

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

6 JUAN RODRIGUEZ, Cal. Bar No. 282081 (Admitted Pro Hac Vice)
 jrodriguez@maldef.org
 7 THOMAS A. SAENZ, Cal. Bar No. 159430 (Admitted Pro Hac Vice)
 tsaenz@maldef.org
 8 MEXICAN AMERICAN LEGAL DEFENSE AND
 EDUCATIONAL FUND (MALDEF)
 9 634 S. Spring St.
 11th Floor
 10 Telephone: (213) 629-2512 ext. 121
 Facsimile: (213) 629-0266

11 Attorneys for Mendoza Plaintiffs

12
13 **UNITED STATES DISTRICT COURT**

14
15 **DISTRICT OF ARIZONA**

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

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

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

Hon. David C. Bury

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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

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1 **INTRODUCTION**

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

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

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

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

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

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

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

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

14 That the District nonetheless endeavors to hold its performance to a lesser standard
15 is particularly troubling given this Court’s clear statement of the applicable standard when,
16 in 2013, it rejected the District’s suggestion that it would then have been “appropriate to
17 withdraw oversight regarding three *Green* factors: facilities, extracurricular activities, and
18 transportation, except as it relates to student assignment.” (Order filed 2/6/2013, Doc.
19 1436, at 8:23-25.) This Court wrote: “[T]he Court finds that supervision cannot be
20 withdrawn over any *Green* factor because at this point in time the Court cannot find **full**
21 **and satisfactory compliance** in these areas.” (*Id.* at 11:1-3; emphasis added; *see also, id.*
22 at 4:4-6.)

23 _____
24 ¹ TUSD acknowledges, as it must, that *Freeman* “still provides guidance today for district
25 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.)

26 ² This Court had independently come to the same conclusion as to the applicable standard
27 when in 2007 it wrote: “Furthermore, the Settlement Agreement is a binding consent
28 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.)

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

3 **II. THE COURT’S INQUIRY MUST INCLUDE CONSIDERATION OF**
4 **WHETHER THE VESTIGES OF DISCRIMINATION HAVE BEEN**
5 **ELIMINATED TO THE EXTENT PRACTICABLE WITH RESPECT TO**
6 **EACH OF THE AREAS IN WHICH THE DISTRICT SEEKS TO BE FREED**
7 **FROM COURT OVERSIGHT**

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

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

25 ³ See also, *Freeman* at 486: “The objective of Brown I was made more specific by our
26 holding in *Green* that the duty of a former *de jure* district is to ‘take whatever steps might
27 be necessary to convert to a unitary system in which racial discrimination would be
28 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.)

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

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

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

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

25 **III. THE COURT ALSO MUST CONSIDER WHETHER RETENTION OF
26 JUDICIAL SUPERVISION OVER ANY OF THE FACETS OF THE
27 SCHOOL SYSTEM IN ISSUE ON THE MOTION IS NECESSARY OR
28 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

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

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

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

16 In *Freeman*, the Supreme Court clearly articulated a third prong to the test to be
17 applied in assessing whether a court should grant a motion for partial unitary status, listing
18 among the factors to be considered “whether the school district has demonstrated, to the
19 public and to the parents and students of the once disfavored race, its good-faith
20 commitment to the **whole** of the court’s decree...” (*Id.* at 491; emphasis added.)
21 Significantly, this Court already has demonstrated that it well understands the need to
22 include this important consideration in assessing whether to grant partial release to the
23 District. Thus, in 2013, it wrote: “The Court finds that supervision may not be partially
24 withdrawn for any *Green* factor because the District failed to demonstrate to the public and
25 to the parties and students of the once disfavored races and ethnicities its good faith
26 commitment to the whole of the [consent decree] and to those provisions of the law and the
27 Constitution that were the predicate for judicial intervention.” (Doc. 1436 at 11:7-11.)
28

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

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

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

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

25
26 ⁴ The District's silence on these portions of the *Freeman* test also is significant because it
27 is the District that bears the burden of proof on this Motion. *See, e.g., Everett v. Pitt Co.*
28 *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.)

1 A. Culturally Relevant Courses

2 As one of the key strategies to “increase academic achievement and engagement
3 among African American and Latino students”, the USP requires TUSD to “develop and
4 implement [including as core English and Social Studies classes in all high schools in the
5 District] culturally relevant courses of instruction designed to reflect the history,
6 experiences, and culture of African American and Mexican American communities” and to
7 expand such courses initially to the sixth through eighth grades and then throughout the K-
8 12 curriculum. (USP, V,E,6,a,ii.)

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

25 Further, with respect to the explicit requirement in the Intervention Plan that the
26 District assign 12 Itinerant Teachers to, *inter alia*, provide effective CRC teacher support
27 regarding CRC instruction, develop CRC curriculum, and recruit students to the classes (a
28

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

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

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

21 B. Expansion of Dual Language Programs

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

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

1 Again, the Mendoza Plaintiffs express concern that the
2 District failed to use 910(G) funding to expand the dual
3 language program. Last year, the Mendoza Plaintiffs
4 challenged proposed expenditures for dual language teachers
5 on supplant vs. supplement grounds, and noted that the
6 District must “build and expand the Dual Language Programs
7 in order to provide more students throughout the District with
8 opportunities to enroll in these programs.” Still this year, the
9 District fails to budget 901(G) money to expand dual language
10 programs, “in fact, the number of schools offering dual
11 language programs and overall enrollment in the programs has
12 substantially declined.” (citing Mendoza Plaintiffs’
13 Objections, Doc. 1833, Ex. B.) Suffice it to say: “If not now,
14 when?”

15 The Court adopts the Special Master’s recommendation that
16 the District be required to develop a plan for increasing the
17 student access to dual language programs which must be
18 implemented in 2016-17. Given the delay in moving forward
19 with the dual language component of the USP, the District
20 should engage one or more nationally recognized consultants
21 to assist in studying and developing the plan, which must be
22 prepared and presented to the parties and the Special Master
23 for review and comment in a timely fashion for implementation
24 in SY 2016-17.

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

26 C. Student Assignment

27 1. Magnet Schools

28 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.

1 For example, in its Order dated 1/16/15, the Court recited relevant case history relating to
2 the preparation of a Magnet Plan, focusing on the Comprehensive Magnet Plan (“CMP”)
3 adopted by the Governing Board in July 2014 and a subsequent, Revised CMP, modified
4 to address certain objections raised by the Special Master and the plaintiffs with respect to
5 the July CMP. This Court then wrote: “The Court...cannot approve the CMP, adopted by
6 the School Board on July 15, 2014, or the Revised CMP. Neither is a comprehensive plan
7 as required by the USP....In short, the CMP fails to reflect the District’s vision for a
8 meaningful operational Magnet School Plan, [which] it can support long term.” (Doc.
9 1753 at 16:1-13.) This Court then added:

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

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

18 The District, in consultation with the Special Master, shall
19 work with its schools to prepare the Improvement Plans over
20 the next three months, which shall identify clear and specific
21 annual bench marks for attaining magnet status by SY 2016-
22 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....

23 The Special Master, in consultation with TUSD, shall...
24 prepare a logical schedule for data gathering and reporting by
25 TUSD necessary to enable him to monitor the Implementation
26 Plans and report to the Court. In four months, TUSD shall file
27 a Revised CMP, which will be a comprehensive gathering
28 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.

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

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

12 During the 2015-16 budget cycle, Mendoza Plaintiffs had objected to the fact that
13 three magnet schools set achievement goals in their Improvement Plans that were lower
14 than what the school previously had achieved. In the face of that objection, the District
15 agreed to revise the school goals. Then, in the 2016-17 budget cycle, it filed Improvement
16 Plans in which **five** magnet schools had set goals that were lower than what the schools
17 previously had achieved. Again, Mendoza Plaintiffs objected. (*See*, Doc. 1948-13 at 4-5
18 for a recitation of this history.) In his R&R on the 2016-17 budget, the Special Master
19 wrote: "While not a funding matter, the District was previously not allowed to ascribe
20 academic goals for magnet schools that were lower than the goals they already had
21 attained. That the District permitted this for 2016-17 is unacceptable and sends a bizarre
22 message to families, staff and students: 'we are satisfied to do less this year than we have
23 in the past.'" (Doc. 1954 at 7:8-11.) This Court rejected TUSD's assertion that no order
24 was needed because, after the R&R had been filed, it had agreed to this and other of the
25

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

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

3 Notwithstanding the many challenges being faced by the District's magnet schools
4 and the overall magnet program, during the 2016-17 budget cycle the District proposed to
5 staff the position of Magnet Director "on a half-time basis" and to fill the position with
6 someone who had "no experience with magnet schools." (Special Master R&R, Doc.
7 1954, at 6:18.) (The other responsibility proposed to be assigned to this position was to
8 serve as Coordinator of Advanced Learning Experiences.⁶) Only after the Special Master
9 had filed his R&R did the District say that it would fund two full positions. The Court
10 observed: "The Court notes the eleventh-hour agreement from TUSD and that TUSD's
11 plan to have a single person serve as Magnet Director and ALE Coordinator means that
12 these two very important administrative positions remain understaffed and/or unfilled
13 approximately five years after the adoption in SY 2012-2013 of the USP. Like the CMP,
14 the ALE...component to the USP is critical to its success because it is a key mechanism
15 for ensuring equal educational opportunities to all students in the District."

16 2. Grade Reconfigurations

17 Under the Order Appointing Special Master, the District must provide the Special
18 Master and the Plaintiffs with notice and request for approval ("NARA") of all attendance
19 boundary changes and changes to student assignment patterns. (Order filed 1/6/12, Doc.
20 1350, at 3:8-15) All such requests are to be accompanied by a desegregation impact
21 analysis.

22 Most recently, in March 2016, this Court denied the District's application to change
23 the grade configurations of Borman, Collier, and Fruchthendler Elementary Schools and
24

25
26 ⁶ The USP provides that the District is to hire or designate a District employee to be the
27 Coordinator of Advanced Learning Experiences ("ALEs"). ALEs include Gifted and
28 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.)

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

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

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

21 *Id.* at 5:28-6:8.

22 Mendoza Plaintiffs will not restate here this Court's extensive discussion of the
23 District's proposal to reconfigure the Fruchthendler and Collier elementary schools from
24 K-5 to K-6, with a middle school added at Sabino High School. Its ultimate conclusion
25 was succinct: "The Court cannot find any positive impact on integration from the
26 [proposed] reconfiguration....The reconfiguration simply provides more opportunities to
27 Anglo students in predominately Anglo schools." (*Id.* at 16:22-25.)
28

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."

1 D. Discipline

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

5 The Special Master notes 'that disciplinary problems in TUSD
6 receive considerable negative attention in the community and
7 generate concerns among teachers and principals, [yet] the
8 District has not taken this provision of the USP seriously.' The
9 Court notes that since the 1974 inception of this case, TUSD
10 has failed to takes its disciplinary practices and procedures
11 seriously. Discipline was one of the *Green*-factor challenges
12 raised by the Plaintiff Fishers and remedied by the Settlement
13 Agreement of 1978, paragraph 14, which required TUSD to
14 implement good faith efforts that no student is discriminated
15 against in the implementation of the District's uniform
16 suspension and expulsion policy. In 2008, when this Court
17 considered whether unitary status had been attained after
18 approximately 30 years of operations pursuant to the 1978
19 Settlement Agreement, it questioned whether paragraph 14 had
20 been addressed in good faith because there was no evidence of
21 any ongoing monitoring and review of TUSD's disciplinary
22 practices and policies to ensure the District maintained over all
23 those years a uniform suspension and expulsion policy and no
24 student was discriminated against.

25 This Court, therefore, does not take lightly the Special Master's
26 concern that \$25,000 in the 2017 budget fails to move TUSD
27 forward in respect to satisfying the USP § VI, F, 3 disciplinary
28 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.

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

22 E. Access to Needed Information

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

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

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

17 None of the foregoing bespeaks a District that has demonstrated “an affirmative
18 commitment to comply in good faith with the entirety of a desegregation plan”. (*Freeman*,
19 503 U. S. at 499.) Rather, it evidences a District that warrants on-going oversight and
20

21
22 ⁸ In the referenced Response, Mendoza Plaintiffs detailed then recent examples of the
23 District’s failures to provide information and the ways in which those failures had hobbled
24 the Mendoza Plaintiffs’ ability to perform their role under the USP. They cited difficulties
25 in the budget process and the NARA process, quoting, *inter alia*, this Court’s Order filed
26 4/26/13, Doc. 1468, in which the Court wrote: [t]he Special Master and the Plaintiffs
27 complain once again the District has failed to provide sufficient information for them to
28 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.)

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

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

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

9 The USP is explicit that the “District shall utilize transportation services as a critical
10 component of the integration of its schools.” (USP, III, A, 1.) The District acknowledges
11 that “more than a third of all transportation go[es] toward fulfilling desegregation
12 obligations”, including magnet transportation and transportation for students who seek to
13 leave their neighborhoods’ racially concentrated schools and/or whose transfer will
14 increase the integration of the receiving school. (Motion at 9:3-7.) In addition, it points to
15 the role of transportation in furthering implementation of the USP-mandated
16 Extracurricular Equitable Access Plan, the Family Engagement Plan⁹, and the ALE Access
17 and Recruitment Plan, as well as the CMP and Comprehensive Boundary Plan. (*Id.* at 10:
18 7-10.) Given the degree of interdependence between transportation and these other facets
19 of the USP, for this reason alone, so much of the Motion as seeks to end judicial
20 supervision of transportation should be denied.

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

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

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

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

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

19 The success of express busing is important because it provides
20 the only opportunity for the Fruchthendler/Collier to Sabino
21 reconfiguration to have any positive impact on integration
22 whatsoever....

23 Soon TUSD will have hard data proving how far middle
24 school Anglo students are willing to travel on express busses to
25 attend an outstanding school, Drachman, which is also a
26 racially concentrated school (75% Latino).... If Drachman is
27 successful there is no reason to believe other successes cannot
28 follow.¹⁰ Nothing stops TUSD from introducing express buses

25
26 ¹⁰ In this regard, Mendoza Plaintiffs note the reported results under the desegregation plan
27 in effect in St. Lucie County, Florida There, the Court observed, ““ the District is finding
28 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).

1 from racially concentrated schools to Magee Middle School or
2 B elementary schools like Fruchthendler or Collier, or Sabino
3 High School. Such bus routes would provide hard evidence
4 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.

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

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

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

1 Absent from the District's Motion is any showing that it looked at the referenced or
2 any other data¹¹ to determine what if anything in the area of transportation, including, for
3 example, the revision of existing bus routes, could be done to increase white eligibility and
4 ridership to magnet schools. What the limited data the District has provided does reveal is
5 that a far larger proportion of white students are eligible for and offered transportation to
6 GATE schools and UHS than is true for African American and Latino students.¹² Further,
7 notwithstanding the decline in the absolute number of white students enrolled in the
8 District between 2012-13 and 2015-16, the number of white students eligible for and
9 offered transportation for GATE schools increased even as the number of Latino students
10 eligible for and offered transportation for GATE schools declined.¹³

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

24 In 2013-14, the District failed to provide even the chart that had been submitted with its
25 2012-13 Annual Report notwithstanding that it is expressly required by USP, III, C, 1.
26 Instead, it appears only to have provided the summary conclusions referenced in the
27 Motion and discussed above. In 2014-15 and 2015-16, the District provided charts similar
28 to that appended to its 2012-13 Annual Report but not the underlying individual school
29 data. (Rodriguez Dec., Exhibits 3-B and 3-C.)

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

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

1 Also missing from the Annual Reports and the Motion is information detailing bus
2 routes¹⁴ or providing any information as to the race/ethnicity of the ridership on each bus
3 route. The significance of this omission is underscored by the cases on which the District
4 would have this Court rely. TUSD asserts that its transportation policies and practices
5 “are consistent with other districts that have achieved unitary status”, cites to a number of
6 cases, and quotes at length from one of them, *United States v. Morehouse Parish School*
7 *Board*, 2013 WL 791578 (W.D. La., Mar. 3, 2013), (Motion at 12:23-13:24) but fails to
8 provide, much less address, data that in these cases was considered essential to a
9 determination of whether court oversight of the transportation component of a
10 desegregation plan should be terminated. In fact, rather than support the District’s
11 position, *Morehouse* and the other cases cited by TUSD demonstrate that it has not met its
12 burden on this Motion.

13 In *Morehouse*, the Court noted that of the eighty-six bus routes in the school
14 district, six transported students of only one race. Before ruling on the motion for partial
15 unitary status, it therefore undertook to satisfy itself that those routes were based only on
16 the demographic living patterns of the students and the feasibility of transportation, not
17 discriminatory purposes. (2013 WL 791578 at *3, quoted in the Motion at 13: 5-9.)
18 Similarly, in *Andrews v. Monroe Co. School Bd.*, 2015 WL 5675862 (W.D. La. Sept. 25,
19 2015), also relied on by TUSD (Motion at 13:15-16), the Court remarked on the existence
20 of one-race or predominately one-race routes in the school district and ruled in the area of
21 transportation only after hearing testimony from the Transportation Manager and receiving
22 other evidence to establish that the routes were based solely on geographical concerns and
23

24 African American students eligible for and offered transportation did increase: from 20 in
25 2012-13 to 33 in 2015-16.

26 ¹⁴ The closest the District has come to providing such information is a series of maps
27 included in the 2014-15 Annual Report but no other (*see* Rodriguez Dec., Para. 6) and
28 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.

1 not the race of the riders. In *United States v. Franklin Parish School Bd.*, 2013 WL
 2 4017093 (W.D. La., Aug. 6, 2013), cited at Motion 24:14-15, the Court also addressed the
 3 existence of one-race and predominately one-race bus routes, examined map routes that
 4 were available at the hearing, and, based on testimony and evidence, then concluded that
 5 those routes were not based on race. It may well be that at some point, TUSD can make a
 6 similar showing but at this time none of the necessary evidence¹⁵ is before this Court.
 7 Accordingly, the Motion for a finding of partial unitary status regarding the provisions of
 8 the USP relating to transportation must be denied.

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

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

15 The USP expressly states (in the “Magnet Program” subsection) that the “District,
 16 through its Family Center(s) and other recruitment strategies set forth in this Order, shall
 17 recruit a racially and ethnically diverse student body to its magnet schools and programs to
 18 ensure that the schools are integrated to the greatest extent practicable.”¹⁶ (USP, II, E, 2.)
 19 Further, the USP section that directly addresses family and community engagement

20 ¹⁵ The Motion makes passing reference to the fact that some TUSD students do not ride
 21 District buses but instead receive SunTrans bus passes to ride public transportation to
 22 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.

23 ¹⁶ The District’s Motion touches on its purported compliance with this requirement, but, as
 24 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.

25 Mendoza Plaintiffs further add that as part of the family engagement strategy to advance
 26 greater integration at TUSD schools, the USP also requires that the District “provide
 27 access at its Family Centers to computers for families to complete and submit open
 28 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).

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

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

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

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

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

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

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

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

27 ¹⁸ Mendoza Plaintiffs demonstrate elsewhere in this Opposition that this Court should deny
28 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.

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

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

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

15 The USP expressly requires that the “District, through its Family Center(s) and
 16 other recruitment strategies set forth in [the USP], shall recruit a racially and ethnically
 17 diverse student body to its magnet schools and programs to ensure that the schools are
 18 integrated to the greatest extent practicable.” (USP, II, E, 2.) As part of that effort, the
 19 District is to “creat[e] or amend[] an informational guide describing offerings at each
 20 school site... distributed via mail and email to all District families; posted on the website
 21 in all major languages; and available in hard copy at all school sites, the Family Center(s)

23 ¹⁹ Mendoza Plaintiffs also note that in its recent March 13, 2017 Order, this Court
 24 acknowledged that the “Plaintiffs and Special Master express concerns regarding... family
 25 engagement efforts” in the transition plans of schools losing their magnet status, as well as
 26 the fact that family engagement is a strategy to improve student achievement at transition
 27 schools. (Doc. 1996 at 2:12-15, 3:4-6.) That this Court then directed TUSD to “work with
 28 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.

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

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

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

20 ²¹ Indeed, descriptions of schools often reflect interesting facts about schools rather than
21 detailing school offerings. For example, the Ochoa description references unspecified
22 before- and after-school programs, notes that children sell produce at a farmers market,
23 provides a very limited description of the Reggio-Emilia approach, and notes garden,
24 chicken coop, and recycling projects. (*See id.* at 37.) The description for Robison
25 similarly describes unspecified before- and after-school programs, the existence of “Music
26 and PE education for all students” and that a full-time counselor is available. (*Id.* at 40.)
27 Notably, each of Ochoa and Robison is a school that, following development of the
28 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.)

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

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

17 As part of the District’s compliance with USP Section VII, C, a, b, TUSD
 18 conducted an initial assessment of its existing family engagement and support programs
 19 and developed recommendations for improvement that it then addressed in the FACE Plan.
 20 (See Motion at 34; Rodriguez Dec., Exhibit 4.) As shown below, a review of the findings
 21 and recommendations of that assessment reveals that the District has made little progress,
 22 if any, with respect to many of the family engagement issues it identified.²⁴ It therefore
 23

24 ²³ Yet, as noted above, the Strategies Appendix to the FACE plan expressly says that data
 25 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.)

26 ²⁴ The FACE Plan section concerning recommendations (commencing on page 14)
 27 explains that the “District assessed the internal data obtained from various reviews in light
 28 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

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

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

5 The District's first FACE Plan recommendation was to "Create District-Wide
6 Strategies"²⁵ because its family engagement "efforts were not connected to one another as
7 part of a comprehensive scheme, and often were focused on parental involvement rather
8 than informing parents about student learning and the parents' role in their student's
9 success."²⁶ (FACE Plan at 14.) However, the TUSD's 2015-16 Annual Report data²⁷
10 reveals that little progress has been made as individual schools participated in an
11 unconnected series of activities that demonstrate the absence of a District-wide family
12 engagement strategy, a heavy amount of "parent involvement" activities (instead of family
13 engagement activities to empower parents and to learn from them how to best meet their
14 children's needs), and telling inconsistencies concerning the amount and quality of family
15

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

18 ²⁵ While the FACE Plan contains five numbered recommendations, those
19 recommendations often overlap (e.g., multiple recommendations emphasize the need for
20 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.)

21 ²⁶ The FACE Plan describes "open houses, student concerts, recognition awards, and social
22 events" as the referenced less favored "parental involvement." (*Id.* at 8.) Under the
23 recommendation concerning "Engaging Families" the District further explained that
24 "[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
25 been focused primarily on family involvement in student activities rather than learning-
26 centric family learning. The Harvard Family Research Project found family engagement
27 practices linked to learning have greater positive effect on student outcomes." (*Id.* at 19.)

28 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.

1 engagement activities across sites. They also fail to manifest a “family engagement
2 vision” (FACE Plan at 14.)

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

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

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

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28 ²⁸ These events consisted of “Family Library Night,” “Spooky Reading Night,” and
“Literacy Night.”

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

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

9 5. The District’s Data Collection Efforts Are Inadequate for Purposes of
10 Meaningful Evaluations of Effectiveness of Family Engagement
11 Efforts

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

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

29 ³⁰ The USP-required assessment is part of a USP provision that also mandates that there be
30 “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.)

1 systems as a necessary component of ongoing evaluation, planning and improvement.”

2 (*Id.*)

3 The District reported that for each of the 2014-15 and 2015-16 school years, the
4 District continued to gather family engagement data through sign-in sheets (AR 2014-15,
5 Doc. 1848, at VII-261; AR 2015-16, Doc. 1958-1, at VII-328), even though USP Section
6 VII, C, 1, c envisioned that by October 1, 2013, the District would make necessary
7 revisions to its electronic data system to track family engagement. Nor has the District, as
8 of April 10, 2017, completed developing its electronic system for tracking family
9 engagement. (*See* TUSD Responses to Special Master and Mendoza Plaintiffs RFIs,
10 Response to RFI #1130, attached to Rodriguez Dec. as Exhibit 10.)³¹ Notably, in response
11 to the Mendoza Plaintiffs’ requests for information, the District also stated that “its **goal** is
12 to develop an electronic system that can be used at the centers and school sites” and that it
13 “is **still developing** the specifics on ‘how’ it will use the system.” (*Id.*, Responses to RFIs
14 #1131 and #1132; emphasis added, attached to the Rodriguez Dec. as Exhibits 11 and 12.)

15 Further, as far as Mendoza Plaintiffs can tell from past TUSD Annual Reports, the
16 District has made no effort to track family engagement data by race/ethnicity to evaluate
17 the effectiveness of its family engagement efforts with Latino and African American
18 families, notwithstanding the Special Master’s 2014-15 Annual Report “Recommendation
19 to the District” that it do so. (Doc. 1890 at 30: “The District should improve its reporting
20 of family and community engagement activities organizing these by types of activities
21 reporting how many families of different racial backgrounds were served and what the
22 purposes of these services were.” The Special Master also attempted to assist the District
23 in this effort by noting that “[o]ne widely used typology for categorizing family and
24 community engagement activities is available from the Center for Family and Community
25

26 ³¹ Indeed, the District acknowledged this in its Motion, stating that it purchased the new
27 Synergy system for this school year and that Family Engagement and Community
28 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.)

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

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

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

20 ³² The quarterly informational events for African American and Latino families are
21 expressly mandated under USP V, E, 7, d and USP V, E, 8, d (concerning quality of
22 education), respectively. The District identifies the events as “complementary” to USP
23 VII, C, 1, a, (v) family engagement requirements that it “provide for the creation and
24 distribution of new or revised materials to provide families with detailed information
25 regarding the curricular and student support services offered in Section V(C) Student
26 Engagement and Support, including information on Academic and Behavioral Support,
27 dropout prevention services, African American and Latino Student Support Services,
28 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.)

1 to family engagement centers and concludes that the data “indicates individual
 2 participation of families services are right on target... .” (A copy of this document is
 3 attached to the Rodriguez Dec. at Exhibit 16.) The District’s 2015-16 “Analysis of the
 4 scope and effectiveness of services provided by the Family Center(s),” on the other hand,
 5 is based entirely on “customer satisfaction surveys” (in connection with unspecified
 6 provided services) and a mere 89 needs surveys collected over a five-month period. (A
 7 copy of this document is attached to the Rodriguez Dec. at Exhibit 17.) Notably, the 2015-
 8 16 “evaluation” does not take into account the number of and reasons for visits to family
 9 centers (beyond simply noting a total of approximately 7,000 visits), or whether the
 10 services and information concerning, for example, Advanced Learning Experiences or
 11 open enrollment and magnet schools, provided at centers are effective in recruiting
 12 students.

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

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

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

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

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

27 The Motion asserts that “African American and Latino student participation rates
 28 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

1 TUSD data relating to extracurricular participation from year to year³⁴, the Table on which
2 the District appears to rely most heavily in its Motion, Table 8.1 from its 2015-16 Annual
3 Report, a copy of which is attached to the Rodriguez Dec. at Exhibit 18, indicates that the
4 participation of white students has increased at a greater rate than that of the District's
5 African American and Latino students.

6 As explained in the Rodriguez Dec. (at Para.17), Mendoza Plaintiffs compared the
7 participation numbers provided in Table 8.1 to the overall enrollment numbers for TUSD
8 white, Latino, and African American students in 2013-14 and 2015-16, the start and end
9 school years referenced in Table 8.1, using TUSD reported total enrollment figures.
10 (Rodriguez Dec., Exhibits 19 and 20.) That comparison reveals that the participation of
11 white students in TUSD extracurricular activities increased by 10% (from 20% of their
12 total enrollment in 2013-14 to 30.2% of their total enrollment in 2015-16). By contrast,
13 notwithstanding the emphasis in the USP on equitable participation by Latino and African
14 American students, the participation rate of Latino students increased by 7.1% (from
15 14.6% of their total enrollment in 2013-14 to 21.7% of their total enrollment in 2015-16)
16 and the participation rate of African-American students increased by 4% (from 20.6% of
17 their total enrollment in 2013-14 to 24.6% of their total enrollment in 2015-16). Thus the
18 participation "gap" has widened rather than narrowed.

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

25 _____
26 ³⁴ The District states in its 2015-16 Annual Report that the 2015-16 numbers "include[] for
27 the first time...students who participated in extracurricular fine arts" and
28 "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 data TUSD has offered relating to extracurricular activities are further discussed
below.

1 for that information, which was provided on March 15, 2017.³⁵ A copy is attached to the
2 Rodriguez Dec. at Exhibit 21. Mendoza Plaintiffs then used that chart and information on
3 2015-16 school enrollment (Rodriguez Dec., Exhibit 20) to create Exhibit 22 to the
4 Rodriguez Dec. to compare relative participation in extracurricular activities by students in
5 racially concentrated K-8 schools and in K-8 schools that have 25% or more white
6 enrollment (inclusive of elementary, K-8, and middle schools). They then performed the
7 same analysis looking at racially concentrated high schools and high schools that have
8 25% or more white enrollment. They found significant disparity.

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

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

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

27 ³⁵ Data is provided for 72 of the District’s 85 schools. Mendoza Plaintiffs understand that
28 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.)

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

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

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26
27 ³⁶ The closest the District comes to this is referencing a chart (Motion at 17:12) that shows
28 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).

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

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

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

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

25 The MYFP provides a “Project List” of needed repairs containing 26 projects
 26 prioritized according to the USP-mandated priorities.³⁸ (MYFP, Attachment F.) The
 27 District Motion provides a list of a mere *eight* MYFP projects “completed since the
 28

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).

1 development of the MYFP,” leaving 18 prioritized projects unaddressed. (Motion at
2 50:15-20.) For this reason alone, so much of the District’s Motion that seeks to end
3 judicial supervision over facilities should be denied.

4 Significantly, noting that “[s]ome key projects [] remain incomplete,” the District
5 proposed a budget “[i]ncrease to [f]und MYFP [p]rojects” of “over \$500K” for the 2017-
6 18 school year. (2017-18 USP Budget Narrative, Rodriguez Dec., Exhibit 2.) Notably,
7 after Mendoza Plaintiffs (and Fisher Plaintiffs) raised concerns regarding the seeming
8 conflict between claiming to have achieved unitary status with respect to facilities while
9 proposing significant increases to implement the MYFP, the District eventually eliminated
10 *some* funding under the budget activity code concerning the MYFP. (*See* TUSD Response
11 to RFI #1133, attached to Rodriguez Dec. as Exhibit 25.)³⁹

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

24 ³⁹ Although the District decided to eliminate what it says is MYFP funding from the Draft
25 #3 budget for the 2017-18 school year, it proposed MYFP-related funding for
26 “CARE/UPKEEP OF,” the purpose of which Mendoza Plaintiffs have not as yet not been
able to determine. (*See Id.*)

27 ⁴⁰ Significantly, the FCI scores for these racially concentrated schools, provided on March
28 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.)

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

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

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

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

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

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

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

10 Beyond issues concerning FCI and ESS weights, reallocation requests with
11 explanations that conflict with FCI and ESS data call into question the accuracy of that
12 data. For example, in connection with a March 8, 2016 reallocation request for repairs to
13 Utterback Middle School’s auditorium, the District asserted the existence of significant
14 disrepair, including no working speakers, sound boards, microphones (sound system), no
15 projection system, and limited lighting as a result of it “hav[ing] had no upgrades or
16 systemic repairs since its inception in 1989.” (*See* email chain re: Reallocations – Tully
17 and Carrillo, attached to Rodriguez Dec. as Exhibit 29.) However, its ESS score stated
18 that Utterback’s “Performing Arts” space received a 4.0 rating out of a possible total of
19 5.0, indicating that it was in “good condition.” (*See id.*) As another example, in
20 connection with its March 2, 2017 reallocation requests, the District states Safford’s
21 computer lab has “two ‘holes’ in the floor. Plywood has been secured to make sure no one
22 falls through. However, there is a noticeable dip when stepping on the plywood... this is
23 an unsafe condition that needs to be addressed.” (*See* TUSD April 3, 2017 email attached
24 to Rodriguez Dec. as Exhibit 30.) Mendoza Plaintiffs presume that the development of
25 “holes” big enough for children to “fall[] through” reflects disrepair that developed over
26 time, and note that with regard to Safford’s ESS scores (which include computer labs), the
27 District apparently had “no data” whatsoever for the 2015-16 school year. (*See* AR 15-16,
28 Appendix IX-18, attached to Rodriguez Dec. as Exhibit 31.)

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

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

28

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

4 The District presented the DMFP discussed above to its Governing Board on June
 5 14, 2016. (Rodriguez Dec., Para. 29.) That DMFP articulates general “TOP
 6 PRIORITIES/OBJECTIVES” that are unconnected to the priorities established in USP
 7 Section IX, A, 3. (Rodriguez Dec., Exhibit 33 at 4.0-1) Notably missing is any weighting
 8 of priorities to address the needs of the District’s racially concentrated schools.
 9 Significantly, while the DMFP does acknowledge that the MYFP “assures Racially
 10 Concentrated Schools are not overlooked and are given a higher level of consideration”
 11 (*Id.*, at 3.0-4), there is no statement in the DMPF about how its “top priorities” and those
 12 of the MYFP are to be reconciled and, as noted above, the District has asserted that “the
 13 MYFP is not related to the DMFP in any way.” (Rodriguez Dec., Exhibit 32.)

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

19

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

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

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

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

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

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

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

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

1 and satisfactory compliance with its technology obligations under the USP when such a
2 large proportion of those obligations remain subject to judicial oversight⁴⁶.

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

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

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

23 ⁴⁶ In the Motion, the District points to the number of racially concentrated schools whose
24 overall TCI exceeds the District average. That such increases resulted from technology
25 upgrades, which Mendoza Plaintiffs agree took place and which they fully supported,
26 rather than from increased proficiency in the use of that technology – and that the racially
27 concentrated schools continue to have a significant distance to go in that regard – is
28 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%).

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

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

9 The USP provides that having developed the TCI, “based on [its] results,... the
10 District shall develop a multi-year Technology Plan that provides for enhancements and
11 improvements to the District’s technology...” (USP, IX, B, 3.) In the Motion, the District
12 ignores significant portions of that Plan. (Doc. 1778-1, filed 2/27/15, Rodriguez Dec.
13 Exhibit 37.) The Plan is extremely detailed. It includes a very specific three-year plan to
14 upgrade and increase the number of computers in 14 identified schools. (*Id.*, at 17- 21.) It
15 may well be that the computer and other technology purchases the District made last year
16 satisfied the provisions of this school specific plan but the District has failed to point to
17 any evidence in the record that would permit this Court to make that finding.
18 Significantly, in that regard, it appears that neither this past year, when it filed its Annual
19 Report nor in any prior year did the District provide the full report required by the USP:
20 “A copy of the ...multi-year technology plan...**and** a summary of the actions taken during
21 that year pursuant to such plan[.]” (USP, IX, C, 1, d; emphasis added.) (*See* Rodriguez
22 Dec., Para. 34, noting, for example, that in the 2015-16 Annual Report after quoting the
23 above-cited provision of the USP, the District said only: “There were no changes made to
24 the Multi-Year Technology Plan (MYTP) for the 2015-16 school year” and provided no
25 summary of actions taken during that year pursuant to the plan.)
26
27
28

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

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

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

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

27 For reasons it does not explain, the District has carved out the evidence-based
28 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

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

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

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

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

25 Mendoza Plaintiffs appreciate the effort that the District has been devoting to the
26 creation of the USP-mandated EBA system. However, even if the Motion were not denied
27 for the reason set forth above, it would have to be denied as premature. This is so because
28 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

1 system, using the Synergy student information integrated with Clarity” (which, the Motion
2 states, provides the “early warnings” of students at risk mandated by the USP). (Motion at
3 60:23-27.) Further, when the District went “live with Synergy in SY 16-17...this resulted
4 in a series of new platform upgrades and data integration.” (Motion at 62:8-10.) And, the
5 “District is in the process of releasing an upgraded TUSDStats, providing the same
6 information in a clearer and more robust format.” (Motion at 62:10-11.) Additionally, the
7 “data warehouse will include data from the District’s older, legacy systems....” (Motion at
8 64:15.)

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

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

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

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

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

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

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

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

1 **CONCLUSION**

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

5 Dated: April 28, 2017
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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

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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

Dated: April 28, 2017

/s/ Roxana Ontiveros
Roxana Ontiveros