schools and programs; “meaningfully” engaging families; and family engagement data monitoring. [ECF 2047 at 36.] Again, there is considerable evidence in the District’s annual reports in all three of these areas.

1. Using Family Centers to Promote Integration.

The SMAR accurately states that the family centers “provide a number of services to families that are described in detail in the DAR.” [ECF 2026 at 27.] Indeed, the 2015-16 DAR provides ample evidence of District efforts to promote integration through family centers.²⁴ Likewise, the 2016-17 DAR outlines in detail the District’s efforts to integrate magnet schools through family centers, among other strategies. [See, e.g., ECF 2057-1 at 86-87.] There is no absence of evidence showing the District’s efforts to promote magnet schools through its family centers.

Moreover, by the 2017-18 school year, the District will likely have transformed at least two (and maybe as many as four) racially concentrated magnets to integrated magnets. The District’s strategies for integrating magnet schools and programs, including efforts to support student assignment through its family centers, are working to promote integration.

2. Two-Way Family Engagement [Mendoza Objection 11].

The USP requires the District to “learn[] from families how best to meet the needs of their children.” [ECF 1713 at 50.] The SMAR reports on District family centers that

²⁴ See, e.g., 2015-16 DAR: noting that family centers “**provide a one-stop service to families seeking information about community resources, magnet school and open enrollment options...**” [ECF 1958-1 at 26 (emphasis added)]; highlighting collaboration with multiple departments “**to actively recruit students at family centers and local events, provide marketing and outreach, and strategically market each magnet school’s unique brand.**” [Id. at 47 (emphasis added)]; noting that to support the family centers “**in assisting parents in school choice, the District will provide a display board to each family center and pre-school and informational rack cards for each magnet school for the 2016-17 school year**” [Id. at 48 (emphasis added)]; referring to continued efforts to provide “families with multiple ways to apply by providing and accepting [Magnet/Open Enrollment] applications at the District’s central offices, school sites, and Family Resource Centers...” [Id. at 59]; describing marketing, recruitment, and application-collection efforts at the school information center [Id. at 66-67]; and describing specific efforts to support magnet and open enrollment at the family centers [Id. at 354].

“provide a number of services to families that are described in detail in the DAR”²⁵ and increased home visits that “help families address difficulties their students may be having in school” – noting this is “important work.” [ECF 2026 at 27.]

The District had not previously reported on basic “two way” engagement like parent-teacher conferences, parent-teacher team meetings, and parent workshops. The District has added to its reporting on these efforts to provide a more thorough picture of its family engagement implementation, in part, to respond to the SMAR’s finding that “better evidence in this regard is needed.” [ECF 2026 at 28.]²⁶ In addition, 53 District schools have a School Community Liaison (SCL) charged with further enhancing two-way engagement and “bridging the gap between schools, families and communities” [ECF 2026 at 28].²⁷

²⁵ In addressing “two way” family engagement, it appears the SMAR (and objections to the SMAR) focus solely on the Family Engagement section (section VII) of the 2015-16 DAR. Other sections provide additional evidence of District’s efforts.

²⁶ See 2016-17 DAR, Appendix VII-1 which includes “reports from a sampling of school sites describing trainings offered to adult caregivers with a curricular focus” including, but not limited to, evidence of “two-way approaches” like: parent-teacher conferences; parent-teacher workshops; parent-student clubs on weekends; Cafecitos; Academic Parent Teacher Teams (APTTs); reading programs; curriculum, math, science, and literacy nights; and AzMERIT informational nights – to name a few). [ECF 2065-1 at 1-26]; see also Appendices VII-2, VII-3, and VII-4 for additional information related to both “one-way” and “two-way” family engagement [ECF 2065-1 at 27-85]; see also ECF 2057-1 at 371 (discussing “training to administrators and school staff to ensure that families felt welcomed at schools and included as partners in enhancing their children’s learning”); and see Table 7.2 “School Site Staff Training to Make Parents Feel Valued as Partners in Their Children’s Education” [ECF 2057-1 at 372].

²⁷ The SMAR states, incorrectly, that “many of these [SCL] positions have gone unfilled.” [Id.] The District has filled 50 of 53 SCL positions. The SMAR recommends “ensuring” full-time SCLs for racially concentrated schools and schools achieving below the District average. The vast majority of these schools already have an SCL. The District funds SCLs, primarily, through Title I discretionary funds and thus cannot direct schools to use those funds for a full-time SCL. Schools develop Title I plans based on a comprehensive needs assessment. It would be unreasonable to direct schools to fund a

3. Data Collection [Mendoza Objection 11].

The Mendoza Plaintiffs object that the SMAR fails to address the adequacy of the District's data collection efforts in the area of family engagement. [ECF 2047 at 40.] The 2014-15 SMAR included recommendations to improve family engagement reporting organized by types of activities, race, and the purpose for the services. [ECF 1890 at 30.] The Special Master filed the 2014-15 SMAR at the end of January 2016 – more than halfway through the 2015-16 school year. The District began implementing the Special Master's recommendations in the 2016-17 school year after determining it would be unreasonable, in the spring of 2016, to develop a family engagement tracking system using its outgoing student information system (Mojave) as it was transitioning to an entirely new system (Synergy).²⁸ Reporting will continue to improve as the District continues to work to improve these various systems (Synergy, Dynamics, and the tracking tool).

full-time SCL simply because they are racially concentrated, particularly where their needs assessment would not otherwise support funding such position. Funding 15 full-time SCLs from 910(G) funds, and supplementing existing part-time SCLs to become full-time SCLs, would cost almost \$1 million dollars (currently, the District uses 910(G) funds for SCLs in very limited circumstances – for family centers and three magnet schools). And, the creation of an alternative funding source would create a disincentive for principals to use Title I discretionary funding for SCLs, resulting in even higher reliance on 910(G) funds.

²⁸ Implementing Synergy to track “student intervention information, parent meetings, and ParentVUE usage at the site level” (ECF 2057-1 at 381); purchasing a customer relationship management platform, Dynamics, to track interactions between staff and families, aligned with the newly-instituted Microsoft Office 365 platform (Id.), capable of tracking engagement by race (Id. at 382), and developing and implementing an improved family center tracking tool, including the ability to track family engagement by race, organized by types of activities (see ECF 2065-2 at 65).

B. The Absence of Racial Disparities [Mendoza Objection 12].

The Mendoza Plaintiffs assert the Special Master could not have found a lack of correlation between race and robust family engagement because the 2015-16 DAR did not provide comprehensive family engagement information on all 86 schools (citing nine schools not listed as having a single type of engagement). As noted above, the Special Master does not rely solely on the DAR to inform his conclusions. The Special Master and Implementation Committee, have “unfettered access” to the District that includes site visits, access to thousands of responses to requests for information, and an intimate knowledge of District operations (all three IC members are former District leaders).

VIII. Extracurricular Activities.

The SMAR finds that “the District is implementing the provisions of the USP with respect to extracurricular activities in a satisfactory way.” [ECF 2026 at 29.] The SMAR supports this finding with multiple facts, including: training for students and supervisors “that exceed what is done in many districts,” after-school tutoring to support participation, free transportation, increased participation, better record-keeping, and that “in general, total percentages of participation across ethnicities, remained relatively constant.” [Id. at 29-30.] The Mendoza Plaintiffs object to this conclusion based on three alleged deficiencies in the supporting findings. As shown below, the data fully supports the Special Master’s finding of good faith compliance with the USP in this area.

A. Participation Rates [Mendoza Objection 13].

The SMAR found, “in general, total percentages of participation across ethnicities, remained relatively constant.” The DAR supports this finding (see ECF 1958-1 at 366):

Students Participating in at Least One Extracurricular Activity (Unduplicated)						
	White	African American	Hispanic	Native American	Asian/Pacific Islander	Multi-Racial
2015-16	27%	9%	56%	3%	2%	4%
2014-15	26%	10%	56%	2%	2%	3%
2013-14	28%	10%	54%	2%	2%	3%

The Mendoza Plaintiffs argue that participation rates increased faster for White students than for Latino and African American students when compared to each group's overall enrollment (despite that all three groups experienced increased participation). The USP requires the District to “comply with” provisions of section VIII “to provide students equitable access to extracurricular activities” (ECF 1713 at 53), not to narrow gaps between participation rates of different racial or ethnic groups in extracurricular activities, and certainly not to prohibit any racial groups from increasing participation.

Additionally, the logic behind this objection is unsound, because it disregards external factors beyond the District's control, such as student and parent choice, and internal factors, such as school size.

Second, the alleged “significant disparity” is based on participation rates at five schools with a white student population of 25% are higher than participation rates at three racially concentrated schools. There were five schools in 2015-16 with white student populations over 25%, as shown in the table below.

2015-16	White Enrollment	African American and Hispanic Enrollment
Palo Verde	25%	66%
Rincon/UHS	34%	54%
Sabino	57%	36%
Sahuaro	44%	49%
Santa Rita	38%	54%

With the exception of Sabino, each school has larger (in some cases, much larger) African American and Latino populations than white populations. Thus, if these schools have greater participation in extracurricular activities, it is to the benefit of their African American and Latino students.

Moreover, again, the existence of differences in participation outcomes does not prove the existence of inequitable access. Such outcomes (if they even existed in TUSD) would not prove the failure of the District to make a good faith effort to provide equitable

access; countless school districts have proven their good faith efforts in seeking a desired outcome even while failing to achieve parity in results.²⁹

B. Interracial Contact in Positive Settings [Mendoza Objection 13].

The USP requires the District to “ensure that extracurricular activities provide opportunities for interracial contact in positive settings of shared interest....” [ECF 1713 at 53]. The District has reported on its efforts in this regard in each of the prior annual reports,³⁰ in its motion for partial unitary status [see ECF 2005 at 18-22], and throughout the Special Master and Implementation Committee’s monitoring, including in-person meetings, responses to requests for information, and other communications.

Contrary to the Mendoza Plaintiffs assertion, the USP does not include a “central obligation in the extracurricular section” to provide a “degree of oversight and follow up” comparable to that described in a single desegregation case decided forty years ago, with no comparison between the USP and the desegregation decree in that case.³¹

²⁹ See *Belk v. Charlotte Mecklenburg Sch.*, 269 F.3d 305, 397 (4th Cir. 2001), (“[T]he scope of our inquiry concerning extracurricular activities is limited. We need only determine whether the school system permits its students equal access to extracurricular activities, without regard to race.”)

³⁰ The 2013-14 DAR [see ECF 1686 at 194-197], the 2014-15 DAR [see ECF 1918-1 at 293-304], and the 2015-16 DAR [see ECF 1958-1 at 364-375].

³¹ The case cited by the Mendoza Plaintiffs, *United States v. Board of Public Instruction of St. Lucie Co.*, 977 F. Supp. 1202, 1221 (S.D. Fla., 1977), is distinguishable from *Fisher-Mendoza*. In *St. Lucie County*, the court made an express finding in 1970 prohibiting the school district “from maintaining any . . . extra-curricular activity on a segregated basis, so that no student is effectively excluded from . . . participating in any non-classroom or extra-curricular activity on the basis of race, color or national origin” [Id.] Seven years later, the District reached unitary status, in part, from its efforts to address specific findings that *St. Lucie County had discriminated in the area of extra-curricular activities* [Id. at 1209]. That TUSD does not have the same level of “oversight” as St. Lucie County did forty years ago, under very different facts and circumstances, does not undermine the Special Master’s finding that TUSD has satisfactorily complied with the USP regarding extracurricular activities. There has never been an allegation of discrimination in extracurricular activities, let alone a finding. In

C. Data Collection [Mendoza Objection 13].

The USP requires the District to improve its data collection and reporting capabilities. Through compliance with the USP, the District's capabilities have improved from year to year. The Mendoza Plaintiffs argue that this progress counsels against a finding of good faith compliance because improved data collection makes it harder to "make 'apples to apples' comparisons with extracurricular participation data provided for prior years." Such a position is not only unreasonable and contrary to the spirit and letter of the USP, it also is in direct opposition to the constitutional moorings of desegregation cases and black letter law from the Supreme Court. Improvements that change the District for good in obvious and substantial ways indicate that the District *has* complied with constitutional requirements and that control of the District should be placed back into the hands of the Governing Board.

IX. Facilities and Technology.

A. Facilities Conditions Index (FCI) [Mendoza Objection 14].

The SMAR found that "it does not appear that the quality of school facilities varies significantly by the proportion of students of different races in a school" [ECF 2026 at 30]. The Mendoza Plaintiffs argue that the SMAR findings related to facilities "may well be inaccurate" because there may (or may not be) unreliable data. [ECF 2047 at 48 (emphasis added).] In attempting to prove the existence of unreliable data, the Mendoza Plaintiffs cite the Educational Suitability Score (ESS) developed for Utterback middle school in the spring of 2015 that included a 4 out of 5 rating for performing arts spaces, and a request for funding for specific repairs to Utterback's auditorium in the spring of 2016. In the spring of 2015, the school's overall performing arts spaces rated 4 out of 5 on the ESS. Utterback, being a former performing arts magnet, has dozens of performing arts spaces including the auditorium. That the auditorium needed repairs in

fact, Judge Frey found there was no dual system related to extracurricular activities. [ECF 345, p. 42.]

2016 does not invalidate the overall scoring of all performing arts spaces at a performing arts school in 2015.

Further support for the Special Master's finding can be found in the 2016-17 DAR, which includes updated versions of the ESS (Appendix IX-1, ECF 2067-1 at 1) and of the FCI (Appendix IX-2, ECF 2067-1 at 5). Based on Appendix IX-2, for example, the high school with the highest FCI score is racially concentrated (Tucson High, 4.53), and the schools with the next highest scores are either racially concentrated, integrated, or neither (Pueblo and Catalina 4.32, Rincon/UHS 4.34). Likewise, the schools with the lowest scores overall are integrated and racially concentrated (Palo Verde 3.19 and Cholla 3.25). The schools with the next lowest FCI scores are not racially concentrated or integrated, and all have student populations that are at least one-third white and one-third Latino (Sabino 3.27, Sahuaro 3.40, and Santa Rita 3.40).

	2017 FCI Score	2016-17 Enrollment			
		Status	White Enrollment	Af-American Enrollment	Hispanic Enrollment
Tucson High	4.53	Racially Concentrated	13%	7%	73%
Rincon / UHS	4.34	Integrated --	20% 46%	15% 3%	56% 36%
Pueblo	4.32	Racially Concentrated	3%	2%	89%
Catalina	4.32	Integrated	24%	17%	48%
Sahuaro	3.40	--	43%	11%	39%
Santa Rita	3.40	--	35%	17%	41%
Sabino	3.27	--	55%	7%	32%
Cholla	3.25	Racially Concentrated	8%	5%	79%
Palo Verde	3.19	Integrated	23%	19%	48%

Similar distributions exist at all grade levels: there is no correlation between a school's FCI score and the racial and ethnic makeup of its student population.

B. District Master Facilities Plan (DMFP) [Mendoza Objection 15].

The Mendoza Plaintiffs seek to compel the Special Master to include a discussion about the District’s Master Facilities Plan in the SMAR. [ECF 2047 at 51-52.] The Mendoza Plaintiffs imagine – without any alleged factual basis or evidentiary support – that the District “intends to no longer comply” with USP-mandated priorities. The Mendoza Plaintiffs are wrong. The DMFP refers to the USP **thirteen times**, including specific references to USP-mandated priorities, including the following:

- “As the sale of the first phase of bonds is taking place, the District will select the sites/areas to address by phase. The phasing will be based on the Multi-year Facility Plan (MYFP) **and a clear set of principles that take into account the requirements of the USP....**”
- **“Per the USP, priority will be given to schools that meet the following criteria:** (i) Schools with facility conditions that impact the health and safety students; (ii) Schools that score below a 2.0 on the FCI and/or below the District average on the ESS; (iii) Racially Concentrated Schools that score below 2.5 on the FCI.”
- “Appendix D also assigned priority to the projects. **These priorities reflect the USP criteria and should be used with them to pick the most immediate projects/schools to address.**”

There is no evidence, in the DMFP or otherwise, to support the bald claim that the District “intends to no longer comply” with the USP. On the contrary, all evidence points to a continuing good faith effort to comply with all USP provisions.

In conjunction with the District’s 2016-17 annual report (2057-1), and its analysis of compliance with the USP (ECF 2075), this annex of information addresses the Plaintiffs’ and Special Master’s objections and issues related to the District’s compliance with the USP.