LOIS D. THOMPSON, Cal. Bar No. 093245 (Admitted Pro Hac Vice)
lthompson@proskauer.com
JENNIFER L. ROCHE, Cal. Bar No. 254538 (Admitted Pro Hac Vice)
jroche@proskauer.com
PROSKAUER ROSE LLP
2049 Century Park East, 32nd Floor
Los Angeles, California 90067-3206
Telephone: (310) 557-2900
Facsimile: (310) 557-2193

JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
jrodriguez@maldef.org
THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
tsaenz@maldef.org
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND (MALDEF)
634 S. Spring St.
11th Floor
Telephone: (213) 629-2512 ext. 121
Facsimile: (213) 629-0266

Attorneys for Mendoza Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenors,

v.

Anita Lohr, et al.,

Defendants,

Sidney L. Sutton, et al.,

Defendant-Intervenors,

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

MENDOZA PLAINTIFFS' OPPOSITION TO TUCSON UNIFIED SCHOOL DISTRICT NO. 1 MOTON FOR PARTIAL UNITARY STATUS

Hon. David C. Bury

Maria Mendoza, et al., Plaintiffs, United States of America, Plaintiff-Intervenor, v. Tucson United School District No. One, et al., Defendants.	Case No. CV 74-204 TUC DCB

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

INTRODUCTION

In its Motion for Partial Unitary Status ("Motion"), Tucson Unified School District No. 1 ("TUSD" or "the District"), ignoring both controlling Supreme Court authority and the law of this case, asks the Court to (1) apply a less demanding standard than is required to determine whether TUSD has attained partial unitary status and (2) impermissibly narrow the scope of what must be considered in resolving the Motion. Therefore, Mendoza Plaintiffs begin this opposition with a discussion of the standard that must guide the Court's analysis and of the required scope of its inquiry.

Mendoza Plaintiffs then show both that the District has not and cannot meet its actual burden on this Motion and demonstrate that even under the limited approach taken by the District, it has failed to establish that it is "in unitary status" (Motion at 1:2-3) in the areas of transportation, extracurricular activities, family and community engagement, facilities, technology, and an evidence-based accountability system as defined in the Unitary Status Plan ("USP").

I. TUSD MUST PROVE FULL AND SATISFACTORY COMPLIANCE WITH THE PROVISIONS OF THE USP RELATING TO THE AREAS IN WHICH IT SEEKS A FINDING OF UNITARY STATUS

Seeking to minimize the extent of compliance with the USP that it must demonstrate to prevail on the Motion, TUSD asks the Court to follow an Eleventh Circuit case having nothing to do with a school district's obligations in a desegregation case, *Howard Johnson Co. v. Khimani*, 892 F.2d 1512 (11th Cir. 1990) (discussed in the Motion at 2:18-20). *Howard Johnson* is a civil contempt proceeding in a trademark infringement action. The District asserts that it stands for the proposition that "[s]ubstantial, but not complete, compliance [with the USP] is all that is required as long as it was made as part of a good faith effort at compliance." (*Id.*) But that is not the standard applicable here. As the Supreme Court stated in *Freeman v. Pitts*, 503 U.S. 467, 491 (1992), decided two years *after* the trademark infringement case on which TUSD would have this Court rely, in assessing a motion for partial unitary status, the Court must determine "whether there has

been **full and satisfactory** compliance with the decree in those aspects of the system where supervision is to be withdrawn…." (Emphasis added.) [1]

Even if the full and satisfactory compliance standard were not otherwise applicable, this Court would be constrained to apply it here because it also is the law of this case. (*See, e.g., Snow-Erlin v. United States*, 470 F.3d 804 (9th Cir. 2006), explaining "law of the case".) When the Ninth Circuit remanded this case for further proceedings in 2011, it wrote:

> We leave it to the district court to decide whether partial withdrawal is warranted in this case. The court's 'sound discretion' should be informed by these factors: 'whether there has been **full and satisfactory** compliance with the [Settlement Agreement] in those aspects of the system where supervision is to be withdrawn….'

Fisher v. Tucson Unified School District, 652 F.3d 1131, 1144 (9th Cir. 2011); emphasis added.[2]

That the District nonetheless endeavors to hold its performance to a lesser standard is particularly troubling given this Court's clear statement of the applicable standard when, in 2013, it rejected the District's suggestion that it would then have been "appropriate to withdraw oversight regarding three *Green* factors: facilities, extracurricular activities, and transportation, except as it relates to student assignment." (Order filed 2/6/2013, Doc. 1436, at 8:23-25.) This Court wrote: "[T]he Court finds that supervision cannot be withdrawn over any *Green* factor because at this point in time the Court cannot find **full and satisfactory compliance** in these areas." (*Id*. at 11:1-3; emphasis added; *see also*, *id.* at 4:4-6.)

---

[1] TUSD acknowledges, as it must, that *Freeman* "still provides guidance today for district courts in considering a request for partial unitary status" (Motion at 2:8-9) but then omits the essential phrase "full and satisfactory" when it purports to set forth the extent of compliance that *Freeman* requires. (*Id*. at 2:10-11.)

[2] This Court had independently come to the same conclusion as to the applicable standard when in 2007 it wrote: "Furthermore, the Settlement Agreement is a binding consent decree, which creates mandatory obligations that are enforceable in every detail….Under Freeman, Defendants must prove 'full and satisfactory compliance with the decree'…." (Order dated August 21, 2007, Doc. 1239, at 10-11, n. 4.)

There can be no question that the standard to be applied on this Motion is full and satisfactory compliance, not "substantial, but not complete."

II. THE COURT'S INQUIRY MUST INCLUDE CONSIDERATION OF WHETHER THE VESTIGES OF DISCRIMINATION HAVE BEEN ELIMINATED TO THE EXTENT PRACTICABLE WITH RESPECT TO EACH OF THE AREAS IN WHICH THE DISTRICT SEEKS TO BE FREED FROM COURT OVERSIGHT

In its Motion (at pages 3-8), the District sets forth Judge Frey's January 1977 findings and a small portion of this Court's August 21, 2007 Order (Doc. 1239) relating to student assignment, asserts that as a consequence of those findings on student assignment "there can be no vestiges of discrimination existing today which are causally linked to the *de jure* discrimination which is the foundation of this case" (Motion at 7:9-10; emphasis omitted), and, having made that assertion, never again addresses the issue of the elimination of the vestiges of past discrimination in its Motion. Once again, the District ignores the Ninth Circuit's 2011 opinion establishing the law of this case, essential portions of the *Freeman* decision on which that opinion is expressly premised, and this Court's own earlier rulings.

As to the Ninth Circuit opinion: When it reversed, the Ninth Circuit also ordered this Court to maintain jurisdiction until it is "convinced that the District has eliminated 'the vestiges of past discrimination…to the extent practicable' **with regard to all of the *Green* factors**." 652 F.3d at 1144, citing *Freeman*, 433 U.S. at 492 (emphasis added).[3] In fact, this Court had earlier expressed the same understanding of what Supreme Court jurisprudence requires when, in 2006, it defined the scope of the unitary status proceeding and wrote: "The …question [whether the vestiges of the de jure discrimination have been

[3] *See also*, *Freeman* at 486: "The objective of Brown I was made more specific by our holding in Green that the duty of a former de jure district is to 'take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.' We also identified various parts of the school system which, in addition to student attendance patterns, must be free from racial discrimination before the mandate of Brown is met: faculty, staff, transportation, extracurricular activities and facilities. The Green factors are a measure of the racial identifiability of schools in a system that is not in compliance with Brown, and we instructed the District Courts to fashion remedies that address all these components of elementary and secondary school systems." (Citations omitted.)

eliminated 'to the extent practicable'] requires the Court to look to 'every facet of school operations,' including the *Green* factors…and other resource related quality of education factors." (Order dated February 6, 2006, Doc. 1119, at 17:9-13; citations omitted.)

This Court, in its 2013 Order addressing the *Green* factors and approving the USP, rejected the very argument the District makes in its Motion that "since the only causally-linked vestiges found by Judge Frey… had been eliminated by 1986, there can be no vestiges of discrimination existing today." (Motion at 7:7-9.). This Court wrote:

> According to the District, the only findings of fact and conclusions of law establishing the constitutional violation at issue in this case were those dated June 4, 1978….This is an old argument seen and rejected by this Court in 2006, when this Court issued the Order defining the scope of the unitary status proceeding…. The Ninth Circuit's ruling…established unequivocally that the District had not attained unitary status….[T]he Ninth Circuit reversed this Court's finding that unitary status was attained and found the contrary because: the 'District failed the good faith inquiry *and* [this Court's findings] raised significant questions as to whether the District had eliminated the vestiges of racial discrimination to the extent practicable.'

Doc. 1436 at 8:5-21; citations omitted; emphasis in original. Accordingly, this Court's inquiry must include consideration of whether the vestiges of discrimination have been eliminated to the extent practicable with respect to each of the areas in which TUSD seeks to be freed from Court oversight.

III. THE COURT ALSO MUST CONSIDER WHETHER RETENTION OF JUDICIAL SUPERVISION OVER ANY OF THE FACETS OF THE SCHOOL SYSTEM IN ISSUE ON THE MOTION IS NECESSARY OR PRACTICABLE TO ACHIEVE COMPLIANCE IN OTHER FACETS OF THE SYSTEM THAT WILL REMAIN SUBJECT TO COURT OVERSIGHT

In *Freeman*, the Supreme Court observed that it had "long recognized that the Green factors may be related or interdependent. Two or more Green factors may be intertwined or synergistic in their relation, so that a constitutional violation in one area cannot be eliminated unless the judicial remedy addresses other matters as well." 503 U.S. at 497. Determining that it was essential to assess whether "retention of judicial control over [the *Green* factor there in issue] [was] necessary or practicable to achieve compliance

in other facets of the school system" (*id*.), the Court expressly stated that on remand the District Court should "make specific findings and conclusions" on this issue. (*Id*. at 498.)

Notably absent from the Motion before this Court is any discussion of this essential requirement (much less the proffer of any evidence on which this Court might base "specific findings and conclusions") notwithstanding that the District does acknowledge this as an issue when it purports to paraphrase the *Freeman* test. (Motion at 2:11-13.) TUSD's omission is particularly significant because, following the Ninth Circuit's direction, this Court made express findings concerning the interrelationship among the *Green* factors in this case in its 2013 Order. There it wrote: "The Court finds that supervision may not be partially withdrawn for any *Green* factor because the USP is a comprehensive interrelated and interdependent plan and, therefore, judicial control over all *Green* factors is necessary and practicable to achieve compliance with all facets of the school system." (Doc. 1436 at 11:4-7.)

IV. THE DISTRICT HAS FAILED TO DEMONSTRATE ITS GOOD FAITH COMMITMENT TO THE WHOLE OF THE USP

In *Freeman*, the Supreme Court clearly articulated a third prong to the test to be applied in assessing whether a court should grant a motion for partial unitary status, listing among the factors to be considered "whether the school district has demonstrated, to the public and to the parents and students of the once disfavored race, its good-faith commitment to the **whole** of the court's decree…." (*Id*. at 491; emphasis added.) Significantly, this Court already has demonstrated that it well understands the need to include this important consideration in assessing whether to grant partial release to the District. Thus, in 2013, it wrote: "The Court finds that supervision may not be partially withdrawn for any Green factor because the District failed to demonstrate to the public and to the parties and students of the once disfavored races and ethnicities its good faith commitment to the whole of the [consent decree] and to those provisions of the law and the Constitution that were the predicate for judicial intervention." (Doc. 1436 at 11:7-11.)

As with the second prong of the *Freeman* test, the District acknowledges the existence of the requirement (Motion at 2:13-16) but then ignores it in the balance of its Motion. That silence is telling because, unfortunately, TUSD cannot yet demonstrate good-faith commitment to the whole of the USP.[4]

Mendoza Plaintiffs hasten to add that they have been encouraged by recent changes in District governance and administration and are hopeful that, going forward, the District will be able to demonstrate that required commitment. Until and unless that occurs, however, the pending Motion is at best premature.

So as not to burden the Court, Mendoza Plaintiffs will not detail all of the evidence that establishes that the District cannot now demonstrate a good-faith commitment to the whole of the USP. However, if the Court (or the Special Master) believes that the record on this Motion should include further evidence on this issue, they can readily provide it. They begin with issues that are of particular concern to the Mendoza Plaintiff class given the *Freeman* Court's express statement that a school district seeking partial withdrawal of a desegregation decree must demonstrate to "the parents and the students of the once disfavored race [that is, the plaintiff class], its good-faith commitment to the whole of the court's decree and to those provisions of the law and Constitution that were the predicate for judicial intervention in the first instance." (503 U.S. at 491.) For ease of reference, Mendoza Plaintiffs discuss matters that already are part of the Court record. As noted above, however, they stand ready to amplify the record with additional evidence not yet part of this Court's proceedings should that be deemed necessary.

What the record discussed below demonstrates is on-going need for Court intervention and active Special Master oversight to ensure compliance with the USP, not a District that yet can be trusted to "do the right thing" in the absence of judicial supervision.

---

[4] The District's silence on these portions of the *Freeman* test also is significant because it is the District that bears the burden of proof on this Motion. *See, e.g., Everett v. Pitt Co. Bd. of Ed.*, 788 F.3d 132, 143 (4th Cir. 2015), relied on by the District in its Motion (at 24) and *Freeman*, 503 U.S. at 494; *see also*, this Court's Order defining the scope of the first unitary status proceedings in this case, Doc. 1119, filed 2/6/2006, at 17:14-16.)

A. *Culturally Relevant Courses*

As one of the key strategies to "increase academic achievement and engagement among African American and Latino students", the USP requires TUSD to "develop and implement [including as core English and Social Studies classes in all high schools in the District] culturally relevant courses of instruction designed to reflect the history, experiences, and culture of African American and Mexican American communities" and to expand such courses initially to the sixth through eighth grades and then throughout the K-12 curriculum. (USP, V,E,6,a,ii.)

During the summer of 2014, Mendoza Plaintiffs determined that the District had failed to implement the provisions of the USP relating to culturally relevant courses ("CRCs") as mandated by the USP. Pursuant to USP Section X, E, 6, they asked the Special Master to bring this instance of USP noncompliance to the Court's attention. Thereafter, he did so. (Doc. 1700.) To obviate the need for further court proceedings, Mendoza Plaintiffs and TUSD entered into a stipulation pursuant to which the District adopted an Intervention Plan to remediate then existing areas of noncompliance and to expressly address CRC expansion through the 2017-18 school year. (Doc. 1761; so ordered by the Court by Order dated 2/12/15 (Doc. 1768).) Subsequently, there were disagreements between the parties concerning the District's implementation of the Intervention Plan. While the details of those disagreements may at some point become relevant, what is of particular import here is that notwithstanding the fact that the Special Master and the Court declined to hold the District noncompliant with the Intervention Plan, this Court also expressly directed that "the Special Master should monitor the Intervention Plan **to ensure** the District continues its efforts to implement and expand the CRC program." (Order dated 12/17/16, Doc. No. 1982, at 2: 15-17; emphasis added.)

Further, with respect to the explicit requirement in the Intervention Plan that the District assign 12 Itinerant Teachers to, *inter alia*, provide effective CRC teacher support regarding CRC instruction, develop CRC curriculum, and recruit students to the classes (a

requirement with which both the Special Master and the Court found the District had failed to comply), this Court wrote:

> Like the Mendoza Plaintiffs, the Court is concerned that the reduction in itinerant staff may correspond to a reduction in their duties and, correspondingly, a dilution of the planned intensity of the Itinerant Teacher Model….The Court is not prepared to say that six versus 12 is enough. The Special Master notes that TUSD offers no program-based rationale for estimating that it needs one itinerant teacher for every ten CRC teachers….Assuming there was a rational basis for the original estimate that the program needed 12 itinerant teachers and the large unexplained disparity between that planned number of itinerant teachers and the actual number hired, the **Court finds that monitoring is warranted**. The Special Master shall review the District's use of itinerant staff to ensure full compliance with the Intervention Plan's Itinerant Teacher Model.

Doc. 1982 at 3:18-4:4; emphasis added. The Court reaffirmed its intent that the District's actions be carefully monitored when it then "ORDERED that the Special Master shall review the District's use of itinerant staff to ensure full compliance with the Intervention Plan's Itinerant Teacher Model" (*id*. at 4:20-22) and "FURTHER ORDERED that TUSD shall develop a meaningful itinerant teacher-CRC teacher ratio sufficient to meet the needs of the Itinerant Teacher Model agreed to by the parties pursuant to the stipulated Intervention Plan, and this ratio shall be developed and used for the 2017-18 USP budget. The Special Master shall develop a data gathering and review plan, both substantive and procedural, to monitor the effectiveness of TUSD's itinerant teacher-CRC teacher ratio for use in the 2016-17 Special Master's Annual Report (SMAR)." (*Id*. at 4:23-5:2.)

B. *Expansion of Dual Language Programs*

The USP recognizes that "Dual Language programs are positive and academically rigorous programs designed to contribute significantly to the academic achievement of all students who participate in them" (USP, V, C.) Accordingly, it provides that the District "shall build and expand its Dual Language programs in order to provide more students throughout the District with opportunities to enroll in these programs." (*Id*.)

The District's failure to implement that clear directive was succinctly described and addressed in this Court's January 28, 2016 budget order when it wrote:

> Again, the Mendoza Plaintiffs express concern that the District failed to use 910(G) funding to expand the dual language program. Last year, the Mendoza Plaintiffs challenged proposed expenditures for dual language teachers on supplant vs. supplement grounds, and noted that the District must "'build and expand the Dual Language Programs in order to provide more students throughout the District with opportunities to enroll in these programs.'" Still this year, the District fails to budget 901(G) money to expand dual language programs, "in fact, the number of schools offering dual language programs and overall enrollment in the programs has substantially declined." (citing Mendoza Plaintiffs' Objections, Doc. 1833, Ex. B.) Suffice it to say: "If not now, when?" ….
>
> The Court adopts the Special Master's recommendation that the District be required to develop a plan for increasing the student access to dual language programs which must be implemented in 2016-17. Given the delay in moving forward with the dual language component of the USP, the District should engage one or more nationally recognized consultants to assist in studying and developing the plan, which must be prepared and presented to the parties and the Special Master for review and comment in a timely fashion for implementation in SY 2016-17.

Order dated 1/28/16, Doc. 1897, at 6:10-7:2; some citations omitted.

C. *Student Assignment*

1. Magnet Schools

The USP provides that the "District shall continue to implement magnet schools and programs as a strategy for assigning students to schools and to provide students with the opportunity to attend an integrated school." (USP, II, E, 1.) Under the USP, by April 1, 2013, the District was to have developed a Magnet Plan that, *inter alia*, would improve existing magnet schools and programs that were not promoting integration and/or educational quality, consider changes to schools that were not promoting integration and/or educational quality, include strategies to specifically engage African American and Latino families, including the families of English language learner students, and identify goals to further the integration of each magnet school. (USP, II, E, 3.)

As this Court has observed, the Magnet Plan is "the USP's key component for integration." (Order dated 1/16/15, Doc. 1753, at 12:4-5.) The Magnet Plan therefore has received a great deal of attention from the plaintiffs, the Special Master, and this Court.

For example, in its Order dated 1/16/15, the Court recited relevant case history relating to the preparation of a Magnet Plan, focusing on the Comprehensive Magnet Plan ("CMP") adopted by the Governing Board in July 2014 and a subsequent, Revised CMP, modified to address certain objections raised by the Special Master and the plaintiffs with respect to the July CMP. This Court then wrote: "The Court…cannot approve the CMP, adopted by the School Board on July 15, 2014, or the Revised CMP. Neither is a comprehensive plan as required by the USP….In short, the CMP fails to reflect the District's vision for a meaningful operational Magnet School Plan, [which] it can support long term." (Doc. 1753 at 16:1-13.) This Court then added:

> [T]he CMP fails to identify the specific activities which must be undertaken by each school to attain magnet status. There is no budgetary assessment as to how much money it will take to make the requisite improvements or [even] how many schools it can maintain as magnets long term. There is no transportation component in the CMP, which is the most expensive factor in operating a magnet school system. School boundaries have not been factored into the plan. The CMP speaks to developing Improvement Plans, but until detailed plans, complete with budget and resource estimates, are prepared for a school, it is impossible to ascertain what actions, if any, a school can undertake to attain true magnet status by the USP target date for attaining unitary status: SY 2016-17.

Doc. 1753 at 13-22. The Court then directed as follows:

> The District, in consultation with the Special Master, shall work with its schools to prepare the Improvement Plans over the next three months, which shall identify clear and specific annual bench marks for attaining magnet status by SY 2016-17. **The Special Master shall monitor compliance by each school regarding its Improvement Plan.** The Special Master shall file reports as necessary with the Court identifying any failure to attain a requisite benchmark….
>
> The Special Master, in consultation with TUSD, shall… prepare a logical schedule for data gathering and reporting by TUSD necessary to enable him to monitor the Implementation Plans and report to the Court. In four months, TUSD shall file a Revised CMP, which will be a comprehensive gathering together of the relevant information, including the Improvement Plans. The CMP should be a one-stop, road map for future review by the Parties, the Special Master, the TUSD schools, this Court, and the public.

Id. at 17:17-18:6; emphasis added. In June 2015, TUSD filed a Revised CMP with the Court. Thereafter, having received objections from the plaintiffs, the Special Master worked with the parties to address their concerns and filed an R&R with the Court, recommending approval of the Revised CMP, with certain additional changes to which TUSD agreed. The Court thereafter approved the Revised CMP inclusive of the changes agreed to by the District. (Order dated 11/19/15, Doc. 1870.) However, this did not eliminate the need for further Special Master and Court engagement with the Magnet Plan.

The District updated the magnet schools' Improvement Plans as part of the 2016-17 budget process. As they had the prior year, Mendoza Plaintiffs commented on the substance of the plans in the context of their budget review. Here, they focus on only one issue: magnet school goals for academic achievement.[5]

During the 2015-16 budget cycle, Mendoza Plaintiffs had objected to the fact that three magnet schools set achievement goals in their Improvement Plans that were lower than what the school previously had achieved. In the face of that objection, the District agreed to revise the school goals. Then, in the 2016-17 budget cycle, it filed Improvement Plans in which **five** magnet schools had set goals that were lower than what the schools previously had achieved. Again, Mendoza Plaintiffs objected. (*See*, Doc. 1948-13 at 4-5 for a recitation of this history.) In his R&R on the 2016-17 budget, the Special Master wrote: "While not a funding matter, the District was previously not allowed to ascribe academic goals for magnet schools that were lower than the goals they already had attained. That the District permitted this for 2016-17 is unacceptable and sends a bizarre message to families, staff and students: 'we are satisfied to do less this year than we have in the past.'" (Doc. 1954 at 7:8-11.) This Court rejected TUSD's assertion that no order was needed because, after the R&R had been filed, it had agreed to this and other of the

[5] This Court has stressed the importance of high academic standards in magnet schools, writing, for example: "[H]igh academic standards will draw students to a magnet school, and an effective magnet program will improve student achievement." (Doc. 1753 at 10:11-12.)

Special Master's recommendations, and expressly adopted the Special Master's recommendations in its Order. (Doc. 1981 at 2:12; 10:4-6.)

Notwithstanding the many challenges being faced by the District's magnet schools and the overall magnet program, during the 2016-17 budget cycle the District proposed to staff the position of Magnet Director "on a half-time basis" and to fill the position with someone who had "no experience with magnet schools." (Special Master R&R, Doc. 1954, at 6:18.) (The other responsibility proposed to be assigned to this position was to serve as Coordinator of Advanced Learning Experiences.[6]) Only after the Special Master had filed his R&R did the District say that it would fund two full positions. The Court observed: "The Court notes the eleventh-hour agreement from TUSD and that TUSD's plan to have a single person serve as Magnet Director and ALE Coordinator means that these two very important administrative positions remain understaffed and/or unfilled approximately five years after the adoption in SY 2012-2013 of the USP. Like the CMP, the ALE…component to the USP is critical to its success because it is a key mechanism for ensuring equal educational opportunities to all students in the District."

2. Grade Reconfigurations

Under the Order Appointing Special Master, the District must provide the Special Master and the Plaintiffs with notice and request for approval ("NARA") of all attendance boundary changes and changes to student assignment patterns. (Order filed 1/6/12, Doc. 1350, at 3:8-15) All such requests are to be accompanied by a desegregation impact analysis.

Most recently, in March 2016, this Court denied the District's application to change the grade configurations of Borman, Collier, and Fruchthendler Elementary Schools and

[6] The USP provides that the District is to hire or designate a District employee to be the Coordinator of Advanced Learning Experiences ("ALEs"). ALEs include Gifted and Talented ("GATE") programs, Advanced Academic Courses ("AACs") [Pre-AP courses, AP courses, middle school courses for high school credit, AP courses, Dual-Credit courses, and I.B. courses]. (USP V, A, 2, a.)

Sabino High School because the District could not demonstrate that the proposed changes would advance the integration of the District's schools.

Addressing the request to add 7th and 8th grade levels to Borman, this Court first noted that it had seen (and rejected) a comparable request in 2007 when it denied the District's application to reopen Lowell Smith Elementary School on the Davis-Montham Air Force Base ("DMAFB") as a middle school. (Order filed 3/8/16, Doc. 1909, at 3:22-18; amended by Order filed 4/28/16, Doc. 1928.) Responding to the District's assertion that its proposal should be approved because it "will not change anything; it neither improves nor exacerbates ethnic imbalances" (*id*. at 4:15-17), the Court stated:

> The USP requires more than just doing no harm; it requires TUSD to take affirmative actions to do good in the context of improving integration and the quality of education for minority students, if it can…. Roberts-Naylor is a [predominately minority] school uniquely situated adjacent to DMAFB, an unusual source of Anglo students, which could affirmatively impact integration at Roberts-Naylor if they could be directed there. Until the Court is certain that Roberts-Naylor cannot be a viable K-8 program for Borman students, it will not approve a plan which will ensure that Roberts-Naylor can never be such an alternative.[7]

Id. at 5:28-6:8.

Mendoza Plaintiffs will not restate here this Court's extensive discussion of the District's proposal to reconfigure the Fruchthendler and Collier elementary schools from K-5 to K-6, with a middle school added at Sabino High School. Its ultimate conclusion was succinct: "The Court cannot find any positive impact on integration from the [proposed] reconfiguration….The reconfiguration simply provides more opportunities to Anglo students in predominately Anglo schools." (*Id*. at 16:22-25.)

[7] The District's reconfiguration proposals and this Court's analysis are particularly relevant to the assessment of its good faith. As the Supreme Court wrote in *Green v. Co. School Bd. of New Kent Co*., 391 U.S. 420, 439 (1968): "The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation….Of course, the availability to the [school] board of other more promising courses of action may indicate a lack of good faith, and, at the least, it places a heavy burden upon the board to explain its preference for an apparently less effective method."

D. *Discipline*

Addressing the Special Master's recommendation that, pursuant to USP VI, F, 3, TUSD develop a viable plan for identifying and sharing effective disciplinary practices and finance that plan, in an Order dated December 27, 2016, the Court wrote:

> The Special Master notes 'that disciplinary problems in TUSD receive considerable negative attention in the community and generate concerns among teachers and principals, [yet] the District has not taken this provision of the USP seriously.' The Court notes that since the 1974 inception of this case, TUSD has failed to takes its disciplinary practices and procedures seriously. Discipline was one of the *Green*-factor challenges raised by the Plaintiff Fishers and remedied by the Settlement Agreement of 1978, paragraph 14, which required TUSD to implement good faith efforts that no student is discriminated against in the implementation of the District's uniform suspension and expulsion policy. In 2008, when this Court considered whether unitary status had been attained after approximately 30 years of operations pursuant to the 1978 Settlement Agreement, it questioned whether paragraph 14 had been addressed in good faith because there was no evidence of any ongoing monitoring and review of TUSD's disciplinary practices and policies to ensure the District maintained over all those years a uniform suspension and expulsion policy and no student was discriminated against.
>
> This Court, therefore, does not take lightly the Special Master's concern that $25,000 in the 2017 budget fails to move TUSD forward in respect to satisfying the USP § VI, F, 3 disciplinary provision to identify and share successful practices….TUSD agreed to this, but the Court notes that the Special Master made this recommendation to TUSD in his 2014-2015 Annual Report to the Court.

Doc. 1981 at 7:7-8:15, also ordering the Special Master to provide a detailed progress report on the District's implementation of the section of the USP governing discipline.

E. *Access to Needed Information*

As the Court is aware, the Plaintiffs and the Special Master have repeatedly objected to the District's failure to provide in a timely fashion, or at all, information they needed to respond to the District's budget proposals, NARA requests, and proposed USP implementation action plans. This issue has been addressed by the Court on multiple occasions, particularly when the District moved to strike the following statement in the Special Master's 2014 Annual Report: "The continuing problem of the inability of the

District to provide Plaintiffs and the Special Master with information they believe they need to exercise their roles as specified in the USP in a timely and effective way was noted above." (Doc. 1641-1 at 7.) The Court denied the motion, stating: "The Court finds the record accurate as reflected in the Special Master's report and Mendoza Plaintiffs' memorandum (Response (Doc. 1680) at [2-7])."[8]

Even after the Court ruled, the plaintiffs and the Special Master continued to encounter difficulties obtaining needed information in a timely fashion. Thus, in his R&R on last year's budget, the Special Master wrote: "The Special Master believes that there are no significant problems with the budget process agreed to by the parties. The problem is that the District did not comply with the process established and did not adequately provide information requested by the plaintiffs and the Special Master." (Doc. 1954 at 3:9-12, filed 8/22/16.) Thereafter, this Court rejected the District's suggestion that no order was needed on the budget process. Instead, it set forth specific components to be included in the process, including a requirement that the District file a notice of compliance within five days of each benchmark deadline in the budget process. (Doc. 1981 at 2:12-3:4 and 10:10-20.)

None of the foregoing bespeaks a District that has demonstrated "an affirmative commitment to comply in good faith with the entirety of a desegregation plan". (*Freeman*, 503 U. S. at 499.) Rather, it evidences a District that warrants on-going oversight and

[8] In the referenced Response, Mendoza Plaintiffs detailed then recent examples of the District's failures to provide information and the ways in which those failures had hobbled the Mendoza Plaintiffs' ability to perform their role under the USP. They cited difficulties in the budget process and the NARA process, quoting, *inter alia*, this Court's Order filed 4/26/13, Doc. 1468, in which the Court wrote: [t]he Special Master and the Plaintiffs complain once again the District has failed to provide sufficient information for them to evaluate the proposal…." (*Id*. at 2.) It then continued: "[t]he Court notes this is the *third* time it has been asked to approve some action by the District, which requires review and comment from the Special Master and the Plaintiffs, where the process for review adhered to by the District resulted in this Court deciding a question without adequate review from the Plaintiffs and the Special Master…." (*Id*. at 3; emphasis in original; *see* Doc. 1399, Order filed 10/5/12, and Doc. 1447, Order filed 2/5/13, for the Court's two earlier discussions of this problem.)

monitoring to ensure full and satisfactory implementation of the USP. Accordingly, for this reason alone, the Motion should be denied.

V. THIS COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE TRANSPORTATION COMPONENT OF THE USP

A. Continued Oversight of the Transportation Component of the USP Is Essential to Achieve Compliance with Other Facets of the USP that Will Remain Under Court Supervision, Including, in Particular, Student Assignment

The USP is explicit that the "District shall utilize transportation services as a critical component of the integration of its schools." (USP, III, A, 1.) The District acknowledges that "more than a third of all transportation go[es] toward fulfilling desegregation obligations", including magnet transportation and transportation for students who seek to leave their neighborhoods' racially concentrated schools and/or whose transfer will increase the integration of the receiving school. (Motion at 9:3-7.) In addition, it points to the role of transportation in furthering implementation of the USP-mandated Extracurricular Equitable Access Plan, the Family Engagement Plan[9], and the ALE Access and Recruitment Plan, as well as the CMP and Comprehensive Boundary Plan. (*Id.* at 10: 7-10.) Given the degree of interdependence between transportation and these other facets of the USP, for this reason alone, so much of the Motion as seeks to end judicial supervision of transportation should be denied.

In fact, it is particularly important that the Court retain jurisdiction over transportation given the centrality of bus service to TUSD's current efforts to increase integration. As this Court will recall, as part of the Stipulation Regarding Magnet School Enrollment Data and Magnet School Supplemented Improvement Plans, TUSD also expressly agreed to "develop and propose initiatives to increase the number of students attending integrated schools within the District." (Stipulation Regarding Magnet School

[9] Mendoza Plaintiffs show below that this Court also should deny so much of this Motion as seeks to end judicial supervision of the extracurricular and family engagement segments of the USP.

Data and Magnet School Supplemented Improvement Plans, Doc. No. 1865, filed 10/6/15, at 6, Para. E; so ordered by Order filed 11/19/2015, Doc. No. 1870.)

Those proposed initiatives are set forth in a document dated May 13, 2016 entitled TUSD Integration Initiatives. (A copy of this document is attached to the accompanying Declaration of Juan Rodriguez ("Rodriguez Dec.") as Exhibit 1.) Significantly, four of the seven proposed initiatives involve transportation: Drachman K-8 Express Shuttle, Magee Middle School Express Shuttle, Sabino High School Express Shuttle, Enrollment Bus. (*Id.* at 1.) Further, another of the initiatives, expanding dual language to Bloom Elementary School, expressly states that the District must "establish transportation options necessary for the program to be successful." (*Id.*, Attachment 7 at 1.) Most recently, in connection with its development of the 910(G) budget for 2017-18, the District has stated that it plans to expand dual-credit offerings at Santa Rita High School and that this "initiative will be supported by an express bus from TUSD's Southside." (2017-18 USP Budget Narrative, January 20, 2017, at 4, Rodriguez Dec., Exhibit 2.)

This Court already has had occasion to comment on the centrality of busing if other initiatives TUSD has been proposing are to have a positive impact on integration. For example, when it declined to approve TUSD's proposal to reconfigure Collier and Fruchthendler and to add a 7th and 8th grade middle school to Sabino, it wrote:

> The success of express busing is important because it provides the only opportunity for the Fruchthendler/Collier to Sabino reconfiguration to have any positive impact on integration whatsoever….
>
> Soon TUSD will have hard data proving how far middle school Anglo students are willing to travel on express busses to attend an outstanding school, Drachman, which is also a racially concentrated school (75% Latino)…. If Drachman is successful there is no reason to believe other successes cannot follow.[10] Nothing stops TUSD from introducing express buses

[10] In this regard, Mendoza Plaintiffs note the reported results under the desegregation plan in effect in St. Lucie County, Florida There, the Court observed, "' the District is finding that more and more parents/students are choosing schools farther from their residence in order to obtain an educational program they want or in order to attend a school they perceive as first-rate.'" *United States v. Bd. of Pub. Instruction of St. Lucie Co.*, 977 F. Supp. 1202, 1221 (S.D. Fla. 1997).

> from racially concentrated schools to Magee Middle School or B elementary schools like Fruchthendler or Collier, or Sabino High School. Such bus routes would provide hard evidence regarding how many students will actually ride buses northeast and how far. Hard evidence is critical because any positive integrative effect from the Fruchthendler/Collier-Sabino reconfiguration hinges on express bussing.

Doc. 1909 at 11:19-21, 12:10-19; citations omitted. Given the foregoing, which establishes how intertwined transportation is with the other *Green* factors that will remain subject to Court supervision and "that a constitutional violation in one area [in particular, student assignment] cannot be eliminated unless the judicial remedy addresses other matters [like transportation] as well" (*Freeman*, 503 U.S. at 497), this Court should deny so much of the Motion as seeks to remove transportation from on-going judicial supervision.

B. TUSD Has Failed to Demonstrate Full and Satisfactory Compliance With Provisions of the USP Regarding Transportation

The District has failed to provide evidence to demonstrate full and satisfactory compliance with the requirement of the USP that it "utilize transportation services as a critical component of the integration of its schools." (USP, III, A, 1.) Tellingly, for example, it cites its 2013-14 Annual Report in support of the statement that eligibility for transportation to magnet schools among African American and Latino students increased slightly from the prior year but omits the reference from the same cited page of that Annual Report (AR 13-14, Doc. No. 1686, at 69; cited in the Motion at 11:2-6) that eligibility for transportation to magnet schools by white children had decreased --- and decreased at a greater rate than the rate of increase for African American and Latino students. Yet, as anyone who is familiar with the enrollment in the great majority of the magnet schools in the District knows (*see*, *e.g.*, USP Appendix C), the critical challenge TUSD has faced in attempting to bring its magnet schools to integration status has been to increase the number of white students attending most of those schools.

Absent from the District's Motion is any showing that it looked at the referenced or any other data[11] to determine what if anything in the area of transportation, including, for example, the revision of existing bus routes, could be done to increase white eligibility and ridership to magnet schools. What the limited data the District has provided does reveal is that a far larger proportion of white students are eligible for and offered transportation to GATE schools and UHS than is true for African American and Latino students.[12] Further, notwithstanding the decline in the absolute number of white students enrolled in the District between 2012-13 and 2015-16, the number of white students eligible for and offered transportation for GATE schools increased even as the number of Latino students eligible for and offered transportation for GATE schools declined.[13]

---

[11] TUSD has provided no evidence in support of its Motion beyond that contained in its Annual Reports. As explained in the accompanying Rodriguez Dec. (Para. 5) with respect to transportation, that data is very limited and its usefulness is further hampered by the inconsistency in the information submitted by the District from year to year. In its first Annual Report for 2012-13, TUSD included a chart setting forth by reason (*e.g.* magnet, GATE, etc.) and by race/ethnicity the number of students offered transportation together with a breakdown by school indicating how many students of each race/ethnicity were offered each type of transportation to that individual school. (Rodriguez Dec., Exhibit 3-A.) That very informative school specific material has not been included in any subsequent Annual Report. Were it available, it might be possible to understand, for example, precisely where the decrease was in the number of white students eligible for and offered transportation to magnet schools between school years 2012-13 and 2013-14.

In 2013-14, the District failed to provide even the chart that had been submitted with its 2012-13 Annual Report notwithstanding that it is expressly required by USP, III, C, 1. Instead, it appears only to have provided the summary conclusions referenced in the Motion and discussed above. In 2014-15 and 2015-16, the District provided charts similar to that appended to its 2012-13 Annual Report but not the underlying individual school data. (Rodriguez Dec., Exhibits 3-B and 3-C.)

[12] According to Exhibit 3-C, in 2015-16, 596 white students and 594 Latino students were eligible for and offered transportation to GATE schools and UHS. According to that same chart, these numbers represented 35.8% of the white students eligible for transportation and 6% of the total enrollment of white students in the District as compared to 11% of the Latino students eligible for transportation and 2% of the total enrollment of Latino students in the District. It does not appear that anyone looked at this and similar data to determine whether it appeared reasonable in relation to the District's efforts to increase African American and Latino attendance at UHS and participation in GATE or whether any transportation routes needed to be adjusted to further facilitate such attendance.

[13] Mendoza Plaintiffs reach this conclusion by comparing the entries for GATE on Exhibits 3-A and 3-C which show 283 white students eligible for and offered transportation for GATE in 2012-13 v. 289 in 2015-16 and 375 Latino students eligible for and offered transportation for GATE in 2012-13 v. 365 in 2015-16. The number of

Also missing from the Annual Reports and the Motion is information detailing bus routes[14] or providing any information as to the race/ethnicity of the ridership on each bus route. The significance of this omission is underscored by the cases on which the District would have this Court rely. TUSD asserts that its transportation policies and practices "are consistent with other districts that have achieved unitary status", cites to a number of cases, and quotes at length from one of them, *United States v. Morehouse Parish School Board*, 2013 WL 791578 (W.D. La., Mar. 3, 2013), (Motion at 12:23-13:24) but fails to provide, much less address, data that in these cases was considered essential to a determination of whether court oversight of the transportation component of a desegregation plan should be terminated. In fact, rather than support the District's position, *Morehouse* and the other cases cited by TUSD demonstrate that it has not met its burden on this Motion.

In *Morehouse*, the Court noted that of the eighty-six bus routes in the school district, six transported students of only one race. Before ruling on the motion for partial unitary status, it therefore undertook to satisfy itself that those routes were based only on the demographic living patterns of the students and the feasibility of transportation, not discriminatory purposes. (2013 WL 791578 at *3, quoted in the Motion at 13: 5-9.) Similarly, in *Andrews v. Monroe Co. School Bd*., 2015 WL 5675862 (W.D. La. Sept. 25, 2015), also relied on by TUSD (Motion at 13:15-16), the Court remarked on the existence of one-race or predominately one-race routes in the school district and ruled in the area of transportation only after hearing testimony from the Transportation Manager and receiving other evidence to establish that the routes were based solely on geographical concerns and

---

African American students eligible for and offered transportation did increase: from 20 in 2012-13 to 33 in 2015-16.

[14] The closest the District has come to providing such information is a series of maps included in the 2014-15 Annual Report but no other (*see* Rodriguez Dec., Para. 6) and assertions in its Annual Report that though there are some majority one-race routes, those routes exist as a result of residential housing patterns. (*See, e.g,* 2015-16 Annual Report at III-55.) However, it has failed to provide any data or other evidence to identify those routes or to support its bald assertion as to why they exist.

not the race of the riders. In *United States v. Franklin Parish School Bd.*, 2013 WL 4017093 (W.D. La., Aug. 6, 2013), cited at Motion 24:14-15, the Court also addressed the existence of one-race and predominately one-race bus routes, examined map routes that were available at the hearing, and, based on testimony and evidence, then concluded that those routes were not based on race. It may well be that at some point, TUSD can make a similar showing but at this time none of the necessary evidence[15] is before this Court. Accordingly, the Motion for a finding of partial unitary status regarding the provisions of the USP relating to transportation must be denied.

VI. THIS COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE FAMILY AND COMMUNITY ENGAGEMENT COMPONENT OF THE USP

A. Continued Oversight of the Family and Community Engagement Component of the USP Is Essential to Achieve Compliance with Other Facets of the USP that Will Remain Under Court Supervision

The USP expressly states (in the "Magnet Program" subsection) that 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."[16] (USP, II, E, 2.) Further, the USP section that directly addresses family and community engagement

---

[15] The Motion makes passing reference to the fact that some TUSD students do not ride District buses but instead receive SunTrans bus passes to ride public transportation to school (Motion at 12:7) but then says nothing more about the passes or who receives them. According to the TUSD website, approximately 3500 students receive such passes each year. (Rodriguez Dec., Para. 7.) No information has been provided on this Motion to permit the parties or the Court to determine whether there are any issues of impermissible disproportionality based on race and/or ethnicity as to which students are directed to use public transportation rather than ride one of the District's buses.

[16] The District's Motion touches on its purported compliance with this requirement, but, as Mendoza Plaintiffs demonstrate in the section below, it has fallen far short of meeting its burden of demonstrating its full and satisfactory compliance with this portion of the USP.

Mendoza Plaintiffs further add that as part of the family engagement strategy to advance greater integration at TUSD schools, the USP also requires that the District "provide access at its Family Centers to computers for families to complete and submit open enrollment/magnet applications online" (USP Section VII, C, f) and "disseminate the information identified… in Section (II) [of the USP – student assignment], in all major languages, on the District's website and through other locations and media, as appropriate" (USP VII, C, g).

expressly states that such engagement "is a critical component of student success" and directs the District to adopt strategies to increase family and community engagement in schools by, *inter alia*, "providing information to families about the services, programs, and courses of instruction available in the District" and to "learn[] from families how best to meet the needs of their children". (USP, VII, A, 1.)

In recognition of the extent to which there is overlap among its family and community engagement obligations under the USP and other USP provisions, the District prepared as part of its Family and Community Engagement Plan ("FACE Plan") a document entitled "Strategies for Family Engagement Alignment" which identifies those express overlapping obligations. (A copy of the FACE Plan is attached to the Rodriguez Dec. as Exhibit 4.)

The Strategies document, which is Appendix B to the FACE Plan, expressly sets out engagement activities that are to align with what it refers to as "Complimentary Factors," which are plans to further the implementation of other portions of the USP.[17] They include: (1) the Marketing, Outreach and Recruitment Plan, (2) the Comprehensive Magnet Plan, (3) the Student Assignment Plan, (4) the Transportation Plan, (5) Administrators and Certificated Staff Plan, (6) Professional Learning Community Training, (7) the Advanced Learning Experiences Plan, (8) the Student Support and Engagement Plan, (9) the Student Discipline Plan, and (10) the Extracurricular Plan. (*Id.*) (The listed activities cover a wide range of activities including a quarterly review of data to monitor progress in supporting families during the school application process, holding meetings to inform families about ALE opportunities in geographically diverse parts of the District, reviewing the ALE parent complaint process, etc. (*Id.*).) Notably, eight of the ten

[17] In providing this list, the Mendoza Plaintiffs use the word "Plan" to describe each item based on the District's reference to all as "Plan[s]" in Appendix B to its FACE Plan. However, Mendoza Plaintiffs understand that some "Plans" relate to USP obligations but do not involve the development of a formal plan.

plans with acknowledged family engagement components involve facets of the USP with respect to which the District is not now seeking to end judicial supervision.[18]

Indeed, the District has expressly recognized that "Family Engagement is a broad area that supports activities undertaken to comply with the original Green factors and other ancillary factors… Family engagement is a critical component to many of the efforts described in the USP, including but not limited to: student outreach and recruitment to promote integration (student assignment); student engagement through ALE recruitment; dropout prevention and retention strategies; targeted intervention activities and the development of supportive and inclusive environments (quality of education); efforts to address behavior issues (discipline)… ." (TUSD Annual Report for the 2014-15 School Year, Doc. 1848, at VII-258.)

Given how integral family and community engagement is to the implementation of many other facets of the USP, for this reason alone, so much of the Motion as seeks to end judicial supervision of the family and community engagement portion of the USP should be denied.

B. TUSD Has Not Demonstrated Full and Satisfactory Compliance With the Provisions of the USP Regarding Family and Community Engagement

The District has failed to provide evidence to demonstrate full and satisfactory compliance with the family and community engagement requirements of the USP. (USP Section VII.) The District has not demonstrated full and satisfactory compliance with regard to family engagement requirements concerning the use of family centers to recruit diverse students to integrate schools, including at magnet schools. (USP, II, E, 2.) Nor has the District demonstrated full and satisfactory compliance with USP obligations to "reorganize or increase family engagement resources" "to both ensure equitable access to programs and services and to concentrate resources on school site(s) and in areas where

[18] Mendoza Plaintiffs demonstrate elsewhere in this Opposition that this Court should deny so much of the Motion as seeks to end judicial supervision of those two remaining facets, the extracurricular activities and transportation segments of the USP.

data indicates greater need," with requirements concerning data tracking, or with regard to the dissemination of information concerning student educational opportunities. Neither has it demonstrated that it has developed and implemented strategies for teachers and principals to learn how to learn from families regarding how to meet the needs of their children.[19]

Significantly, as detailed below, the District's USP-mandated assessment of family engagement and support programs, resources, and practices (detailed in the FACE Plan) identified areas of weakness in the District's family engagement efforts and detailed recommendations to improve those efforts. (*See* Rodriguez Dec., Exhibit 4, "FACE Plan") The District's own data, confirmed by the Special Master's findings in connection with his Annual Reports, reveal that the District has made little if any progress in implementing its own recommendations.

1. The District Has Not Demonstrated Full and Satisfactory Compliance with Regard to Efforts to Use Family Centers to Integrate Magnet Schools and Programs

The USP expressly requires that the "District, through its Family Center(s) and other recruitment strategies set forth in [the USP], 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.) As part of that effort, the District is to "creat[e] or amend[] an informational guide describing offerings at each school site… distributed via mail and email to all District families; posted on the website in all major languages; and available in hard copy at all school sites, the Family Center(s)

[19] Mendoza Plaintiffs also note that in its recent March 13, 2017 Order, this Court acknowledged that the "Plaintiffs and Special Master express concerns regarding… family engagement efforts" in the transition plans of schools losing their magnet status, as well as the fact that family engagement is a strategy to improve student achievement at transition schools. (Doc. 1996 at 2:12-15, 3:4-6.) That this Court then directed TUSD to "work with the Special Master to monitor and report implementation of the transition plans, with the Special Master reporting to the Court regarding the status of transition plans for SY 2017-18, and for the Special Master to make recommendations for SY 2018-19, if necessary" (*id*. at 5:12-15) underscores the need for this Court to retain jurisdiction over the area of family and community engagement.

and the District office."[20] (USP, II, C.) (It bears repeating that these requirements are integral to efforts and detailed in USP sections concerning student assignment.)

The District's Catalog of Schools, which TUSD identifies as the informational guide describing magnet school offerings and that is posted on its webpage (AR 15-16, Doc. 1958-1, at II-40; Motion at 39), falls far short of providing a description of offerings at each school site -- often providing no examples of offerings at all. (*See* TUSD Catalog of Schools attached to Rodriguez Dec. as Exhibit 5.)[21] Tellingly, the Catalog of Schools is utterly silent on the benefits of integration, with its single reference to integration being the following sentence: "Magnet programs are an essential component of the district's effort to support integration, increase academic achievement, increase graduation rates and increase parent engagement." (*See* Rodriguez Dec., Exhibit 5 at 8.)[22] Further, although the District identified seven major languages at its schools for the 2015-16 school year (AR 15-16, Appendix VII-21), it translated its Catalog of Schools into only four of those major languages, (*see* http://tusd1.org/contents/distinfo/catalog14/index.asp), in violation of the USP.

---

[20] The Mendoza Plaintiffs note that the District's 2015-16 Annual Report makes no mention of whether it distributed its Catalog of Schools to parents via mail and email.

[21] Indeed, descriptions of schools often reflect interesting facts about schools rather than detailing school offerings. For example, the Ochoa description references unspecified before- and after-school programs, notes that children sell produce at a farmers market, provides a very limited description of the Reggio-Emilia approach, and notes garden, chicken coop, and recycling projects. (*See id*. at 37.) The description for Robison similarly describes unspecified before- and after-school programs, the existence of "Music and PE education for all students" and that a full-time counselor is available. (*Id*. at 40.) Notably, each of Ochoa and Robison is a school that, following development of the District's Catalog of Schools, lost magnet status as a result of its failure to attract an integrated in-coming class. (*See* Doc. 1984 at 2.)

[22] The Special Master has specifically reported to this Court the District's inadequate marketing of magnet schools to increase integration, stating, for example: "Since approval of the USP by the plaintiffs and the District in 2012, it would be difficult to know by the actions of the District that integration was a priority… Magnet schools and programs distribute brochures to families in efforts to recruit their children. Not one of the 15 brochures reviewed mentioned the benefits of integration." (Special Master's Annual Report for the 2014-15 School Year, Doc. 1890 at 8.)

Further, the District provides evidence of but a single one hour "open enrollment" workshop held at family engagement centers in November 2015 in support of its obligation to use these centers and the family engagement initiative more generally to integrate magnet schools. (Motion at 38; AR 15-16, Appendix II-12). Indeed, although it claims to have complied with magnet-related family engagement obligations, the District apparently conducts no data collection concerning the submission of magnet and open enrollment applications at its family centers or gathers any other information that would allow it to evaluate the effectiveness of its efforts at increasing integration through its family centers.[23] (*See* TUSD Response to RFI #863, attached to Rodriguez Dec. as Exhibit 6: "There is no disclosure or tracking mechanism to differentiate from where it [magnet and open enrollment applications] was submission [sic].") For these reasons alone, so much of the District's Motion that seeks to end judicial supervision concerning family and community engagement should be denied.

2. The District Has Failed to Address the Shortcomings it Identified in its USP-Mandated Assessment Concerning its Family and Community Engagement Efforts or to Follow its Own Recommendations Concerning Those Shortcomings

As part of the District's compliance with USP Section VII, C, a, b, TUSD conducted an initial assessment of its existing family engagement and support programs and developed recommendations for improvement that it then addressed in the FACE Plan. (*See* Motion at 34; Rodriguez Dec., Exhibit 4.) As shown below, a review of the findings and recommendations of that assessment reveals that the District has made little progress, if any, with respect to many of the family engagement issues it identified.[24] It therefore

[23] Yet, as noted above, the Strategies Appendix to the FACE plan expressly says that data will be reviewed on a quarterly basis to monitor the progress of the family engagement efforts in supporting families with the application process. (Rodriguez Dec., Exhibit 4 at 30.)

[24] The FACE Plan section concerning recommendations (commencing on page 14) explains that the "District assessed the internal data obtained from various reviews in light of the research-based best practices for family engagement to develop recommendations for reorganizing family resources." (The District, under USP Section VII, C, d, is to "implement [that] plan to reorganize or increase family engagement resources… to ensure

has failed to demonstrate full and satisfactory compliance with its family and community engagement obligations.

3. The District Has Not Conducted Meaningful Family Engagement as Part of a District-wide Strategy Notwithstanding its Own FACE Plan Recommendations

The District's first FACE Plan recommendation was to "Create District-Wide Strategies"[25] because its family engagement "efforts were not connected to one another as part of a comprehensive scheme, and often were focused on parental involvement rather than informing parents about student learning and the parents' role in their student's success."[26] (FACE Plan at 14.) However, the TUSD's 2015-16 Annual Report data[27] reveals that little progress has been made as individual schools participated in an unconnected series of activities that demonstrate the absence of a District-wide family engagement strategy, a heavy amount of "parent involvement" activities (instead of family engagement activities to empower parents and to learn from them how to best meet their children's needs), and telling inconsistencies concerning the amount and quality of family

---

equitable access to programs and services and to concentrate resources on school site(s) and in areas where data indicates greatest need.")

[25] While the FACE Plan contains five numbered recommendations, those recommendations often overlap (e.g., multiple recommendations emphasize the need for adequate data collection). The District's first recommendation overlaps with the third recommendation "Engaging Families" in describing the need for greater "learning-centric family engagement." (*See id.* at 19.)

[26] The FACE Plan describes "open houses, student concerts, recognition awards, and social events" as the referenced less favored "parental involvement." (*Id.* at 8.) Under the recommendation concerning "Engaging Families" the District further explained that "[b]ased on the Review and Assessment [under USP Section VII, C, 1, b] of the District, the majority of the family engagement efforts provided historically by the District have been focused primarily on family involvement in student activities rather than learning-centric family learning. The Harvard Family Research Project found family engagement practices linked to learning have greater positive effect on student outcomes." (*Id.* at 19.)

[27] The District describes site-level family engagement activities in appendices VII-1 (titled "Curricular Focus Training") and VII-6 (titled "Staff Trainings and Family Opportunities to Value Parents as Partners") of the 2015-16 Annual Report– as the titles and appendices suggest, the listed activities appear to be an indiscriminate mixing of staff training and family engagement events. Appendices VII-1 and VII-6 are attached to Rodriguez Dec. as Exhibits 7 and 8, respectively.

engagement activities across sites. They also fail to manifest a "family engagement vision" (FACE Plan at14.)

Some schools' activities for the 2015-16 school year consisted entirely of the less favored and less effective "parental involvement" (*e.g.*, open houses, social events). For example, other than a single "Title One parent meeting" at Cragin (Rodriguez Dec., Exhibit 8 at 2), Cragin held only what appear to be events at which stories were read to children and families.[28] (Rodriguez Dec., Exhibit 7 at 3.) Another example, Mary Meredith, held only the following social events: Healthy Social Family Fun, Annual Harvest Luncheon, Rodeo Bar-B-Q, and Celebration and Promotion. (*Id.* at 9) These are not unique examples; indeed, this Court need only conduct a cursory review of the activities reflected in Exhibits 7 and 8 to see that site-level activities are dominated by "parent involvement" events (delivered inconsistently across schools) which do not reflect the family engagement goals of the USP, the acknowledged importance of focusing on learning-centric activities, or a District-wide family engagement strategy and "vision". Notably, there are zero family engagement activities reported in the 2015-16 TUSD Annual Report for many schools, including, but not limited to, Ochoa, Pueblo, and Safford. (Rodriguez Dec., Exhibits 7 and 8.) Significantly, each of these three schools was a magnet school that recently lost its magnet status. (*See* Doc. 1984-1 at 1.)

4. The District Has Not Implemented its Own Recommendation Concerning the Site-level Designation of Family Engagement Points of Contact

Another recommendation in the FACE Plan concerned "Building School Capacity (to Engage Families)" and included within it a recommendation that all schools "designate a family engagement point of contact." (FACE Plan at 18.) The FACE Plan further noted what it identified as a problem that "[t]he District relied heavily in the past on Title 1 and Student Support Services to provide parent educational opportunities." Plainly, this

[28] These events consisted of "Family Library Night," "Spooky Reading Night," and "Literacy Night."

recommendation points to the need for sites to hire or designate family liaisons as points of contact.

Indeed, recognizing that many of its sites had no family engagement point of contact and "often divided among many staff members" "family engagement duties," the District only now, in connection with the 2017-18 USP budget, proposes family liaison "stipend[s to] allow each school site to designate one staff member as the family engagement liaison and to be recognized at the site and throughout the District" (*See* TUSD Response to RFI #1007, attached to Rodriguez Dec. as Exhibit 9.)[29]

5. The District's Data Collection Efforts Are Inadequate for Purposes of Meaningful Evaluations of Effectiveness of Family Engagement Efforts

Recognizing the centrality of data collection efforts to the success of the District's engagement efforts, the District's FACE Plan made another recommendation concerning the need to track family engagement efforts for "Monitoring the Effectiveness" of programs and efforts (*id.* at 21) – aligning with the USP Section VII, C, 1, c requirement that the District "develop and implement a plan to track data on family engagement.[30] The FACE Plan recognized that there "is no system to provide consistent access to programs or a way of evaluating the effectives of programs. Currently the District's major method for tracking family engagement is through sign-in sheets… Research supports data collection

[29] The District appears to have continued to rely heavily on Title 1 for family engagement efforts just as it did at the time it developed the FACE Plan, and is only now addressing that issue. Indeed, in describing family liaison stipends proposed for the 2017-18 school year, it concedes that the "existing distribution of Title I liaisons is based on each school principal's assessment of need. The funding for the Title I liaisons is discretionary to each site: Title I sites that do not have a liaison have either determined that they do not need one (based on a number of factors: size, availability of other support staff, etc.) or that they have other priorities for Title I funding. *This supplemental 910G funding will ensure that all schools have an adequate measure of family engagement that is consistent with the needs at each site.*" (*Id.*; emphasis added.)

[30] The USP-required assessment is part of a USP provision that also mandates that there be "data systems in place to provide information on outreach to and engagement with families and communities." (USP Section VII, C, 1, b.) The USP further required that the District "By October 1, 2013… develop and implement a plan to track data on family engagement, and the District shall make necessary revisions to Mojave to allow such data to be tracked by student." (USP Section VII, C, 1, c.)

systems as a necessary component of ongoing evaluation, planning and improvement." (*Id.*)

The District reported that for each of the 2014-15 and 2015-16 school years, the District continued to gather family engagement data through sign-in sheets (AR 2014-15, Doc. 1848, at VII-261; AR 2015-16, Doc. 1958-1, at VII-328), even though USP Section VII, C, 1, c envisioned that by October 1, 2013, the District would make necessary revisions to its electronic data system to track family engagement. Nor has the District, as of April 10, 2017, completed developing its electronic system for tracking family engagement. (*See* TUSD Responses to Special Master and Mendoza Plaintiffs RFIs, Response to RFI #1130, attached to Rodriguez Dec. as Exhibit 10.)[31] Notably, in response to the Mendoza Plaintiffs' requests for information, the District also stated that "its **goal** is to develop an electronic system that can be used at the centers and school sites" and that it "is **still developing** the specifics on 'how' it will use the system." (*Id.*, Responses to RFIs #1131 and #1132; emphasis added, attached to the Rodriguez Dec. as Exhibits 11 and 12.)

Further, as far as Mendoza Plaintiffs can tell from past TUSD Annual Reports, the District has made no effort to track family engagement data by race/ethnicity to evaluate the effectiveness of its family engagement efforts with Latino and African American families, notwithstanding the Special Master's 2014-15 Annual Report "Recommendation to the District" that it do so. (Doc. 1890 at 30: "The District should improve its reporting of family and community engagement activities organizing these by types of activities reporting how many families of different racial backgrounds were served and what the purposes of these services were." The Special Master also attempted to assist the District in this effort by noting that "[o]ne widely used typology for categorizing family and community engagement activities is available from the Center for Family and Community

[31] Indeed, the District acknowledged this in its Motion, stating that it purchased the new Synergy system for this school year and that Family Engagement and Community Outreach staff currently are working with TUSD Technology Services to implement an online system for tracking Family Center use. (Motion at 35:12-16.) Nothing is said about tracking such activities "by student." (USP VII, C, 1, c.)

Partnerships at Johns Hopkins University….") Significantly, with respect to efforts at the site-level, the District has conceded that for the 2015-16 school year "[t]here was no process to review or assess school site family engagement activities in place during the school year for SY2015-16." (TUSD Response to RFI #863, attached to Rodriguez Dec. as Exhibit 6.)

With respect to evaluations of effectiveness, the District inaccurately asserts that it "conducts surveys to assess the effectiveness of the [USP-mandated] quarterly information events that it provides to parents of African American and Hispanic Children"[32] citing to its 2015-16 Annual Report. (Motion at 32:24-26.) However, those surveys did not concern quarterly informational events and therefore could not have been used to assess their effectiveness; rather, they prompt parents to rank from 1 to 5 the importance of items such as Saturday math tutoring, before- and after-school tutoring, and tutoring in reading, writing and math. (Copies of those survey results are attached to the Rodriguez Dec. at Exhibits 13 and 14.)[33]

Moreover, the District's evidence concerning its USP Section VII, E, 1, d obligation to "[a]naly[ze]…the scope and effectiveness of services provided by the Family Center(s)" demonstrates that no serious effort was put into this effort. Its one-page 2014-15 "Analysis of the Scope and Effectiveness of Services" of family resource centers provides absolutely no analysis of "scope" of services or of effectiveness; instead it tallies up visits

---

[32] The quarterly informational events for African American and Latino families are expressly mandated under USP V, E, 7, d and USP V, E, 8, d (concerning quality of education), respectively. The District identifies the events as "complementary" to USP VII, C, 1, a, (v) family engagement requirements that it "provide for the creation and distribution of new or revised materials to provide families with detailed information regarding the curricular and student support services offered in Section V(C) Student Engagement and Support, including information on Academic and Behavioral Support, dropout prevention services, African American and Latino Student Support Services, culturally relevant courses and policies related to inclusion and non-discrimination." (FACE Plan at 33.)

[33] This is an area that exemplifies the District's ongoing inadequate data collection processes as it appears not to have tracked participation at quarterly events at seven, 14 and 17 racially concentrated schools in each of the second, third and fourth quarters of 2015-16 school year, respectively. (Appendix V-214 to AR 2015-16 containing this information is attached to the Rodriguez Dec. at Exhibit 15.)

to family engagement centers and concludes that the data "indicates individual participation of families services are right on target… ." (A copy of this document is attached to the Rodriguez Dec. at Exhibit 16.) The District's 2015-16 "Analysis of the scope and effectiveness of services provided by the Family Center(s)," on the other hand, is based entirely on "customer satisfaction surveys" (in connection with unspecified provided services) and a mere 89 needs surveys collected over a five-month period. (A copy of this document is attached to the Rodriguez Dec. at Exhibit 17.) Notably, the 2015-16 "evaluation" does not take into account the number of and reasons for visits to family centers (beyond simply noting a total of approximately 7,000 visits), or whether the services and information concerning, for example, Advanced Learning Experiences or open enrollment and magnet schools, provided at centers are effective in recruiting students.

Because the District has failed to demonstrate full and satisfactory compliance with the provisions of the USP relating to family and community engagement so much of its Motion as seeks release from Court supervision over this facet of the school system should be denied.

VII. THE COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE EXTRACURRICULAR ACTIVITIES COMPONENT OF THE USP

A. TUSD Has Failed to Demonstrate Full and Satisfactory Compliance With Provisions of the USP Regarding Extracurricular Activities

1. The District Has Not Demonstrated that African American and Latino Students Have Equitable Access to Extracurricular Activities

The USP section on extracurricular activities begins with the clear direction that the "District shall comply with the provisions [relating to extracurricular activities] in order to provide students equitable access to extracurricular activities." (USP, VIII, A, 1.) Available data indicates that this has yet to occur.

The Motion asserts that "African American and Latino student participation rates have increased since the adoption of the USP" (Motion at 23:26-27) but does not say anything about the participation rates of white students. Although it is difficult to compare

TUSD data relating to extracurricular participation from year to year[34], the Table on which the District appears to rely most heavily in its Motion, Table 8.1 from its 2015-16 Annual Report, a copy of which is attached to the Rodriguez Dec. at Exhibit 18, indicates that the participation of white students has increased at a greater rate than that of the District's African American and Latino students.

As explained in the Rodriguez Dec. (at Para.17), Mendoza Plaintiffs compared the participation numbers provided in Table 8.1 to the overall enrollment numbers for TUSD white, Latino, and African American students in 2013-14 and 2015-16, the start and end school years referenced in Table 8.1, using TUSD reported total enrollment figures. (Rodriguez Dec., Exhibits 19 and 20.) That comparison reveals that the participation of white students in TUSD extracurricular activities increased by 10% (from 20% of their total enrollment in 2013-14 to 30.2% of their total enrollment in 2015-16). By contrast, notwithstanding the emphasis in the USP on equitable participation by Latino and African American students, the participation rate of Latino students increased by 7.1% (from 14.6% of their total enrollment in 2013-14 to 21.7% of their total enrollment in 2015-16) and the participation rate of African-American students increased by 4% (from 20.6% of their total enrollment in 2013-14 to 24.6% of their total enrollment in 2015-16). Thus the participation "gap" has widened rather than narrowed.

In an effort to further understand why that might be so, Mendoza Plaintiffs also analyzed information the District provided in response to their requests for information relating to the 2015-16 Annual Report. Although the USP directs that reports on participation "shall include…data by school, disaggregated by race, ethnicity, and ELL status" (USP, VIII, C, 1), the data provided with the District's Annual Report failed to include information broken down by school. Mendoza Plaintiffs therefore made a request

[34] The District states in its 2015-16 Annual Report that the 2015-16 numbers "include[] for the first time…students who participated in extracurricular fine arts" and "reflect…improvements in the collection and reporting of the data…." (2015-16 AR at VIII-337-38, Doc. 1958-1.) These and other issues relating to the quality and completeness of the dataTUSD has offered relating to extracurricular activities are further discussed below.

for that information, which was provided on March 15, 2017.[35] A copy is attached to the Rodriguez Dec. at Exhibit 21. Mendoza Plaintiffs then used that chart and information on 2015-16 school enrollment (Rodriguez Dec., Exhibit 20) to create Exhibit 22 to the Rodriguez Dec. to compare relative participation in extracurricular activities by students in racially concentrated K-8 schools and in K-8 schools that have 25% or more white enrollment (inclusive of elementary, K-8, and middle schools). They then performed the same analysis looking at racially concentrated high schools and high schools that have 25% or more white enrollment. They found significant disparity.

At the K-8 level, there is a 19.8% participation rate in extracurricular activities by students attending racially concentrated schools as compared to a 27.6% participation rate by students attending schools in which the white student population constitutes 25% or more of the total enrollment. That disparity increases significantly at the high school level. There is a 31.4% participation rate among students attending racially concentrated schools as compared to a 45 % participation rate among students attending high schools in which the white student population constitutes 25 % or more of total enrollment. This fails to evidence "equitable access to extracurricular activities." It also suggests that the District has yet to conduct a meaningful assessment across its schools to determine whether extracurricular opportunities are being offered on an equitable basis and what changes, if any, may be necessary in those offerings and how they are marketed, or whether after-school bus routes need to be modified to further support such activities.

2. The District Has Failed to Demonstrate that it Provides Opportunities for Interracial Contact in Positive Settings in the Great Majority of its Extracurricular Offerings

The Motion devotes virtually all of its discussion of its implementation of the USP requirement that it "ensure that extracurricular activities provide opportunities for interracial contact in positive settings" (USP, VIII, A, 2) to its efforts to foster leadership

[35] Data is provided for 72 of the District's 85 schools. Mendoza Plaintiffs understand that the three alternative schools likely have no extracurricular activities. The data provided does not identify the additional missing schools or explain why they are omitted from the list. (Rodriguez Dec., Para. 18.)

training and opportunities in an interracial setting. (Motion at 15-18.) These are laudatory endeavors but they involve only a small fraction of the students who participate in extracurricular activities. According to the Motion, 42 students attended a Captains Academy in 2014 and 346 students participated in an expanded event based on the Academy's success. (Motion at 16, n.6 and 18:11-14.) By contrast, according to Table 8-1 (Rodriguez Dec., Exhibit 18), over 7600 students participated in extracurricular activities in 2014-15 and 11,256 did so in 2015-16. The Motion is silent as to the extent to which these remaining thousands of students actually experienced enhanced opportunities for interracial contact in positive settings of shared interest – that is, for example, at the individual team level, in campus clubs, etc.[36] or what efforts the District is undertaking to "ensure" interracial conduct. In this regard, one of the cases on which the District relies in support of its Motion is instructive.

In *United States v. Bd. of Public Instruc. of St. Lucie Co.*, 977 F. Supp. 1202, 1221 (S.D. Fla., 1977), when considering whether the school district before it had attained unitary status with respect to extracurricular activities, the Court expressly noted evidence that "[i]f it is determined that, over a period of time, a particular extracurricular activity (*e.g.*, cheerleading) is participated in primarily by students of one race, then 'the Principal is asked why is that occurring, and what needs to happen in order to change that…[A]s they occur you ask the question as to why, and then you provide the remedy." Nothing before this Court establishes that TUSD has provided a comparable degree of oversight and follow up with respect to this central obligation in the extracurricular section of the USP. Accordingly, on that basis alone so much of its Motion as seeks to be relieved from judicial oversight of extracurricular activities should be denied.

[36] The closest the District comes to this is referencing a chart (Motion at 17:12) that shows participation, broken down by race and ethnicity, of about 500 students in activities like future business leaders' clubs and Student Council.

B. The District Has Failed to Provide Sufficient and Consistent Information Relating to Extracurricular Activities, Thereby Making it Extremely Difficult if Not Impossible to Accurately Assess its Performance of its USP Obligations in This Area

In its 2015-16 Annual Report, the District asserted that participation in K-8 extracurricular activities increased in 2015-16 but also stated that "[i]ncluded in these numbers for the first time are students who participated in extracurricular fine arts." (2015-16 Annual Report at VIII-337, Doc. 1958-1,) Thereafter, in response to a Mendoza Plaintiff inquiry, the District stated that in earlier years participation in fine arts had been included in a K-8 "club" category. (Rodriguez Dec., Exhibit 23.) Whether and to what extent this new category in the report affects the ability to make "apples to apples" comparisons with extracurricular participation data provided for prior years is compounded by the fact that the District additionally asserted in its Annual Report that the improvement in participation numbers also "reflected…improvements in the collection and reporting of the data through better office staff training." (Id. at VIII-338.)

When it explained these improvements in response to a Mendoza Plaintiff inquiry, the District expanded on its Annual Report statement as follows. There were "increased efforts on the part of the extracurricular department to inform school administrators of the necessity to correctly submit this information and then to monitor submission." (Rodriguez Dec., Exhibit 24.) The District provided as an example that only "23 Elementary, K-8 and Middle Schools reported athletic data in 2014-15, whereas 49 schools reported athletic data in 2015-16." (*Id.*) [37]

[37] This statement is of some concern given that the District made a similar claim about having improved its data collection efforts in 2014-15. In the 2014-15 Annual Report, it wrote: "In the 2014-15 school year, the District also developed training for administration and office staffs at the elementary and K-8 schools to learn how to correctly input data into the Mojave Interscholastic module to track participation" in extracurricular activities. (2014-15 Annual Report, Doc. 1918-1, at VIII-283.) As noted above, in footnote 35, the by school participation report for 2015-16 that the District provided in March 2017 fails to provide information for all schools. Mendoza Plaintiffs have identified the following as among the schools whose extracurricular participation data has not been provided: Banks, Maldonado, Miller, Mountain View, Oyama, Robison, Vesey, Cragin, Hudlow, and Whitmore. (Rodriguez Dec., Para.18).

The District cannot be found to have attained unitary status in the area of extracurricular activities until it has been able to provide complete and consistent information for a sufficient number of years to permit the Plaintiffs, the Special Master and this Court to assess whether it has fully and satisfactorily complied with its obligations under the USP.

VIII. THE COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE FACILITIES COMPONENT OF THE USP

A. The District's Own Motion, Recent Budget Reallocation Request, and Proposed Budget for the 2017-18 School Year Demonstrate it Understands it is Not in Full and Satisfactory Compliance with the Facilities Provisions of the USP

USP Section IX, A, 3 requires that the District "[b]ased on the results of the assessments using the FCI [Facilities Condition Index] and the ESS [Education Sustainability Score]… develop a multi-year plan for facilities repairs and improvements with priority on facility conditions that impact the health and safety of a school's students and on schools that score below a 2.0 on the FCI and/or below the District average on the ESS. The District shall give the next priority to Racially Concentrated Schools that score below 2.5 on the FCI." Accordingly, the District developed the Multi-Year Facilities Plan which "provides a prioritized list of needed repairs, renovations, and replacements that should be addressed. Depending on the available budget, the repairs will be completed in the order defined by the [Multi-Year Facilities Plan], following the guidelines stated in the USP. Once the budget is exhausted, further repairs will be deferred to the following fiscal year when funds become available." (Multi-Year Facilities Plan, Doc. 1771-1, Exhibit 1 ("MYFP") at 10.)

The MYFP provides a "Project List" of needed repairs containing 26 projects prioritized according to the USP-mandated priorities.[38] (MYFP, Attachment F.) The District Motion provides a list of a mere *eight* MYFP projects "completed since the

[38] As will be detailed below, Mendoza Plaintiffs have ongoing significant concerns regarding the reliability of the District's FCI and ESS indices (upon which the prioritized projects are based).

development of the MYFP," leaving 18 prioritized projects unaddressed. (Motion at 50:15-20.) For this reason alone, so much of the District's Motion that seeks to end judicial supervision over facilities should be denied.

Significantly, noting that "[s]ome key projects [] remain incomplete," the District proposed a budget "[i]ncrease to [f]und MYFP [p]rojects" of "over $500K" for the 2017-18 school year. (2017-18 USP Budget Narrative, Rodriguez Dec., Exhibit 2.) Notably, after Mendoza Plaintiffs (and Fisher Plaintiffs) raised concerns regarding the seeming conflict between claiming to have achieved unitary status with respect to facilities while proposing significant increases to implement the MYFP, the District eventually eliminated *some* funding under the budget activity code concerning the MYFP. (*See* TUSD Response to RFI #1133, attached to Rodriguez Dec. as Exhibit 25.)[39]

Further, on March 2, 2017, five days before the District lodged the Motion, it requested that unexpended budget funds for the 2016-17 school year be reallocated for a number of facilities projects at four racially concentrated schools, stating that those schools "are currently below 2.5 on the FCI but would all be well above 2.5 on the FCI if these projects are approved." (*See* M. Taylor March 2, 2017 email, attached to Rodriguez Dec. as Exhibit 26.)[40] Significantly, in making the proposal, the District prioritized the facilities projects over budget reallocation priorities it had identified during the budget process last year -- for which this Court expressly noted the District had committed to "earmark" funds (*e.g.*, Culturally Relevant Courses, Dual Language Programs, etc.). (Order dated December 27, 2016, Doc. 1981, at 8:26-9:3.) Thus, the District's Motion and budget-related proposals all demonstrate that the District itself recognizes it has further MYFP implementation to go before it can be in full and satisfactory compliance with the USP.

[39] Although the District decided to eliminate what it says is MYFP funding from the Draft #3 budget for the 2017-18 school year, it proposed MYFP-related funding for "CARE/UPKEEP OF," the purpose of which Mendoza Plaintiffs have not as yet not been able to determine. (*See Id.*)

[40] Significantly, the FCI scores for these racially concentrated schools, provided on March 2, 2017 conflict with the FCI scores that the District Motion (at 47:4-5) describes as the last adjustment of FCI results. (Compare Rodriguez Dec., Exhibit 26 with AR 15-16, Appendix IX-16, attached to Rodriguez Dec. as Exhibit 27.)

B. Unilateral Revisions to the FCI, Reallocation Requests Inconsistent with the District's Data on Facility Conditions, and Adjustments to FCI Scores Said to be Related to the District Master Facilities Plan Make Accurate Assessment of TUSD's Performance of its USP Obligations in This Area Extremely Difficult

In its Motion, the District acknowledges, as it must, that it "reduced the weight given to the communication category [in the FCI] from 15 percent to 5 percent… [and] increased the grounds category, which includes playgrounds and athletic fields, from 5 percent to 10 percent" because, it says, the FCI "duplicated" the technology communications system assessments that are part of the TCI. (Motion at 46:12-16.) What the District fails to state is that it unilaterally revised the weights of the FCI, which had been negotiated by the parties, in violation of USP Section I, D, 1 concerning Plaintiff review and comment. (*See* Mendoza Plaintiffs' Reply to the TUSD November 28, 2016 Response to Their Request that the Special Master Bring Multiple Instances of Noncompliance with the USP and its Undertakings Related Thereto to the Court's Attention, attached to Rodriguez Dec. as Exhibit 28, at 5-6.)[41]

Had the District submitted the changes it unilaterally made to the FCI weighted categories to Plaintiffs for review and comment, as the USP requires, the Mendoza Plaintiffs would have objected because the changes make year-by-year comparisons that would allow the Plaintiffs, Special Master, and this Court to assess the District's progress concerning its USP facilities obligations very difficult.[42]

---

[41] Mendoza Plaintiffs requested that the Special Master bring certain instances of the District's noncompliance with the USP to the attention of the Court in connection with their review of TUSD's 2015-16 Annual Report. Exhibit 28 is Mendoza Plaintiffs' reply to TUSD's response to that request. It provides further discussion of why the District's unilateral revisions to the FCI weights do not make sense.

Mendoza Plaintiffs note that the unilateral revisions to the FCI occurred well before this Court's December 27, 2017 Order (Doc. 1981) concerning changes to the USP I, D, 1 Plaintiff review and comment process.

[42] In this regard, the District provides absolutely no evidence to support its "**belie[f]** that the changes *have yet to substantively affect[] the allocation* of any District fund for repair and improvement." (Motion at 46:16-18; emphasis added)

Moreover, the District's decision to increase the weight accorded to the FCI's grounds category which includes "playgrounds and athletic fields" (Motion at 46:14-15) raises separate issues because, as TUSD acknowledges in its Motion, the ESS already evaluates "playgrounds and playfields" (Motion at 47:11-12 (quoting USP Section IX, A, 1).) Because the MYFP is based on both the FCI and ESS, the effect of the District's unilateral revision is to shift the weighting from technology communications systems supporting instruction to play areas, even though, as TUSD also acknowledges in its Motion (at 48:9-11), the parties negotiated the weights of the ESS to "score[] more heavily towards the classroom and less on the non-instructional space."

Beyond issues concerning FCI and ESS weights, reallocation requests with explanations that conflict with FCI and ESS data call into question the accuracy of that data. For example, in connection with a March 8, 2016 reallocation request for repairs to Utterback Middle School's auditorium, the District asserted the existence of significant disrepair, including no working speakers, sound boards, microphones (sound system), no projection system, and limited lighting as a result of it "hav[ing] had no upgrades or systemic repairs since its inception in 1989." (*See* email chain re: Reallocations – Tully and Carrillo, attached to Rodriguez Dec. as Exhibit 29.) However, its ESS score stated that Utterback's "Performing Arts" space received a 4.0 rating out of a possible total of 5.0, indicating that it was in "good condition." (*See id.*) As another example, in connection with its March 2, 2017 reallocation requests, the District states Safford's computer lab has "two 'holes' in the floor. Plywood has been secured to make sure no one falls through. However, there is a noticeable dip when stepping on the plywood… this is an unsafe condition that needs to be addressed." (See TUSD April 3, 2017 email attached to Rodriguez Dec. as Exhibit 30.) Mendoza Plaintiffs presume that the development of "holes" big enough for children to "fall[] through" reflects disrepair that developed over time, and note that with regard to Safford's ESS scores (which include computer labs), the District apparently had "no data" whatsoever for the 2015-16 school year. (*See* AR 15-16, Appendix IX-18, attached to Rodriguez Dec. as Exhibit 31.)

Finally, the District developed a "District Master Facilities Plan" ("DMFP") which it says involved assessments of "HVAC, Roofing and Special Systems… at every school between September 2015 and February 2016" and that it took "advantage of the assessments that were completed as part of that project to make sure the conditions were reflected in the FCI as well." (Rodriguez Dec., Exhibit 32.) Although the District purports to have revised the FCI in light of the DMFP assessments, it asserts that the "MYFP is not related to the DMFP in any way." (*Id.*) And, on that basis, declined to provide a copy of the DMFP to the Mendoza Plaintiffs. Following the District's refusal to provide a copy of the DMFP in response to Mendoza Plaintiffs' repeated requests, Mendoza Plaintiffs searched the District's website and found a copy on line. (Rodriguez Dec., Para. 29.) Contrary to the District's assertion that the DMFP does not relate to the MYFP, the DMFP contains a section devoted to the "Multi-Year Facilities Plan Background and Summary" and sets out the assessment process that formed the basis of the DMFP. (DMFP, Rodriguez Dec., Exhibit 33, at 3.0-1 *et seq*.) Significantly, it describes only the creation of the FCI and the ESS and no additional assessment work, and so far as Mendoza Plaintiffs have been able to determine, does not refer to or incorporate any new assessment of "HVAC, Roofing, and Special Systems" as referenced in the District's response to their inquiry. Further, it makes no reference that Mendoza Plaintiffs have been able to locate to any changes to the FCI to reflect such an assessment. Thus the nature and extent of what the District asserts are the most recent changes to the FCI are opaque at best and further complicate any attempt to evaluate the District's progress in implementing the facilities portion of the USP.

As is the case with regard to extracurricular activities, the District cannot be found to have attained unitary status in the area of facilities until it has been able to provide complete and consistent information for a sufficient number of years to permit the Plaintiffs, the Special Master and this Court to assess whether it has fully and satisfactorily complied with its obligations under the USP.

C. The District Has Not Fully Committed its Facilities Repair and Maintenance Efforts to Furthering USP Purposes as Demonstrated by its Actions on the Day it Lodged its Motion[43]

The District presented the DMFP discussed above to its Governing Board on June 14, 2016. (Rodriguez Dec., Para. 29.) That DMFP articulates general "TOP PRIORITIES/OBJECTIVES" that are unconnected to the priorities established in USP Section IX, A, 3. (Rodriguez Dec., Exhibit 33 at 4.0-1) Notably missing is any weighting of priorities to address the needs of the District's racially concentrated schools. Significantly, while the DMFP does acknowledge that the MYFP "assures Racially Concentrated Schools are not overlooked and are given a higher level of consideration" (*Id*., at 3.0-4), there is no statement in the DMPF about how its "top priorities" and those of the MYFP are to be reconciled and, as noted above, the District has asserted that "the MYFP is not related to the DMFP in any way." (Rodriguez Dec., Exhibit 32.)

The DMFP "top priorities"[44] not only fail to include the priority of providing a "higher level of consideration" to racially concentrated schools; so far as Mendoza Plaintiffs can discern they make no effort to reconcile the achievement of priorities like attaining "optimum school size" or the expansion of teaching areas for successful programs with the District's desegregation obligations under the USP.[45]

---

[43] Mendoza Plaintiffs note that this section also implicates the District's burden to demonstrate to this Court its "affirmative commitment to comply in good faith with the entirety of a desegregation plan". (*Freeman*, 503 U.S. at 499.)

[44] The priorities listed on page ii of the DMFP are: repairs, key facility improvements to enhance learning, technology, school renovations for 21st Century Learning and optimum school size, support expansions of successful programs, reduce the number of active portable classrooms, and "transportation".

[45] The DMFP suggests the possibility of bringing Hohokam "back on line" to address projected increases in student population in the southwest portion of the District, and as examples of creating additional space to expand successful school programs, expansion or relocation of the Dodge campus, vocational buildings at Tucson High, and relocation of Dietz to Carson. (Rodriguez Dec., Exhibit 33 at 4.0-3) Plainly, therefore, far more than the facilities component of the USP is implicated by the DMFP. And while the DMFP does acknowledge that such proposals would have to go through the USP NARA process (*id*. at 4.0-5) what is notably absent from the discussion is that increasing integration must be a central concern as the District evaluates these proposals.

Although Mendoza Plaintiffs could not determine whether the TUSD Governing Board adopted the DMFP, the Governing Board did, on March 7, 2017, provide approval "to pursue the preparation of a bond package" to implement the DMFP, and, it would appear, thereby implicitly approved the DMFP. (Rodriguez Dec., Exhibit 34.) Significantly, the day the District approved preparation of its DMFP bond is the very day it lodged this Motion, seeking to be relieved of Court oversight of its facilities obligations under the USP.

IX. THE COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE TECHNOLOGY COMPONENT OF THE USP

A. The District Itself Acknowledges that it Is Too Early to Terminate Court Oversight of Technology Professional Development, Which Accounts for a Full 42% of the Technology Conditions Index to Which the District Points in Assessing its Progress Under the USP

In a footnote in its Motion (n. 9 at 51), the District states that notwithstanding that its Motion seeks an order finding that it has attained unitary status in the area of technology (Motion at 1:4, 66:6), it "does not seek termination of court supervision over technological professional development at this time." Given that concession and the central role of technology professional development to the District's technology obligations under the USP, for that reason alone so much of the Motion as seeks release from Court supervision over "technology" should be denied.

The USP not only requires the District to prepare a Technology Conditions Index ("TCI") to rate technology and technology conditions along multiple dimensions including "teacher proficiency in facilitating student learning with technology". (USP, IX, B, 1.) It also separately mandates that the "District shall include in its professional development for all classroom personnel…training to support the use of computers, smart boards and educational software in the classroom setting." (USP, IX, B, 4.) Not surprisingly, therefore, teacher proficiency constitutes 42% of the overall TCI rating for each school (Motion at 52:26). Mendoza Plaintiffs do not believe that the District can demonstrate full

and satisfactory compliance with its technology obligations under the USP when such a large proportion of those obligations remain subject to judicial oversight[46].

B. The Motion Fails to Acknowledge Advances in Technology and Increased Computer Usage That, it Says, Require it to Revise the TCI and to Seek Additional 910(G) Funding to Provide More Equitable Wireless Access to Ten Racially Concentrated Schools

In support of its request to be relieved from Court supervision with respect to technology, the District relies almost exclusively on what it states have been relative improvements in the TCI scores of racially concentrated Schools. (Motion at 51-57.) However, TUSD is relying on a TCI that it has separately stated is outmoded and will have to be revised.

In its Budget Narrative for the 2017-18 910(G) budget cycle, the District reported that the number of Wireless Access Points ("WAPs") in its classrooms had become insufficient "[d]ue to advances in technology and internet 'cloud' based applications and at the same time the lower cost of devices…." (Budget Narrative, Rodriguez Dec., Exhibit 2 at 41.) Thereafter, in response to Mendoza Plaintiffs' requests for information, the District also stated that it "is developing proposed revisions to the TCI to measure schools' wireless bandwidth and connectivity, funding, (when it becomes available) will be directed towards schools based on need with the primary purpose of providing equitable access to high speed internet." (Rodriguez Dec., Exhibit 36, RFI #1013.) In the Budget Narrative, the District had indicated that it sought 910(G) funding for 2017-18 for ten racially concentrated schools "which are in most immediate need…." (Budget Narrative, Rodriguez Dec., Exhibit 2 at 41.)

[46] In the Motion, the District points to the number of racially concentrated schools whose overall TCI exceeds the District average. That such increases resulted from technology upgrades, which Mendoza Plaintiffs agree took place and which they fully supported, rather than from increased proficiency in the use of that technology – and that the racially concentrated schools continue to have a significant distance to go in that regard – is indicated by Appendix IX-12 to the District's 2015-16 Annual Report, attached to the Rodriguez Dec. as Exhibit 35. That schedule indicates that approximately 41% of the schools below the District average in teacher proficiency are racially concentrated, corresponding almost exactly to the percentage of racially concentrated schools in the District (approximately 41%).

Given that the TCI is in need of revision, that the revised TCI may result in different relative scores for the racially concentrated schools than those on which the District relies in its Motion, and that the District has already acknowledged that ten racially concentrated schools "are in the most immediate need" of bandwidth upgrades, the Motion appears both to be based on out-moded data and to be premature. On that basis as well, it should be denied.

C. The District Has Failed to Demonstrate Full and Satisfactory Compliance With Provisions of the USP Regarding Technology

The USP provides that having developed the TCI, "based on [its] results,… the District shall develop a multi-year Technology Plan that provides for enhancements and improvements to the District's technology…." (USP, IX, B, 3.) In the Motion, the District ignores significant portions of that Plan. (Doc. 1778-1, filed 2/27/15, Rodriguez Dec. Exhibit 37.) The Plan is extremely detailed. It includes a very specific three-year plan to upgrade and increase the number of computers in 14 identified schools. (*Id*., at 17- 21.) It may well be that the computer and other technology purchases the District made last year satisfied the provisions of this school specific plan but the District has failed to point to any evidence in the record that would permit this Court to make that finding. Significantly, in that regard, it appears that neither this past year, when it filed its Annual Report nor in any prior year did the District provide the full report required by the USP: "A copy of the …multi-year technology plan…**and** a summary of the actions taken during that year pursuant to such plan[]." (USP, IX, C, 1, d; emphasis added.) (*See* Rodriguez Dec., Para. 34, noting, for example, that in the 2015-16 Annual Report after quoting the above-cited provision of the USP, the District said only: "There were no changes made to the Multi-Year Technology Plan (MYTP) for the 2015-16 school year" and provided no summary of actions taken during that year pursuant to the plan.)

D. Continued Oversight of the Technology Component of the USP Is Essential to Achieve Compliance with Other Facets of the USP that Will Remain Under Court Supervision

The District itself recognizes that the very significant portion of the technology component of the USP that relates to teacher proficiency is so intertwined with the portions of the USP that expressly address professional development that judicial supervision of that part of the technology component must remain in place. (Motion at 51, n.9.) Given how entwined technology is with the achievement and student support portions of the USP, this Court should retain jurisdiction over the entirety of the technology portion of the USP.

The District (like every other school system in the country) increasingly relies on technology not only for daily classroom instruction but also in connection with a host of interventions designed to improve the achievement of students who have been struggling with their school work. (*See, e.g.*, Rodriguez Dec., Para.36.) As noted above, faced with the demands on its infrastructure made by the ever-increasing use of technology, the District plans to allocate 910(G) funds to "[i]mprove the availability of wireless and broadband internet at racially concentrated schools to ensure that equal access to the Internet is provided district-wide." (Budget Narrative, Rodriguez Dec., Exhibit 2 at 40.) To ensure that deficits in technology do not impair the access to equal educational opportunities and appropriate interventions by the District's African American and Latino students, particularly those attending any of the District's 36 racially concentrated schools, this Court should find that retention of jurisdiction over technology is necessary to achieve compliance with the USP in other areas of the school system that will remain subject to judicial oversight.

X. THIS COURT SHOULD NOT TERMINATE ITS OVERSIGHT OF THE EVIDENCE BASED ACCOUNTABILITY SYSEM

For reasons it does not explain, the District has carved out the evidence-based accountability system from its obligations under Section X of the USP relating to Accountability and Transparency and asked the Court to withdraw its supervision over that

system. (*See*, Motion at 1:4-5, Point VIII, and 66:6-7.) Mendoza Plaintiffs stress the word "system" because the USP subsection on Evidence-Based Accountability (USP, X, A) covers more than the creation of a "system" and, as discussed further below, it is quite clear that the District has not demonstrated full and satisfactory compliance with those other provisions of the USP subsection. Nor has it established that supervision should be withdrawn from the "system" itself. However, this Court need not reach issues relating to the nature and extent of the District's compliance with USP, X, A given that jurisdiction must be maintained over the EBA system in any event because that system is so related to and intertwined with sections of the USP that will remain under Court supervision.

A. Continued Oversight of the EBA System Is Essential to Achieve Compliance with Other Facets of the USP that Will Remain Under Court Supervision

The USP is explicit that the purpose of the evidence-based accountability system is "to review program effectiveness and ensure that, to the extent practicable, program changes address racial segregation and improving the academic performance and quality of education for African American and Latino students, including ELLs." (USP, X, A, 1.) Given that the essential purpose of including an evidence-based accountability system in the USP was to monitor and facilitate compliance with the USP's core purposes, it is hard to imagine an aspect of the school system is which retention of judicial control would be more "necessary or practicable to achieve compliance in other facets of the school system." *Freeman*, 503 U.S. at 497.

B. This Court Should Not Withdraw Supervision of the EBA System Because it Still Is a "Work in Process" and its Functionality Has Not Been Demonstrated to the Plaintiffs (or This Court)

Mendoza Plaintiffs appreciate the effort that the District has been devoting to the creation of the USP-mandated EBA system. However, even if the Motion were not denied for the reason set forth above, it would have to be denied as premature. This is so because the system remains a work in process. As stated in the Motion, it was only at the beginning of this school year that the "District went live with the new student information

system, using the Synergy student information integrated with Clarity" (which, the Motion states, provides the "early warnings" of students at risk mandated by the USP). (Motion at 60:23-27.) Further, when the District went "live with Synergy in SY 16-17…this resulted in a series of new platform upgrades and data integration." (Motion at 62:8-10.) And, the "District is in the process of releasing an upgraded TUSDStats, providing the same information in a clearer and more robust format." (Motion at 62:10-11.) Additionally, the "data warehouse will include data from the District's older, legacy systems…." (Motion at 64:15.)

Mendoza Plaintiffs understand that there many reasons why the EBA system was not completed by the January 1, 2014 date stated in the USP (USP, X, A, 2) but it is the "**completed** amended [data] system" that, under the USP "shall be known as the Evidence-Based Accountability System ("EBAS") (*id.*; emphasis added). Based on the statements in the Motion, it is not clear that the system has been "completed" or, that if it now is "completed" , that the District has had sufficient experience with the "completed" system to warrant withdrawal of supervision.

It also is worth noting that the District has never offered to demonstrate the EBA system and its functionality to the Plaintiffs. (Rodriguez Dec., Para. 35.) Mendoza Plaintiffs respectfully suggest that neither the Plaintiffs nor the Court should be asked to accept the District's statements about the capacity and functionality of the EBA system when a demonstration of the system presumably could be easily arranged and when the District bears the burden of demonstrating its full and satisfactory compliance with the relevant provision of the USP.

C. The District Has Failed to Demonstrate Full and Satisfactory Compliance With Provisions of the USP Regarding Evidence-Based Accountability

As stated immediately above, the District should not be found in full compliance with the provisions of the USP relating to the evidence-based accountability system until it provides an actual demonstration of the system's capacity and functionality to the Plaintiffs and the Court.

Also as noted above, it is unclear whether the District is seeking withdrawal of supervision only with respect to its creation and implementation of an evidence-based accountability system or also with respect to the other express requirements of the USP subsection on Evidence-Based Accountability. In an excess of caution, Mendoza Plaintiffs therefore address the additional requirements of Section X, A.

Under the USP, the District "shall require all administrators, certificated staff, and where appropriate, paraprofessionals, to undertake …training on the EBAS." (USP, X, A, 3.) Further, that training must include: "recording, collecting, analyzing, and utilizing data to monitor student academic and behavioral progress, including specific training on the inputting, accessing, and otherwise using the District's existing and amended data systems…." (USP, IV, J, 3, b, vi.) The District has offered little evidence of any training, much less the extent of training required by the USP. In its Motion, it states only that some training was given to principals, directors from Student Services and School Leadership in June 2015 (Motion at 64:7-11), that is, **before** Synergy and Clarity "went live." That significant additional training must occur is underscored by the fact that many of the magnet school transition plans include expenses for a "data coach" who, for example in the case of Ochoa, will "train teachers and administrators on data collection and analysis." (Rodriguez Dec., Exhibit 38 at 38.)

The USP also requires the District to "evaluate relevant personnel on their ability to utilize the EBAS as contemplated pursuant to Section (IV)(H)(1)." (USP X, A, 4.) Section IV, H, 1 states that evaluations shall include an assessment of "teacher and principal use of classroom and school-level data to improve student outcomes, target interventions, and perform self-monitoring." The Motion includes no discussion of this requirement.

Because the District has failed to demonstrate full and satisfactory compliance with the provisions of the USP relating to the evidence-based accountability system and evidence-based accountability more generally, so much of its Motion as seeks release from judicial oversight of its evidence-based accountability system should be denied.

CONCLUSION

For the reasons set forth above and in the accompanying Declaration of Juan Rodriguez, this Court should deny in its entirety the TUSD Motion for Partial Unitary Status.

Dated: April 28, 2017

MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on I electronically submitted the foregoing MENDOZA PLAINTIFFS' MOTION FOR OPPOSITION TO TUCSON UNIFIED SCHOOL DISTRICT NO. 1 MOTON FOR PARTIAL UNITARY STATUS; DECLARATION OF JUAN RODRIGUEZ IN SUPPORT OF MENDOZA PLAINTIFFS' OPPOSITION TO TUCSON UNIFIED SCHOOL DISTRICT NO. 1 MOTON FOR PARTIAL UNITARY STATUS 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:

P. Bruce Converse
bconverse@steptoe.com

Paul K. Charlton
pcharlton@steptoe.com

Samuel Brown
samuel.brown@tusd1.org

Todd A. Jaeger
todd.jaeger@tusd1.org

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

James Eichner
james.eichner@usdoj.gov

Shaheena Simons
shaheena.simons@usdoj.gov

Peter Beauchamp
peter.beauchamp@usdoj.gov

Special Master Dr. Willis D. Hawley
wdh@umd.edu

/s/ Roxana Ontiveros
Roxana Ontiveros

Dated: April 28, 2017