

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 **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,
26
27
28

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

**MENDOZA PLAINTIFFS'
OBJECTIONS TO THE SPECIAL
MASTER'S 2015-16 ANNUAL REPORT
AND REQUEST THAT HE BE
DIRECTED TO SUPPLEMENT AND
REVISE PORTIONS THEREOF**

Hon. David C. Bury

1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
7 al.,

8 Defendants.

9
10 **INTRODUCTION**

11 Mendoza Plaintiffs submit the within Objections to the Special Master's 2015-16
12 Annual Report ("SMAR") pursuant to Section V, 4 of the Order Appointing Special
13 Master which states *inter alia* that the parties shall have the right to object to findings of
14 fact and recommendations in the Special Master's reports.

15
16 **ARGUMENT**

17
18 **OBJECTION NO. 1**

19 **THE SMAR FAILS TO FULLY ADDRESS INSTANCES OF NON-COMPLIANCE**
20 **WITH THE USP REVEALED IN THE DISTRICT'S ANNUAL REPORT**

21 On October 28, 2016, Mendoza Plaintiffs submitted a request to the Special Master
22 that pursuant to USP Section X, E, 6 he bring to the Court's attention multiple instances of
23 the District's failures to comply with the USP and TUSD undertakings related to the
24 implementation of the USP that were revealed in the District's 2015-16 Annual Report
25 ("DAR"). On December 12, 2016, after the District had responded to that request and the
26 Mendoza Plaintiffs had replied, the Special Master requested further information from the
27 District and stated that "rather than ask the Court to find the District in non-compliance
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1 when the facts fit, I will include the relevant information in my Annual Report.” (Memo
2 dated December 12, 2016 to Parties from Bill Hawley Re: Mendoza and Fisher Plaintiffs
3 Request that the District be Reported as Noncompliant (“SM Dec. 12 Memo”) at 6
4 [The SM Dec. 12 Memo is attached as Exhibit 1. The Mendoza Plaintiffs’ request, District
5 response, and Mendoza Plaintiffs’ reply are attached as Exhibits 2, 3, and 4, respectively.]

7 In the SMAR, the Special Master states (at 4:18) that he agrees with the Mendoza
8 Plaintiffs that the District failed to comply with the requirements of USP Section I, D, 1
9 when it made changes to certain specified plans and policies governed by the USP but with
10 the exception of one such change (to the Facility Condition Index), he fails to discuss the
11 substance of the improper change or the effect it has had on implementation of the USP.
12 Mendoza Plaintiffs object to this omission and therefore address the substance of those
13 changes and their effect on USP implementation below.

16 *Improper Grant of Special Consideration to Children of District Employees*
17 *in the Lottery Process Regardless of Whether Such Consideration (a/k/a Priority) Would*
18 *Help the Receiving School Meet Integration Targets*

19 The selection process for oversubscribed schools is of great importance under the
20 USP because it is one of the few tools available to the District to further the integration of
21 its schools. It therefore was the subject of significant negotiation between the parties.
22 Ultimately, the plaintiffs agreed that children of District employees could have priority
23 over (1) students who live in the attendance zone of racially concentrated schools and
24 whose attendance at the receiving school would help that school meet integration targets
25 and (2) other students whose attendance at the receiving school would help that school
26 meet integration targets **IF** the enrollment of the employee’s child at that receiving school
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1 would help that school meet integration targets. (*See* discussion in Exhibit 2 at 1-2.)¹

2 Appendix II-18 (Regulation JFB-R4) to the DAR revealed that in 2015-16, the
3 District eliminated the integration condition for the placement of children of District
4 employees. Although the Special Master found that the District had failed to comply with
5 the USP Section I, D, 1 process (SM Dec. 12 Memo at 6 and SMAR at 4:17-16), he failed
6 to address the larger substantive issue: not only did the District’s action violate the
7 agreement between the parties; it also undermined TUSD’s obligation under the USP to
8 further the integration of its schools². TUSD’s actions with respect to the process of
9 selecting students to attend oversubscribed schools therefore should have been called out
10 expressly in the SMAR discussion of integration. Mendoza Plaintiffs therefore object to
11 the omission of this action by TUSD in the SMAR listing at pages 6-7 of the SMAR of
12 actions that reveal that it “would be difficult to build a case that the District has worked to
13 integrate its schools.” They also object to the failure of the SMAR to call this act of non-
14 compliance to the Court’s attention and to request that the District be directed to comply
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20 ¹ Rather than add to the length of these Objections by repeating what is set forth in the
21 portions of Exhibits 2, 3, and 4 relating to this issue, Mendoza Plaintiffs respectfully invite
22 the Court to review those Exhibits should it seek greater detail on this issue.

23 ² Under the parties’ agreement, TUSD was to have provided data specifically disclosing
24 the race/ethnicity of the District employee children placed in each school under the lottery
25 process as well as their resident/non-resident status. Exhibit 3, Attachment C. Instead it
26 provided the far less complete Exhibit D (which also is confusing/ambiguous in its use of
27 the term “balanced placement”). What Exhibit D does reveal is that in only eight of 16
28 schools did the enrollment of children of District employees have a “positive” effect on
integration while in four cases the impact was admittedly “negative”. Without the
underlying data on race/ethnicity it is difficult to fully assess what is meant in the four
reported instances of “no impact” (eliminating the one reported school [Gridley] for which
no number placed is provided) particularly in the absence of information to indicate
whether the placement of a “no impact” District employee child foreclosed the opportunity
under the lottery process to place a student from a racially concentrated school or another
District student whose enrollment would have had a positive effect on integration.

1 with its agreement concerning how the process for assigning children of District
2 employees to oversubscribed schools is to be implemented.

3
4 *Departure from the Definition of “Exclusionary” Discipline in a Manner*
5 *that Conflicts with the USP Definition of the Term, Resulting in the Curtailing of Due*
6 *Process Rights and Limitations on Such Discipline, Each of Which Also Violates the USP*

6 In the entirety of the SMAR, the Special Master twice briefly and generally
7 references issues that arose with regard to “exclusionary” discipline (or “suspensions”) and
8 due process rights, and frames those issues as involving a disagreement on the definition of
9 the term and whether USP Section I, D, 1 applied to related TUSD action. (*See* SMAR at
10 4:17-19, 5:1-3, 23:15-22.) However, the issues that arose additionally implicate actual or
11 potential noncompliance with USP Sections VI, B, 2, b. (addressing TUSD regulations that
12 are to provide an opportunity to appeal exclusionary discipline), VI, F, 2 and Appendix A
13 to the USP (defining “exclusionary discipline”), and VI, B, 2, a, i (limiting use of
14 exclusionary discipline to “ongoing and escalating” misbehavior).
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16

17 When the Mendoza Plaintiffs raised the issues of the District’s unilaterally revised
18 discipline due process policies (discussed below) and what appeared to be improper
19 recoding of student placements in the District’s Alternative Education Program
20 (“DAEP”)³, as reported in the DAR, at the November 29-30, 2016 meeting among the
21 parties and Special Master in Tucson, the District for the first time explained its recent
22 position that “exclusionary” discipline did not include in-school intervention (“ISI”) or
23 DAEP because each includes some instruction (notwithstanding that each removes
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27 ³ While this issue relates to the dispute concerning what constitutes “exclusionary”
28 discipline, because it raises concerns regarding the reliability and consistency of the
District’s discipline data, it is addressed below with other issues that relate to discipline
data.

1 students from their regular classrooms), and that they therefore were not subject to USP
2 limitations on “exclusionary” practices. (See TUSD’s subsequent December 23, 2016
3 memo re “exclusionary” discipline (“TUSD Suspension Memo”), attached as Exhibit 5, at
4 4.)⁴

5
6 The District’s recent position directly conflicts with the USP definition of
7 “exclusionary” discipline, that is, “any disciplinary consequence that removes a student
8 from classroom instruction, including, but not limited to, *in-school suspension, out-of-*
9 *school suspension, placement in an alternative setting or program,* and expulsion.” (See
10 USP (Doc. 1713) at Appendix A, #17; see also USP Section VI, F, 2.) Plainly, ISI and
11 DAEP are “placement[s] in an alternative setting or program.” Thus, the new definition of
12 “exclusionary” discipline first implemented in the 2015-16 school year violates the USP.
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14
15 Further, without following USP Section I, D, 1 procedures,⁵ the District revised its
16 TUSD regulations JK-R1 and JK-R2 (concerning short- and long-term suspensions,
17 respectively) to include new sections that define ISI and DAEP as “alternatives to

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19 ⁴ As is discussed in Mendoza Plaintiffs’ January 9, 2017 Response to TUSD’s Suspension
20 Memo (“Mendoza Plaintiffs’ Suspension Memo”) (attached as Exhibit 6), which they
21 respectfully invite the Court to review should it seek additional information, the District’s
22 recent position concerning what is “exclusionary” conflicts with the District’s previous
23 position as described in its ISI Manual shared with the Plaintiffs and Special Master
24 (Appendix VI-29 to the DAR (ISI “still count[s] as an exclusionary consequence”)),
25 training to TUSD staff in August 2015 (Appendix VI-30 at 3) and February 2016
26 (Appendix VI-31 at 3), and November 5, 2014 representations that caused Mendoza
27 Plaintiffs to defer their request for an R&R relating to the GSRR (see Mendoza Plaintiffs’
28 Suspension Memo at 2-3). Notably, the DOJ too deferred action based on explicit
statements concerning “exclusionary discipline.” (See DOJ’s January 6, 2017 email,
attached as Exhibit 7 (“[T]he United States did not object to [the DAEP] program because
of its explicit understanding that DAEP would be considered a form of Exclusionary
Discipline under the USP’s definition...”).) The Special Master agrees with the Mendoza
Plaintiffs and DOJ with regard to “exclusionary” discipline. (See SM Dec. 12 Memo at 4
 (“Frankly, it seems absurd to argue that students who participate in DAEP are not involved
in exclusionary discipline.”).) Yet, this issue was not squarely addressed in the SMAR.

⁵ The District’s revisions occurred on July 9, 2015 (Exhibit 3, Attachment E), about a year
and a half before this Court issued its December, 27, 2016 Order (Doc. 1981) in which it
addressed USP Section I, D, 1 review and comment procedures.

1 suspension” and that then state that student appeal processes apply only to “suspensions.”
2 (See Exhibit 3, Attachment E (TUSD redlined revised policies).) Thus, the District
3 eliminated students’ ability to appeal ISI placements or referrals to DAEP,
4 notwithstanding that the USP mandates under Section VI, B, 2, b., with express reference
5 to regulations JK-R1 and JK-R2, that “an opportunity to appeal” be provided for all
6 exclusionary discipline. Indeed, in the SM Dec. 12 Memo, the Special Master asked that
7 the District “abide by the processes specified in Section VI.B.2.b. of the USP and by the
8 policies in place before the District made its changes to these policies that it describes as
9 minor in its annual report... .” Mendoza Plaintiffs are aware of no District response to the
10 Special Master’s request following the SM Dec. 12 Memo, and no District express
11 commitment following that Memo to abide by USP Section VI, B, 2, b and the policies
12 that existed before the District’s unilateral revisions. (And as of the date of this writing,
13 the improper July 2015 versions of JK-R1 and JK-R2 remain on the TUSD web site.)

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17 Additionally, that the District now takes the position that neither ISI nor DAEP are
18 “exclusionary” calls into question whether and to what extent the District has, in
19 administering that discipline, complied with USP Section VI, B, 2, a, I, which limits the
20 use of exclusionary discipline to “ongoing and escalating” misbehavior (suggesting that it
21 may be referring students to ISI and DAEP even when their behavior is not ongoing and
22 not escalating). Indeed, the District asserts that those limitations do not apply to ISI and
23 DAEP, and has presumably therefore not applied them. (See, e.g., TUSD’s Suspension
24 Memo at 4 (asserting that ISI and DAEP should not be “subject to the USP limits on
25 exclusionary discipline”).)
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1 Thus, because TUSD’s actions with respect to “exclusionary” discipline implicate
2 noncompliance with USP Section I, D, 1, Section VI, B, 2, b, Section VI, F, 2 (and
3 Appendix A to the USP), and Section VI, B, 2, a, I, Mendoza Plaintiffs object to the failure
4 of the SMAR to have fully addressed these issues and called those acts of noncompliance
5 to the Court’s attention.

7 Further, because the parties’ disagreement concerning what constitutes
8 “exclusionary” discipline remains unresolved and has significant implications concerning
9 the implementation of multiple USP sections, Mendoza Plaintiffs had expected the Special
10 Master to prepare an R&R addressing this issue. They therefore request that the Special
11 Master be directed to file such an R&R so that the issue can be addressed by all parties
12 and, if then required, resolved by this Court.

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15 *Changes to “Ethnicity Coding” and Coding of Referrals to DAEP and ISI*
16 *Has Resulted in Changes in How TUSD Collects and Reports Discipline Data, Raises*
17 *Further Questions about Compliance, and Makes Analysis Across Years Difficult*

18 Notwithstanding that USP Section VI, G, 1, b requires that suspension data be
19 reported “substantially in the form of [the USP’s] Appendix I for the school year of the
20 Annual Report together with comparable data for every year after the 2011-2012 school
21 year,” the corresponding DAR data “differs from prior USP Reporting because this report
22 uses updated USP ethnicity coding. Prior USP reports used federal ethnicity coding... the
23 distribution across ethnicities has changed.”⁶ (DAR, Appendix VI – 54.) The data

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26 ⁶ In this regard, notwithstanding that the Mendoza Plaintiffs have stated that they do not
27 understand what exactly the District means by “updated USP ethnicity coding” or whether
28 the District changes reflect extremely belated reporting per a party agreement
memorialized in a June 2012 Special Master memo concerning USP reporting (*see* Exhibit
4 at 6-7), the District has not explained the reasons for its changes or what exactly those
changes are. Instead, it has provided conflicting statements concerning whether there

1 reported in Appendix VI-54 for the years 2012-13 to 2014-15 now significantly conflicts
2 with data previously provided for the same years and makes meaningful comparison to the
3 USP baseline year of 2011-12 impossible. (*Compare* Appendix VI-54 with TUSD Annual
4 Report for 2014-15, Appendix VI-1 (Doc. 1851-1).)

5
6 Notwithstanding that the Special Master agreed that it “would be very difficult to
7 know whether the District has achieved many goals of the USP if the definition of
8 ethnicity has changed” (SM Dec. 12 Memo at 5), the Special Master omitted discussion in
9 the SMAR of this issue and its consequences for assessing District progress toward unitary
10 status. Mendoza Plaintiffs object to this omission and therefore request that the Special
11 Master be directed to supplement the SMAR to include a discussion and analysis of why
12 the District changed how it reported data broken down by ethnicity, the extent of such
13 changes in reporting, and whether and what action now is needed to revise the reporting of
14 data to make year-to-year comparison possible.⁷

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17 Further complicating the question of whether the District reported DAR discipline
18 data in a manner consistent with the USP and past annual report data is the fact that, as
19 discussed in the section above, the District modified what it considers to be “exclusionary
20 discipline” or “suspension,” and it therefore is not clear whether Appendix VI-54 data for
21 the 2015-16 school year reflects the collection of data based on the new position the
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25 indeed have been changes in how ethnicity is reported. *Compare* Exhibit 3 (stating that its
26 DAR reporting methodology is the same as that “used for the last three years”) with
27 Response to RFIs #843-46, attached as Exhibit 8 (“USP ethnic reporting criteria was used
28 for the 2016-15 discipline summary reports in Appendix VI-54 whereas in prior years,
federal ethnic reporting was used...”).

⁷ Mendoza Plaintiffs specifically requested that the Special Master undertake to investigate the matter and determine the answer to these questions to ensure the accuracy and reliability of TUSD’s discipline data. (*See* Exhibit 4 at 7.)

1 District has taken. However, the District’s statements in its DAEP program evaluation for
2 the 2015-16 school year that if “a student enrolls in DAEP and successfully completes the
3 program, the suspension status will be reassigned **from long-term to short-term** and the
4 student’s time in DAEP will be **recoded as a ‘reassignment to another school’**”
5 suggests that the District improperly reported student assignments to DAEP in the DAR.⁸
6 (Appendix VI-36 to DAR, at 2; see also Appendix VI-33 to DAR.) Similarly, the District
7 recodes ISI discipline as “[r]eassignment to another class.” (Appendix VI-33 and
8 Appendix VI-31 to DAR.) It thus appears that neither ISI nor DAEP placements were
9 included in the data on “exclusionary discipline” or “suspension” for the 2015-16 school
10 year.
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12
13 In the SMAR, the Special Master notes drops in four categories of discipline in the
14 2015-16 school year (SMAR at 23:4-12), yet the SMAR entirely omits any discussion,
15 analysis or report of whether and to what extent such reported drops in actuality reflect the
16 District’s various changes in how it reported data in the 2015-16 school year rather than
17 true changes in disciplinary outcomes and behavior warranting the imposition of
18 discipline. Mendoza Plaintiffs therefore object to the SMAR’s omission of any discussion,
19 analysis, or recommendations relating to the changes in the manner the District reported
20 data as described above.
21

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23 In addition, the Mendoza Plaintiffs respectfully request that this Court direct the
24 Special Master, pursuant to the oversight, monitoring, and reporting responsibilities
25 assigned to the Special Master in Section X, E of the USP and the Order Appointing
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28 ⁸ Plainly, nothing about a temporary long-term placement in an alternate program suggests that a “short-term” suspension or “reassignment to another school” has occurred.

1 Special Master, to investigate and report whether and to what extent TUSD DAR data
2 reflects changes or inaccuracies in how ethnicity and ISI/DAEP referrals were reported,
3 what the nature of any such changes/inaccuracies were, and what actions need to be taken,
4 if any, to provide for the type of consistency in TUSD Annual Report data that would
5 allow for accurate year-to-year comparisons and analysis.
6

7 *Changes to the District's Marketing, Outreach, and Recruitment Plan and to*
8 *the Dropout Prevention and Graduation Plan*

9
10 The DAR states that “[i]n 2015, the *District updated* the [Marketing, Outreach, and
11 Recruitment] plan [(“MOR Plan”)] with an eye toward continuing what had worked and
12 finding new ways to reach its target audience, including African American and Hispanic
13 students. *The revised plan* focused on increasing the use of videos and other platforms as
14 tools... .”⁹ (DAR at II-35; emphasis added.) The Mendoza Plaintiffs therefore had
15 requested that the Special Master “follow up with the District to determine what exactly
16 occurred with the MOR Plan during the 2015-16 school year and whether the District did
17 indeed revise the Plan without following the USP Section I, D, 1 procedure... .” (Exhibit
18 4 at 3.)
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21 Similarly, the District stated that “[a]t the end of SY 2015-16, District staff met to
22 analyze the... [Dropout Prevention and Graduation plan (“DPG Plan”)] and revise its
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26 ⁹ After the Mendoza Plaintiffs stated that the unilaterally “revised plan” apparently was
27 done in violation of USP Section I, D, 1 procedures (Exhibit 2 at 2), the District
28 contradictorily asserted that “it did not revise the [MOR plan] during the 15-16 school
year. The [MOR Plan] in effect throughout the 15-16 school year is the same plan in effect
at the end of the 14-15 school year...” (Exhibit 3 at 2).

1 strategies for the 2016-17 school year” and that the “revised DPG plan will be provided in
2 the 2016-17 Annual Report.”¹⁰ (DAR at V-195.)

3
4 In his Dec. 12 Memo, the Special Master suggested that what the District had
5 described in the DAR with respect to the MOR Plan appeared to be the adoption of new
6 strategies rather than the sort of revision that triggered USP Section I,D,1 review. (SM
7 Dec. 12 Memo at 3.) However, he also called on the District to share its revisions to the
8 DGP Plan so that the Plaintiffs and he could assess whether the changes had warranted
9 USP Section I, D, 1 review. (*Id.*) To date, the District has not done so. (Neither has it
10 posted the revised MOR and DPG Plans on its website notwithstanding the USP Section
11 X, D requirement that the TUSD website provide up-to-date “current information related
12 to the various elements of the Plan.”)

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14
15 Mendoza Plaintiffs object to the failure of the SMAR to have included the
16 foregoing in its discussion of Section I,D,1 issues in the SMAR and the omission to
17 specifically address the District’s failure to provide the revised DPG Plan.

18 **OBJECTION NO. 2**

19
20 **THE SMAR FAILS TO CALL OUT THE FAILURE OF THE DISTRICT IN ITS**
21 **DISCUSSION OF THE “IMPLEMENTATION, MONITORING, EVALUATION,**
22 **AND CONTINUOUS IMPROVEMENT” OF MAGNET SCHOOLS (OR**
23 **ANYWHERE ELSE IN THE DAR) TO INCLUDE ANY INFORMATION TO**
24 **SUGGEST THAT THE MAGNET SCHOOLS ARE ASSESSING, AND THAT**
THESE SCHOOLS ARE BEING EVALUATED BASED ON, THE ACADEMIC
PERFORMANCE OF THEIR STUDENTS

25
26 ¹⁰ Notwithstanding the Special Master’s direction that the “District should provide the
27 plaintiffs and the Special Master with the revisions it (inexplicably) says it will provide in
28 the next annual report” (SM Dec. 12 Memo at 3), the District did not provide its revised
DPG Plan; instead it indicated that “no revisions or changes [to the plan] resulted *during*
the 15-16 school year” (Exhibit 3 at 2). However, that response sidesteps the District’s
USP Section I, D, 1 obligations as it fails to address that the DAR describes the DPG Plan
revisions as having occurred after “the end of SY 2015-16.” (DAR at V-195.)

1 This Court has repeatedly stated that the magnet schools are subject to two “equally
2 important” standards: integration and student achievement. (Order dated 11/19/15, Doc.
3 1870 at 3, n.1; emphasis in the original; *see also*, Order dated 1/16/15, Doc. 1753, at 9:3-6:
4 “The Revised CMP adopts two goals as measurements for assessing the effectiveness of a
5 magnet school. In other words, a school must show progress towards achieving the USP
6 definition of an integrated school and towards enhancing the educational quality of its
7 magnet programs.”)

8
9
10 The DAR is silent on the subject of the educational achievement of students in its
11 magnet schools and on the related subject of whether they are succeeding in reducing the
12 achievement gap. Mendoza Plaintiffs object to the failure of the SMAR to call out this
13 omission and of the SMAR to explicitly address the issue of magnet school educational
14 outcomes. In this regard they specifically note that the Order Appointing Special Master
15 directs that he include “[e]valuation of the effectiveness of programs” in his annual reports.
16 (Order Appointing Special Master at III, 2, c.) Given the emphasis on increasing
17 academic achievement in the magnet school plans and the Court’s focus on that issue,
18 failure of the SMAR to address this issue is of particular concern to the Mendoza
19 Plaintiffs.
20
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22 **OBJECTION NO. 3**

23 **THE RECORD DOES NOT SUPPORT THE SPECIAL MASTER’S FINDING** 24 **THAT THE DISRICT IS IMPLEMENTING THE TRANSPORTATION** 25 **PROVISIONS OF THE USP SATISFACTORILY**

26 Mendoza Plaintiffs acknowledge that they did not object to a similar finding by the
27 Special Master in his 2014-15 Annual Report. However, review of data in the appendices
28 to the District’s 2015-16 Annual Report and assertions relating to the transportation

1 component of the USP in the District’s motion for partial unitary status indicate that the
2 District has yet to demonstrate that it “is implementing the transportation provisions of the
3 USP satisfactorily.” (SMAR at 7.)
4

5 That most of the District’s magnet schools are not integrated (indeed that a majority
6 of them are racially concentrated) is well known and was the subject of express comment
7 in the Special Master’s 2014-15 Annual Report.¹¹ In order to further the integration goals
8 of the USP, the USP expressly provides that “District transportation administrators shall be
9 included in planning and monitoring activities related to student assignment and
10 integration.” (USP Section III, A, 2.) Yet, absent from the DAR – and unaddressed by the
11 Special Master in the 2015-16 SMAR -- is any showing that TUSD took any actions to
12 determine what if anything in the area of transportation, including, for example, the
13 revision of existing bus routes, could be done to increase white ridership to magnet
14 schools. What the data the District has provided in the 2015-16 DAR does reveal is that a
15 far larger proportion of white students are eligible for and offered transportation to GATE
16 schools and UHS than is true for African American and Latino students.¹² Further,
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20 ¹¹ In that Report, the Special Master wrote: “The purpose of magnet [schools] and
21 programs is to facilitate integration. Of the 20 magnet schools and programs operating in
22 the 2014-15 school year, fourteen are racially concentrated. Ironically, a greater
23 proportion of magnet schools were racially concentrated [than] is true for all of the other
District schools.” (Special Master’s Annual Report (“SMAR”) for 2014-15, Doc. 1890, at
6:21-24.)

24 ¹² According to Appendix III-7, in 2015-16, 596 white students and 594 Latino students
25 were eligible for and offered transportation to GATE schools and UHS. According to that
26 same chart, these numbers represented 35.8% of the white students eligible for
27 transportation and 6% of the total enrollment of white students in the District as compared
28 to 11% of the Latino students eligible for transportation and 2% of the total enrollment of
Latino students in the District. Further, as noted above, Appendix III-7 shows that white
students disproportionately (as compared to the total number of white students eligible for
transportation under current assignment patterns) use such transportation to attend UHS or
GATE programs while Latino students disproportionately (again as compared to the total
number of Latino students eligible for transportation under current assignment patterns)
use such transportation to attend magnet schools and programs. Mendoza Plaintiffs object

1 notwithstanding the decline in the absolute number of white students enrolled in the
2 District between 2012-13 and 2015-16, the number of white students eligible for and
3 offered transportation for GATE schools **increased** even as the number of Latino students
4 eligible for and offered transportation for GATE schools declined.¹³

5
6 Also missing from the Annual Reports and unaddressed by the Special Master in
7 the SMAR is information detailing bus routes¹⁴ or providing any information as to the
8 race/ethnicity of the ridership on each bus route. The significance of this omission is
9 underscored by the cases cited by the District in its motion for partial unitary status. For
10 example, in *United States v. Morehouse Parish School Board*, 2013 WL 791578 (W.D.
11 La., Mar. 3, 2013), the Court noted that of the eighty-six bus routes in the school district at
12 issue in that case, six transported students of only one race. Before ruling on the motion
13 for partial unitary status, it therefore undertook to satisfy itself that those routes were based
14 only on the demographic living patterns of the students and the feasibility of
15 transportation, not discriminatory purposes. (2013 WL 791578 at *3.) Similarly, in

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19 to a finding that the District has met its obligations under the transportation section of the
20 USP until it can demonstrate that it has looked at this and similar data to determine
21 whether it appeared reasonable in relation to the District's efforts to (1) increase African
22 American and Latino attendance at UHS and participation in GATE and (2) increase white
23 attendance at magnet schools and programs, or whether any transportation routes needed to
24 be adjusted to further facilitate such attendance.

25
26 ¹³ Mendoza Plaintiffs reach this conclusion by comparing the entries for GATE on
27 Appendix III-7 in the 2015-16 DAR with the comparable chart in the 2012-13 DAR
28 (Appendix 25) which show 283 white students eligible for and offered transportation for
GATE in 2012-13 v. 289 in 2015-16 and 375 Latino students eligible for and offered
transportation for GATE in 2012-13 v. 365 in 2015-16. The number of African American
students eligible for and offered transportation did increase: from 20 (plus an undisclosed
number under 10) in 2012-13 to 33 in 2015-16.

¹⁴ The closest the District has come to providing such information is a series of maps
included in the 2014-15 Annual Report (but no other annual report) and assertions in its
Annual Report that although there are some majority one-race routes, those routes exist as
a result of residential housing patterns. (*See, e.g.*, 2015-16 DAR 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 one-race routes exist.

1 *Andrews v. Monroe Co. School Bd.*, 2015 WL 5675862 (W.D. La. Sept. 25, 2015), the
2 Court remarked on the existence of one-race or predominately one-race routes in the
3 school district and ruled in the area of transportation only after hearing testimony from the
4 Transportation Manager and receiving other evidence to establish that the routes were
5 based solely on geographical concerns and not the race of the riders. In *United States v.*
6 *Franklin Parish School Bd.*, 2013 WL 4017093 (W.D. La., Aug. 6, 2013), the Court also
7 addressed the existence of one-race and predominately one-race bus routes, examined map
8 routes that were available at the hearing, and, based on testimony and evidence, then
9 concluded that those routes were not based on race. It may well be that TUSD can make a
10 similar showing but it does not appear that the necessary documentation yet has been
11 tendered by the District or considered by the Special Master.¹⁵

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15 As a separate but related matter, some TUSD students do not ride District buses but
16 instead receive SunTrans bus passes to ride public transportation to school. According to
17 the TUSD website, approximately 3500 students receive such passes each year. No
18 information is contained in the DAR or its appendices that would permit the parties or the
19 Special Master to determine whether there are any issues of impermissible
20 disproportionality based on race and/or ethnicity as to which students are directed to use
21 public transportation rather than ride one of the District's buses. Mendoza Plaintiffs
22 therefore object to a finding that the District has satisfactorily implemented the

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24
25 ¹⁵ The SMAR indicates that it draws on information in the DAR when feasible and
26 appropriate but also references otherwise unspecified information provided by the District
27 and/or available to the Implementation Committee ("IC"). (SMAR at 2:3-10.) As noted
28 above, no data concerning the ethnicity and race of the riders on individual bus routes is
provided in the DAR. If the Special Master had access to and considered such
information, Mendoza Plaintiffs ask that it be made available as an addendum to the
SMAR.

1 transportation provisions of the USP until the referenced data has been provided to the
2 Plaintiffs and the Special Master and reviewed by them.¹⁶

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4 **OBJECTION NO. 4**

5 **THE SMAR FAILS TO ADDRESS THE FAILURE OF THE DISTRICT TO**
6 **APPLY THE METHOD FOR CALCULATING DIVERSITY EXPRESSLY**
7 **AGREED TO IN THE TEACHER DIVERSITY PLAN AND, WHILE IT REJECTS**
8 **THE NUMBER OF “DIVERSE” SCHOOLS REPORTED BY THE DISTRICT**
9 **BASED ON THE SUPERCEDED METHOD, APPEARS TO OVERSTATE THE**
10 **NUMBER OF SCHOOLS THAT DO QUALIFY AS “DIVERSE” UNDER THE**
11 **TEACHER DIVERSITY PLAN METHODOLOGY**

12 *The SMAR Omits Needed Discussion of the Parties’ Agreement on How In-*
13 *School Diversity Under This Court’s March 28, 2016 Order is to be Measured*

14 In this Court’s March 28, 2016 Order, the Court directed TUSD to “act immediately
15 to address the racial disparities among faculty in TUSD schools...” under USP Section
16 IV, E, 2. (Doc. 1914 at 2:4-5.)

17 USP Section IV, E, 2 requires that the District identify schools with significant
18 disparities (“more than a 15 percentage point variance”) between African American and
19 Latino staff at individual schools when compared to the district-wide percentage across
20 TUSD schools at comparable grade levels (*e.g.*, elementary schools, K-8 schools), and that
21 it address those disparities. The USP makes reference only to the percentages of African
22 American and Latino staff (and not white staff) in addressing significant racial disparities
23 among in-school staff. (USP Section IV, E, 2.) Following the issuance of the Court’s
24 March 28, 2016 Order, the parties agreed to the Special Master’s proposal that to “achieve
25 the objectives of the USP more productively than would rigid adherence to the 15% rule
26

27 ¹⁶ Again, as noted above with respect to the race and ethnicity of bus route ridership, if that
28 data has been provided to the Special Master, Mendoza Plaintiffs ask that it be made an
addendum to the SMAR.

1 [in USP Section IV, E, 2],” the parties would “consider **only the numbers and**
2 **percentages of Anglo and Latino teachers**” in measuring in-school diversity – something
3 reflected in the Teacher Diversity Plan (“TDP”) that subsequently was developed. (See the
4 Special Master’s May 17, 2016 memo re: Request for Agreement Among the Parties
5 Regarding Guidelines for Achieving School Site Teacher Diversity attached as Exhibit 9
6 (emphasis added).) Although the District agreed to the Special Master’s proposal as
7 reflected in the TDP, and in doing so, reduced the number of schools subject to
8 diversification requirements from 37 to 26, it subsequently asserted that it achieved
9 required diversification at 17 schools based on the USP Section IV, E, 2 measures, rather
10 than the measures in the very TDP agreement that reduced the number of schools subject
11 to diversification requirements.¹⁷ (See Special Master’s August 15, 2016 memo re: Report
12 on Teacher Diversity Plan attached as Exhibit 10.)

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16 On September 6, 2016, the Special Master provided a memo (that references the
17 TDP as Exhibit 1) (cover email and memo attached as Exhibit 11), the cover email of
18 which indicates that the Special Master would file the memo “tomorrow,” and that “the
19 District has agreed to use th [sic] TDP as it was approved by the plaintiffs.” However, the
20 Special Master did not subsequently file that memo along with the TDP, which would have
21 placed in the record the parties’ agreement to measure diversity under the TDP by applying
22 the 15% variance measure to white and Latino teaching staff.
23
24

25
26 ¹⁷ As Mendoza Plaintiffs on August 22, 2016 stated to the parties and Special Master, the
27 “District is trying to have the best of two worlds: to have a reduced number of schools on
28 which to focus its attention (as a consequence of the agreement on how disparity would be
assessed for the purpose of determining that number) and then claiming success by using
the assessment of disparity that, if applied to all TUSD schools, would require it to be
focusing on a much larger number of schools.”

1 As noted above, the issues that would have been addressed and made matters of
2 record with the proposed September filing also are omitted in the SMAR. (*See* SMAR at
3 8.) Underscoring the need for such discussion in the SMAR is the fact that, in the DAR
4 filed subsequent to the Special Master’s September 6 memo indicating the District agreed
5 to assess “diversity” by looking at the percentages of white and Latino staff (per the TDP),
6 the District ignores the agreed approach to measuring disparity memorialized in the TDP.
7 (*See* DAR at IV-79-IV-80 (“The District calculates disparity by comparing district-wide
8 percentages and grade level comparisons for both *African American and Hispanic staff*
9 *placements* to determine whether there is more than a 15 percent gap between the number
10 of *African American or Hispanic teachers* at a school site compared to the applicable
11 school level” (emphasis added). The Mendoza Plaintiffs therefore object to this omission
12 in the SMAR and respectfully request that this Court direct the Special Master to revise his
13 2015-16 SMAR to specifically address the development of the TDP and the parties’
14 agreement concerning how diversity is to be measured under that plan.
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19 *The SMAR Errs in Stating that 11 Schools Diversified Their Staff Under the*
20 *Teacher Diversity Plan*

21 While the Special Master did not accept the District’s assertion that it achieved
22 “diversity” at 17 schools (as discussed above) and instead appears to apply the measure of
23 “diversity” reflected in the agreed-upon TDP, he errs in applying that measure. On page 8
24 of the SMAR, the Special Master indicates that “the District was ordered by the Court [in
25 its March 28, 2016 Order (Doc. 1914)] to implement th[e in-school staff diversity]
26 provision of the USP no later than 2017-18 in 26 schools that did not meet the diversity
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28

1 criteria. [(Doc. 1914.)] The District was able to ‘integrate’ the faculty at 11 of these
2 schools in 2016-17.” (SMAR at 8:17-20.)

3
4 As far as Mendoza Plaintiffs can tell, the last data report the District provided to
5 the Plaintiffs and Special Master concerning teacher diversity at the subject TUSD schools
6 was on September 9, 2016, and is dated August 12, 2016 (attached as Exhibit12).

7 Mendoza Plaintiffs reviewed the teacher diversity data under the “Current Percentage”
8 heading and determined that 10 rather than 11 schools achieved diversity under the teacher
9 diversity plan. (*See Id.*) Mendoza Plaintiffs therefore object to the portion of the SMAR
10 (at 8:19-20) that states that the District “was able to ‘integrate’ the faculty at 11 of these
11 schools in 2016-17.”
12

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14 **OBJECTION NO. 5**

15 **THE RECORD, INCLUDING FACTUAL FINDINGS IN THE SMAR, DOES NOT**
16 **SUPPORT THE SPECIAL MASTER’S FINDING THAT IT APPEARS THE**
17 **DISTRICT IS SATISFYING THE PROVISIONS OF THE USP RELATING TO**
18 **PROFESSIONAL DEVELOPMENT**

19 The USP requires that professional development related to multiple facets of the
20 District’s operations be delivered to TUSD’s certificated and administrative staff (*see, e.g.*,
21 USP Sections II, J (student assignment), VI, E (discipline), V, E, 5 (supportive and
22 inclusive environments)).¹⁸ A review of the data in the DAR, the record, the Special
23 Master’s findings in the SMAR, and the Special Master’s Annual Report for the 2014-15
24 school year (Doc. 1890) “Recommendations to the District,” indicate that it does not yet
25 “appear[] that the District satisfies the letter of the [professional development] provisions
26

27
28 ¹⁸ USP Section IV, J, 3 a.–c. (in the Administrator and Certificated staff section), requires the District to provide all professional development described in the USP to its administrators and certificated staff.

1 of the USP” (SMAR at 14:17). Indeed, there are significant inadequacies across many
2 areas of professional development and in the District’s ongoing failure to conduct
3 meaningful assessments on the adequacy of that professional development.
4

5 Notwithstanding that “the importance of CRP [Culturally Responsive Pedagogy] is
6 emphasized in the USP” (*id.* at 17:5-6), an assertion with which the Mendoza Plaintiffs
7 agree, the Special Master seems to not consider the District’s inadequate delivery of CRP
8 in the 2015-16 school year in stating that the District appears to satisfy USP professional
9 development provisions. Indeed, the Special Master finds that the “District has treated
10 CRP as a set of practices that are distinct from subject matter content...” and that it
11 “provides no evidence about how proficient teachers are with respect to CRP.” (SMAR at
12 12:5-6, 12:13-14.) Further, with respect to administrators, “CRP (and instruction in
13 general) get relatively little attention” in “training sessions,” and “like [the training]
14 experienced by teachers... is poorly aligned.” (*Id.* at 17:8-11.)¹⁹
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17 In fact, the SMAR details a large number of additional areas of the USP for which
18 the District’s professional development efforts were inadequate in the 2015-16 school year.
19 (See SMAR at 10:20-11:6 (re mentoring for beginning teachers: “the District
20 acknowledges that in 2015-16 it did not have enough mentors to support beginning
21

22 ¹⁹ In addition, the Special Master finds that CRP-related consultants inadequately
23 implement CRP. (See SMAR at 17 n.6 (“a consultant whose training was entitled,
24 ‘leadership for culturally responsive teaching...’ provided no examples of CRP or
25 culturally responsive teaching.”) Moreover, *even in the current school year*, the District’s
26 delivery of CRP training has a considerable way to go as there seems to be no cohesive
27 governing CRP “canon” employed, and the CRP consultant hired by the District meets and
28 trains with individuals rather than groups, thereby reflecting significant ongoing issues in
the delivery of CRP training. (See Special Master’s April 19, 2017 memo re:Comments on
Version 3 of 910g Budget, attached as Exhibit 13 (“...many of the consultants used do not
align their advice to ongoing approaches being promoted by the District. This is
abundantly clear with respect to culturally responsive pedagogy... when consultants come
in to provide workshops for 1-3 days (and the like) they often provide their own take on
the topic and there are no opportunities for follow-up.”).

1 teachers to the extent called for by its own plan... almost one-third of first and second year
2 teachers did not attend professional learning opportunities facilitated by mentors”), at
3 25:17-22 (re PBIS and restorative practices: “it was not until the fall term of 2016 [after
4 the 2015-16 school year] that the District developed a protocol or set of guidelines that
5 spelled out the essential elements of PBIS... The[] number [of hours of restorative
6 practices and PBIS training offered in 2015-16] raise[s] questions about the adequacy of
7 training for PBIS and about the strategies being used”), at 25:8-15 (re discipline training
8 for teachers identified as needing support: the District identifies “an extraordinarily low
9 number of teachers who are in need of additional specific support, the professional
10 development [to] these teachers was performed over one day tellingly by the ‘Showing and
11 Telling’ Consultants”), at 32:18-21 (re technology training: “it is hard to imagine that an
12 average of one hour per teacher will serve the needs of teachers to develop proficiency in
13 the use of technology, especially with respect to more complex courseware”), at 21:11-13
14 (re Culturally Relevant Courses: “A problematic issue... is whether teachers who are
15 beginning to offer such courses are receiving sufficient training and mentoring to
16 effectively implement these courses and modules”).

21 Tellingly, the issues the Special Master identified in his Annual Report for the
22 2014-15 school year (Doc. 1890) concerning teacher evaluations (the basis of which is to
23 determine whether additional teacher support and training is appropriate) and evaluation of
24 effectiveness of professional development persist and do not support a finding that the
25 District has met even the “letter” (SMAR at 14;17) of its USP professional development
26 obligations.
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28

1 For example, based on a review of the small sample of teacher evaluations that he
2 had been provided, the Special Master observed: “Only a small percentage of the feedback
3 that teachers were given had anything to do with instruction, much less culturally
4 responsive pedagogy.” (SMAR at 13:1-2.) Further, with respect to the 2014-15 school
5 year, the Special Master noted that there apparently existed “no systematic assessment of
6 the relative effectiveness of different approaches to professional development,” and
7 therefore , in a “Recommendation[] to the District,” asked that the District “[a]ssess the
8 extent to which various approaches to professional development meet the District’s own
9 statement of principles for the design of effective professional development.” (Id. at 18:9-
10 10, 20:5-7.) The SMAR includes no reference to the District having acted on this
11 recommendation. Instead, in the SMAR (for the 2015-16 school year), the Special Master
12 again details that there are “no systematic studies undertaken by the District to determine
13 whether these [professional development for administrators] experiences result in
14 improved leadership.” (SMAR at 17:15-16.) With respect to teachers, before noting that
15 the District continues to employ what are now perceived to be “traditional” (and less
16 effective) approaches to professional development than “personalized, job-embedded
17 professional learning” (SMAR at 13:20-26), the Special Master states that, “[j]ust as it is
18 difficult to know how effective the District is in preparing teachers to engage in culturally
19 responsive pedagogy, it is *difficult to know whether professional development in general is*
20 *changing teacher practices, much less improving student achievement.*” (Id. at 13:9-12;
21 emphasis added.) Additionally, in the Special Master’s Annual Report for the 2014-15
22 school year, the Special Master addressed teacher evaluations and the tailoring of
23 professional development to teacher needs. In another “Recommendation to the District,”
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1 the Special Master wrote: “The District should undertake a systematic analysis of the
 2 extent to which ratings of teacher effectiveness correlate with student performance and
 3 whether principals provide sufficiently detailed feedback to teachers so as to facilitate the
 4 targeting of professional development.”²⁰ (Doc. 1890 at 20:1-4.) The SMAR reveals that
 5 in this regard, little changed in 2015-16: “less than 2% of teachers are rated as in need of
 6 improvement... Only a small percentage of the feedback that teachers were given had
 7 anything to do with instruction... it is not likely that the District’s teacher evaluation
 8 instrument can provide the information necessary to effectively target professional
 9 development on teachers [sic] learning needs.” (SMAR at 12:22-23, 12:1-2, 14:3-5.)

10 For the reasons stated above, the Mendoza Plaintiffs object to the Special Master’s
 11 finding that it “appears that the District satisfies the letter of the [professional
 12 development] provisions of the USP” (SMAR at 14:17).

13 **OBJECTION NO. 6**

14 **THE SMAR FAILS TO INCLUDE THE COMPREHENSIVE ASSESSMENT OF**
 15 **THE ORIGINAL ALE PLAN OF ACTION AND SUPPLEMENT THAT IS**
 16 **CALLED FOR BY THE COURT’S ORDERS OF JANUARY 17, 2016 (DOC. 1895)**
 17 **AND MAY 17, 2017 (DOC. 2023) AND THAT, BASED ON THE SPECIAL**
 18 **MASTER’S PREPARATION AND CIRCULATION OF A DRAFT R&R,**
 19 **MENDOZA PLAINTIFFS HAD ANTICIPATED WOULD BE PART OF THE**
 20 **SMAR**
 21

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 23
 24 ²⁰ In this regard, it should be noted that the District concedes it did not follow the Special
 25 Master’s recommendation in the 2015-16 school year. (DAR at IV-98 (“[t]he District
 26 recognizes the need to assess the effectiveness of these teacher support plans and originally
 27 planned to rely upon the teacher classification based upon the final evaluation for that
 28 teacher. However, as a result of some changes to the classification measurements in the
 2015-2016 school year, the District determined that that analysis would not accurately
 reflect the effectiveness of the plans. *In the future*, the District *intends to consider* changes
 to the Danielson Framework assessments to determine whether the plans were effective in
 improving teacher performance” (emphasis added).

1 In January, 2016, the Court, after reviewing the Mendoza Plaintiffs' objections to
2 TUSD's Supplemental ALE Action Plan, ordered the Special Master to prepare an R&R
3 that "should be a comprehensive assessment of the original ALE Plan of Action and the
4 Supplement, and include UHS and ELLs, to determine whether TUSD is on a projectory to
5 meet the requirements set out in the USP ALE provisions. If not, the Special Master's
6 report should include recommendations for specific measures which could practicably be
7 undertaken by TUSD, acting in good faith, to implement the provisions of the USP which
8 require TUSD to improve minority student access to ALEs and improve the completion
9 rate of minority students in these programs." (Doc. 1895 at 4:22-5:1.) In its May 17, 2017
10 Order, the Court noted that it was "awaiting information and details related to several
11 [USP] components". (Doc. 2023 at 2:6-7.) It then specifically referenced the ALE
12 programs and its order of January 2016. (*Id.* at 2:6.)

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16 On February 12, 2017, the Special Master circulated a draft R&R to the parties,
17 inviting them to identify factual errors or omissions and to identify any additional areas
18 they believed the R&R should address. Both the District and the Mendoza Plaintiffs
19 responded. Thereafter, the Special Master requested certain additional information from
20 the District, which was provided in early March. However, the R&R was never finalized
21 and much of its discussion, particularly of goals, including for individual schools,
22 participation of ELL students in ALE courses, differences in enrollment by race and
23 ethnicity among the different GATE programs, differences in participation in AP courses
24 at different high schools and the significant role of UHS in contributing to the District's
25 reported overall gain in AP enrollment as well as specific recommendations for "moving
26 forward" all are omitted from the SMAR.
27
28

1 Mendoza Plaintiffs object to the omission from the SMAR of the comprehensive
2 assessment that was ordered by the Court in January, 2016. They request that the Special
3 Master be directed to file a supplement to the SMAR that finalizes his draft R&R re: ALE
4 dated February 12, 2017 so that the parties may (through the R&R process) address
5 significant open issues concerning the District’s ALE obligations under the USP and
6 matters omitted in the SMAR.²¹

7
8 Of particular concern to the Mendoza Plaintiffs is the issue of goals and how they
9 are to be used to assess the District’s success in implementing the ALE portion of the USP.
10

11 *The SMAR Omits Essential Discussion and Specification of ALE Goals (and*
12 *Analysis of TUDS Progress As Measured Against Those Specific Goals)*

13 As the Court will recall, the disagreement on goals -- or against what standard the
14 District’s success in fulfilling its USP obligation to “improve the academic achievement of
15 African American and Latino students in the District and to ensure that African American
16 and Latino students have equal access to the District’s Advanced Learning Experiences
17 (USP Section V, A, 1) would be measured -- was the major reason it ordered the Special
18 Master to prepare an R&R.²²

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20
21 However, rather than address the parties’ disagreement on appropriate goals and
22 how they should be measured, the Special Master in his SMAR references without any
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24 ²¹ Mendoza Plaintiffs believe that this also will further the “robust discussion, comment,
25 and probably objections” (Doc. 2023 at 2:14) that this Court anticipated would be part of
26 the SMAR process this year so as to provide further understanding of how the District is
27 progressing toward unitary status.

28 ²² *See, e.g.*, Doc. 1895 at 4:1-6: “The Mendoza Plaintiffs complain that they were not
consulted about the new goal and first learned of it upon reviewing the Supplement....As a
result, the Supplement offers nothing more than the original ALE Action Plan, a disputed
standard for measuring the efficacy of the ALE Action Plan to increase access in ALEs
and improve minority students’ successful completion of ALE programs.”

1 further detail or discussion goals that he recites **have been “agreed upon by the District**
2 **and the Special Master.”** (SMAR at 19:23-24; emphasis added.) Mendoza Plaintiffs
3 strenuously object to a process that has led to an agreement on goals between the District
4 and the Special Master that apparently side-stepped both the USP Section I, D, 1 process
5 and the R&R process that this Court ordered (since the filing of the ALE R&R would have
6 carried with it an opportunity for the Mendoza Plaintiffs to object to ALE goals recited in
7 that R&R and Court resolution of any dispute on the issue).
8
9

10 Moreover, there now is a complete absence of clarity as to what the “agreed to”
11 goals are. Again, without specification or further discussion, the SMAR recites in a
12 footnote that the “goals pursued by the District were more ambitious than those
13 recommended by a nationally prominent consultant.” (SMAR at 19, n. 7.) But the 2015-16
14 DAR (which is the document that the SMAR states it draws on for information [SMAR at
15 2:9-10]) says no such thing. To the contrary, the District not only asserts that it is
16 measuring its progress using the so-called less than 20% Rule developed by its consultant
17 (and not some more ambitious goal as the SMAR suggests); it also wrongly states that this
18 Court approved the use of the less than 20% Rule for the setting of goals. (DAR at V-131
19 and n. 52.) As the Court made clear in its Order of January 27, 2016:

22 Plaintiffs and the Special Master challenged TUSD’s proposal
23 for a “less-than” 20% Rule, which set the goal for minority
24 access at NOT less than 20% of the minority group’s
25 enrollment rate District-wide....The Court found that the
26 “less-than 20% Rule” was an imprecise standard:
27 merely a rule-of-thumb, which might red-flag the
28 existence of discrimination depending on a multitude
of other variables. (Order (Doc. 1771) at n. 8) The
Court ordered TUSD to “begin consulting with the
Plaintiffs and the Special Master” regarding how to
comprehensively measure the effectiveness of the

1 ALE Action Plan to determine whether TUSD has
2 attained unitary status in regard to its obligation
3 to increase access for minority students in ALEs....

4 The Court rejected the notion of an aggregate rule
5 for measuring the efficacy of the ALE Action Plan,
6 and ordered TUSD to develop goals for increasing
7 participation of minority students, including ELLs,
8 in the individual ALE programs to the extent
9 practicable for each ALE.

10 Doc. 1895 at 2:17-3: 10; some citations omitted.

11 In light of the foregoing, the Mendoza Plaintiffs respectfully request that the Court
12 direct the Special Master to revise his 2015-16 SMAR to specifically address appropriate
13 goals to be applied to assess the successful implementation of the USP provisions relating
14 to ALEs, as the Special Master in fact undertook to do in his draft R&R on ALEs.

15 *The SMAR Omits Discussion of UHS Goals and Goals for the Participation of ELLs
16 in ALEs*

17 The Court Order of January 27, 2016 expressly directed the Special Master to
18 “include UHS and ELL goals” in his comprehensive review of the original ALE Action
19 Plan and Supplement (Doc. 1895 at 9). However, the SMAR is silent on the subject of
20 ELL goals (in fact lacking any discussion of ELL participation in ALEs) and states only
21 that UHS has “the goal of increasing admission of African American and Latino students”
22 (SMAR at 20:6-7) but fails to state what the goal(s) are or should be or how the District is
23 faring in reaching such goals except to observe that after an initial increase “the number of
24 African American students has stabilized while the number of Latino students enrolled in
25 UHS has increased.” (SMAR at 20.)

26 The Mendoza Plaintiffs therefore respectfully request that the Court direct the
27 Special Master to revise his 2015-16 SMAR to specifically address appropriate goals to be
28

1 applied to assess the successful implementation of the USP provisions relating to UHS
2 admissions and the participation of ELL students in ALEs.

3
4 *The SMAR Fails to Address the Participation Rate of African American and Latino*
5 *Students in ALEs in the Context of the USP's Requirement that the District "Ensure that*
African American and Latino Students Have Equal Access to the District's" ALEs

6 The USP expressly requires that the District "ensure that African American and
7 Latino students have equal access to the District's" ALEs. (USP Section V, A, 1.)
8 Mendoza Plaintiffs believe that the SMAR's focus (consistent with that of the DAR) on
9 the achievement of goals that are based exclusively on percentages of African American
10 and Latino student enrollment without any comparison to the relative participation of white
11 students in ALEs fails to provide data and analysis sufficient to "ensure" that African
12 American and Latino students have equal access to the District's ALEs.
13

14
15 For example: Mendoza Plaintiffs compared data on GATE enrollment as reported
16 in Appendix F to the USP for the 2011-12 school year and in "Appendix F" provided by
17 the District for 2015-16. (This data is attached as Exhibits 14 and 15, respectively.) It
18 reveals that when the percentage of the "total group pop[ulation] of the District" (or what
19 is more recently referred to as "% District Ethnic Total") is considered during the period
20 from 2011-12 to 2015-16, the percentage of white students enrolled in the District who
21 also are enrolled in GATE programs has increased (from 12.4% to 13.3%) while that of
22 Latino students has decreased (or given the small decrease [from 6.4% to 6.3%], at best,
23 held constant). In other words, notwithstanding the efforts to increase Latino participation
24 in GATE, the participation "gap" between white and Latino students has expanded.
25 (Mendoza Plaintiffs note that the same does not appear to be true for African American
26 participation but believe that the Latino/white gap nonetheless must be acknowledged and
27
28

1 addressed and that the SMAR should focus on data that demonstrates the outcome of
2 efforts to “ensure” equal access.)²³

3
4 The Mendoza Plaintiffs therefore respectfully request that the Court direct the
5 Special Master to revise his 2015-16 SMAR to specifically address the relative
6 participation of white, Latino, and African American students in ALEs.

7 *The SMAR Fails to Address Completion Rates/Outcomes*

8
9 The SMAR fails to discuss data relating to the completion rates or outcomes for
10 African American and Latino students participating in ALEs (including by way of
11 example, continued participation in GATE programs after initial entry, those earning a “C”
12 or better in their ALE classes, percentage scoring a “3” or higher on their AP exams, etc.).
13 Yet, much of this sort of data was included as base line information to be monitored in the
14 USP. (See, USP Appendix E at 2 “AAC Achievement, Retention, Teachers SY 2010-11
15 and SY 2011-12.) Further, when the Court directed the Special Master to prepare an
16 R&R on ALEs it expressly stated that the Special Master should focus on measures to
17 “improve the completion of minority students in these programs.” (Doc. 1895 at 4:28-5:1.)
18
19

20 The Mendoza Plaintiffs therefore respectfully request that the Court direct the
21 Special Master to revise his 2015-16 SMAR to specifically address the completion rates
22 and outcomes of African American and Latino students (including ELLs) in ALEs and any
23

24 ²³ The DAR includes a table (Table 5.26 at V-165) that shows the number of 8th grade
25 students meeting UHS Admissions Test Criteria. It indicates that the percentage of
26 African American and Latino students meeting these criteria declined from 2014-15 to
27 2016-17 (from 47.7% of those qualified in 2014-15 to 45.8% in 2016-17 for Latinos and
28 from 3.6% to 3.5% for African Americans in that same period). This suggests that efforts
to close achievement gaps and provide advanced learning experiences for Latino and
African American students are not yet where they should be. Mendoza Plaintiffs therefore
believe that this, too, is a topic that should have been addressed in the SMAR.

1 measures that could practicably be undertaken by TUSD, acting in good faith, to improve
2 completion rates and outcomes.

3
4 **OBJECTION NO. 7**

5 **THE SMAR FAILS TO ADDRESS THE DISTRICT'S INAPPROPRIATE USE OF**
6 **THE "20% RULE" IN CONNECTION WITH GOALS FOR PARTICIPATION IN**
7 **DUAL LANGUAGE PROGRAMS.**

8 As noted above, there has been no agreement to or Court approval of the use of the
9 "20% Rule" to set goals and/or assess successful integration of the District's ALE efforts.
10 Yet, the District, in the DAR, does just that with respect to its dual language programs.
11 (See DAR at V-180.) Mendoza Plaintiffs object to the failure of the Special Master in the
12 SMAR to address this issue. They are particularly concerned because, as the Special
13 Master and the parties have recognized, the issue for many of the dual language programs
14 is not whether "Hispanic enrollment far surpasses 20 percent" (*id.*) but, rather, efforts to
15 increase the participation of white students. Mendoza Plaintiffs note the District's report
16 of an increase in the number of white students in its dual language programs (*id.* at V-179)
17 and agree that that is positive information but nonetheless believe that it is essential for the
18 Special Master to clarify that assessment of the District's implementation of its USP
19 obligations relating to the dual language program will not turn on the application of the
20 "20% Rule" to Latino enrollment.
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OBJECTION NO. 8

IN ITS DISCUSSION OF SUPPORT FOR STRUGGLING STUDENTS THE SMAR FAILS TO ADDRESS THE ISSUES THAT LED THE DISTRICT TO SIGNIFICANTLY REDUCE THE NUMBER OF STUDENT SUCCESS SPECIALISTS AND REDEFINE THEIR ROLE, THE EVALUATION OF THE TUSD STUDENT SERVICE EQUITY PROGRAMS, AND THE TUSD DECISION TO REDUCE THE SIZE OF AND SUBSTANTIALLY REVAMP THE MEXICAN AMERICAN AND AFRICAN AMERICAN STUDENT SUPPORT DEPARTMENTS. IT ALSO FAILS TO ADEQUATELY ADDRESS ISSUES RELATING TO TUTORING SERVICES PROVIDED BY THESE DEPARTMENTS.

The SMAR contains a very short discussion of “support for struggling students”. (SMAR at 20.) Mendoza Plaintiffs object to its failure to address the extensive discussion of Student Success Specialists and Student Service Departments in the DAR (at DAR V-228 *et seq.*) which suggests that the work being described is successful and on-going when in fact, based in part on the District’s own January 2016 evaluation of those Departments and the Student Success Specialist position (an evaluation the DAR barely addresses²⁴), by the time of the SMAR, the District had decided to substantially reduce the number of Student Success Specialist positions and revise the role, eliminate a number of the Student Service Departments, and substantially reduce the sizes of the Mexican American and African American Student Services Departments (“AASS” and “MASS”, respectively.)²⁵ Mendoza Plaintiffs believe it was incumbent on the Special Master to address these issues in his SMAR and object to the SMAR’s silence on this topic.

²⁴ The only reference the Mendoza Plaintiffs have found to the evaluation (Appendix V-159) in the DAR is a statement in its discussion of data to track students in need of support that in January 2016 the Assessment and Program Evaluation Department reviewed data for various months and reviewed student equity data for the Mexican American and African American Student Services Departments. (DAR at V-230.)

²⁵ *See, e.g.*, Budget Draft #2 Cover Letter, 2017-18 USP Budget dated March 13, 2017 at 2, 4. (Doc. 2028-3 at 147, 149.)

1 Master to revise the above-cited sections of his SMAR if he finds that it is necessary to do
2 so to ensure consistent and accurate data reporting following the investigation and
3 reporting Mendoza Plaintiffs request the Court to direct the Special Master to conduct
4 under Objection No. 1.
5

6 **OBJECTION NO. 10**

7 **THE SPECIAL MASTER’S LIMITED DISCUSSION OF THE GSRR**
8 **INCORRECTLY OMITTS ACTIONS THAT THE DISTRICT TOOK WITH**
9 **RESPECT TO THE GSRR IN 2015-16 THAT VIOLATED USP PROVISIONS**

10 The SMAR contains a very limited discussion of the GSRR. It states only that “[a]t
11 the beginning of the 2015-16 school year, the District recognized the need to revise the
12 GSRR – the document that defines violations and appropriate responses to these offenses.
13 As of **May 2017**, no changes in the GSRR had been approved by the Governing Board.”
14 (SMAR at 27:10-13; emphasis in original.) The implication of the Special Master’s
15 SMAR statement is that the District did not change the GSRR from the version that was
16 operative at the beginning of the 2015-16 school year as of “**May 2017.**” While the
17 Governing Board may have taken no action as of May 2017, it is inaccurate to state that
18 the GSRR was not changed.
19
20

21 District administration did in fact revise the GSRR prior to the commencement of
22 the 2016-17 school year²⁶ to include a new “Frequently Asked Questions Regarding
23 Discipline” (“FAQ”) section that articulated the following zero-tolerance policy for student
24 fights: “This coming school year, students who violate the Code of Conduct by fighting
25
26

27 ²⁶ While Mendoza Plaintiffs discovered the version of the GSRR containing the FAQ
28 section in mid-August 2016, they understood the District to have posted it before
commencement of the 2016-17 school year because the FAQ references the 2016-17
school year as “the coming school year.”

1 will be suspended short term out of school, followed by a two day in school intervention,
2 and each will be counseled. Students who fight a second time during the school year are
3 subject to being assigned to our District Alternative to Education Program for a period of
4 time.” (See Mendoza Plaintiffs ‘August 17, 2016 email re TUSD’s 2016-17 GSRR Issues
5 attached as Exhibit 16. The GSRR containing the new FAQ section and referenced in this
6 email is attached as Exhibit 17.) The District did not submit the GSRR with the FAQ
7 section to the Plaintiffs and Special Master for USP Section I, D, 1 review and comment,
8 and the fighting policy contained in that GSRR violates USP Section VI, B, 2, a.
9 (concerning limitations relating to exclusionary disciplinary consequences).²⁷

12 Given the significance of the this issue, including the fact that the District
13 made the version of that GSRR with the FAQ available to its employees and parents by
14 posting it on its website (see Exhibit 16), Mendoza Plaintiffs object to the misleading
15 statement that “[a]s of **May 2017**, no changes in the GSRR has been approved by the
16 Governing Board.” Rather than request that the Special Master be directed to fully report
17 on this issue in the SMAR (given that the FAQ fighting policy was intended to be
18 implemented in the 2016-17 school year, and that efforts to correct the matter occurred
19 throughout the 2016-17 school year), they respectfully request that this Court direct the
20 Special Master to revise the statement cited above to indicate that no changes were made
21 to the GSRR for the 2015-16 school year.²⁸

25 ²⁷ The Mendoza Plaintiffs subsequently requested that the Special Master bring this
26 instance of USP non-compliance to the attention of the Court under USP Section X, E, 6,
27 but per subsequent discussions with the parties and Special Master, agreed to defer that
request.

28 ²⁸ Mendoza Plaintiffs note that they do however anticipate and expect that the Special
Master will fully address this issue in his Annual Report for the 2016-17 school year.

OBJECTION NO. 11**THE SMAR OMITTS NEEDED DISCUSSION OF FAMILY ENGAGEMENT PLAN OBLIGATIONS AND RECOMMENDATIONS RELATING TO USE OF FAMILY CENTERS TO INTEGRATE MAGNETS, “TWO WAY” FAMILY ENGAGEMENT, AND DATA TRACKING WHICH INVOLVE PROBLEM AREAS TUSD IDENTIFIED LONG AGO, AND/OR THAT WOULD PROVIDE CONTEXT FOR SMAR STATEMENTS THAT SUGGEST THE EXISTENCE OF BROADER BUT UNADDRESSED ISSUES**

As discussed below, there are multiple areas of the SMAR in which the Special Master does not provide discussion or any analysis of District efforts to meet its obligations under the USP relating to family engagement or the Family and Community Engagement Plan (“FACE”) developed to implement those provisions. (TUSD Annual Report for the 2014-15 School Year, Appendix VII-1 (Doc. 1852-1)). That there may be an absence of evidence concerning the District’s efforts in this area is not a reason to have omitted full discussion of this aspect of the USP in the SMAR. Of particular concern to the Mendoza Plaintiffs are, omissions to address the use of Family Centers to integrate magnet schools and programs, the District’s failure to meaningfully engage families in a “two way” approach, and the District’s failure to track family engagement data. Discussions of these topics are necessary to provide a complete picture of the District’s efforts, would implicate long-outstanding obligations and recommendations, and would provide needed context for SMAR statements and findings.

Efforts to Use Family Centers to Integrate Magnet Schools and Programs

The USP expressly requires that the “District, through its Family Center(s) and other recruitment strategies set forth in [the USP], shall recruit a racially and ethnically diverse student body to its magnet schools and programs to ensure that the schools are

1 integrated to the greatest extent practicable.”²⁹ (USP, II, E, 2.) (The FACE Plan
2 references the need for the District to use its Family Centers to market magnet schools and
3 programs. (*See. e.g.*, FACE Plan at 25.))

4 Notwithstanding such USP obligations, and that the Special Master, under the
5 “Integration” section of the SMAR, asserts that “[i]t would be difficult to build a case that
6 the District has worked to integrate its schools” (SMAR at 6:9), the Special Master does
7 not address the District’s efforts in the 2015-16 school year in this regard beyond the
8 indirect statement that TUSD marketing materials failed during that year to mention
9 research concerning learning opportunities provided by integrated student bodies (*id.* at
10 6:15-19). Indeed, given the Special Master’s integration findings (at pages five through
11 seven of the SMAR) and that the USP contemplates the use of family centers as a tool for
12 integrating magnet schools, discussion of District efforts in this regard should have been
13 included both to assess its implementation of its express USP obligation and to provide
14 better context to the Special Master’s findings. Further, Mendoza Plaintiffs believe that
15 inclusion of such discussion in the SMAR would have better informed the District on what
16 problems it may need to address in this regard and how it can better market magnet schools
17 through its family centers.³⁰

18
19
20 ²⁹ As part of that effort, the District is to “creat[e] or amend[] an informational guide
21 describing offerings at each school site... distributed via mail and email to all District
22 families; posted on the website in all major languages; and available in hard copy at all
23 school sites, the Family Center(s) and the District office.” (USP, II, C.) The Mendoza
24 Plaintiffs note that the District’s 2015-16 Annual Report makes no mention of whether it
25 distributed its Catalog of Schools to parents via mail and email.

26 ³⁰ In this regard, the Mendoza Plaintiffs note that greater discussion of the District’s use of
27 family centers to integrate magnets could call attention to the following issues: the DAR
28 provided evidence of but a single one hour “open enrollment” workshop held at family
engagement centers in November 2015 in support of its obligation to use these centers and
the family engagement initiative more generally to integrate magnet schools. (DAR,
Appendix II-12). Further, the District apparently conducts no data collection concerning
the submission of magnet and open enrollment applications at its family centers or gathers
any other information that would allow it to evaluate the effectiveness of its efforts at
increasing integration through its family centers. (*See* TUSD Response to RFI #863,
attached as Exhibit 18: “There is no disclosure or tracking mechanism to differentiate from
where it [magnet and open enrollment applications] was submission [sic].”)

1 Meaningful “Two Way” Family Engagement as Part of a District-wide Strategy
 2 Recognized as Valuable in its FACE Plan Recommendations

3 As part of the District’s compliance with USP Section VII, C, a, b, TUSD
 4 conducted an initial assessment of its existing family engagement and support programs
 5 and developed recommendations for improvement that it then addressed in the FACE Plan.
 6 (See FACE Plan at 14.) Although the SMAR states generally that the “District’s approach
 7 to family engagement is what is called a one-way bridge and current thinking calls for a
 8 two-way approach” (SMAR at 28:3-4), the SMAR fails to note that the favored two-way
 9 approach is in fact embraced by the District’s own FACE Plan (although it is yet to be
 10 implemented). Further, given such lack of progress and the long-outstanding FACE Plan
 11 recommendations, further discussion of this matter is warranted in the SMAR, particularly
 12 given that, as Mendoza Plaintiffs understand the “two way” approach, a meaningful shift
 13 to that approach provides the most promising strategy to genuinely engage families.³¹

14 The SMAR-referenced “two way” approach to family engagement directly relates
 15 to the District’s first FACE Plan recommendation to “Create District-Wide Strategies”
 16 because its family engagement “efforts were not connected to one another as part of a
 17 comprehensive scheme, and often were focused on parental involvement rather than
 18 informing parents about student learning and the parents’ role in their student’s success.”³²
 19 (FACE Plan at 14.) However, the TUSD’s 2015-16 Annual Report data³³ reveals that little

20 ³¹ The FACE Plan section concerning recommendations (commencing on page 14)
 21 explains that the “District assessed the internal data obtained from various reviews in light
 22 of the research-based best practices for family engagement to develop recommendations
 23 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
 equitable access to programs and services and to concentrate resources on school site(s)
 and in areas where data indicates greatest need.”)

24 ³² The FACE Plan describes “open houses, student concerts, recognition awards, and social
 25 events” as the referenced less favored “parental involvement.” (*Id.* at 8.) Under the
 26 recommendation concerning “Engaging Families” the District further explained that
 27 “[b]ased on the Review and Assessment [under USP Section VII, C, 1, b] of the District,
 the majority of the family engagement efforts provided historically by the District have
 been focused primarily on family involvement in student activities rather than learning-
 centric family learning. The Harvard Family Research Project found family engagement
 practices linked to learning have greater positive effect on student outcomes.” (*Id.* at 19.)

28 ³³ 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

1 progress has been made as individual schools participated in an unconnected series of
 2 activities that demonstrate the absence of a District-wide family engagement strategy, a
 3 heavy amount of “parent involvement” activities (instead of family engagement activities
 4 to empower parents and to learn from them how to best meet their children’s needs), and
 5 telling inconsistencies concerning the amount and quality of family engagement activities
 6 across sites.³⁴ They also fail to manifest a “family engagement vision” (FACE Plan at 14.)

7 Mendoza Plaintiffs object to the omission of any discussion of the District’s own
 8 recognition of the value of the “two-way” approach and its failure to follow its own
 9 counsel and recommendations in the SMAR.

10 *The District’s Data Collection Efforts and Inability to Conduct Meaningful*
 11 *Evaluations of Effectiveness of Family Engagement Efforts With Collected Data*

12
 13 While the Special Master notes that “[f]urther information is needed” with regard to
 14 Community Liaison communications with teachers about students, that “better evidence...
 15 is needed” to determine trends in racial demographics of schools using more “robust”
 16 family engagement strategies versus those that do not, and that “[m]ore information on the

17
 18 to Value Parents as Partners”) of the 2015-16 Annual Report— as the titles and appendices
 19 suggest, the listed activities appear to be an indiscriminate mixing of staff training and
 20 family engagement events. As discussed in the section below, these appendices omit data
 21 for a significant number of schools and therefore is unreliable as the basis for forming
 22 conclusions about trends in site-level family engagement efforts.

23 ³⁴ In this regard, some schools’ activities for the 2015-16 school year consisted entirely of
 24 the less favored and less effective “parental involvement” (e.g., open houses, social
 25 events). For example, other than a single “Title One parent meeting” at Cragin (DAR,
 26 Appendix VII-6 at 2), Cragin held only what appear to be events at which stories were read
 27 to children and families. These events consisted of “Family Library Night,” “Spooky
 28 Reading Night,” and “Literacy Night.” (DAR, Appendix VII-1 at 3.) Another example,
 Mary Meredith, held only the following social events: Healthy Social Family Fun, Annual
 Harvest Luncheon, Rodeo Bar-B-Q, and Celebration and Promotion. (*Id.* at 9) These are
 not unique examples; indeed, this Court need only conduct a cursory review of the
 activities reflected in DAR Appendices VII-1 and VII-6 to see that site-level activities are
 dominated by “parent involvement” events (delivered inconsistently across schools) which
 do not reflect the family engagement goals of the USP, the acknowledged importance of
 focusing on learning-centric activities, or a District-wide family engagement strategy and
 “vision”. As detailed below, there is no data relating to many schools’ family engagement
 efforts in DAR Appendices VII-1 and VII-6.

1 functions and the results of these [District] partnerships [with Tucson organizations] would
2 be useful” (SMAR at 27:23-24, 28:14-15, 28:24-25), the Special Master does not address
3 the underlying issue of the adequacy District’s data collection efforts in the area of family
4 and community engagement. This is of particular importance given that, recognizing the
5 centrality of data collection efforts to the success of the District’s engagement efforts, the
6 District’s FACE Plan made express data collection recommendations (FACE Plan at 21) –
7 aligning with the USP Section VII, C, 1, c requirement that the District “develop and
8 implement a plan to track data on family engagement.”³⁵

9 The FACE Plan recognized that there “is no system to provide consistent access to
10 programs or a way of evaluating the effectiveness of programs. Currently the District’s
11 major method for tracking family engagement is through sign-in sheets... Research
12 supports data collection systems as a necessary component of ongoing evaluation, planning
13 and improvement.” (*Id.*) Yet, the District reported that for the 2015-16 school year, the
14 District continued to gather family engagement data through sign-in sheets (DAR at VII-
15 328), even though USP Section VII, C, 1, c envisioned that by October 1, 2013, the
16 District would make necessary revisions to its electronic data system to track family
17 engagement. (While that date was pushed back by agreement of the parties, Mendoza
18 Plaintiffs believe that the SMAR should nonetheless have addressed the 2015-16 reliance
19 on sign-in sheets and absence of more informative information.)

20 Further, Mendoza Plaintiffs expected these issues to be addressed in the SMAR as
21 needed follow up to the Special Master’s 2014-15 Annual Report “Recommendation to the
22 District” that it “should improve its reporting of family and community engagement
23 activities organizing these by types of activities, reporting how many families of different
24 racial backgrounds were served and what the purposes of these services were.” (Doc. 1890

25
26 ³⁵ The USP-required assessment is part of a USP provision that also mandates that there be
27 “data systems in place to provide information on outreach to and engagement with families
28 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 at 30.) In this regard, as far as Mendoza Plaintiffs can tell from past TUSD Annual
2 Reports, the District has made no effort to track family engagement data by race/ethnicity
3 and/or to evaluate the effectiveness of its family engagement efforts with Latino and
4 African American families.³⁶

5 Moreover, the SMAR additionally fails to address the District's evidence
6 concerning its USP Section VII, E, 1, d obligation to "[a]naly[ze]...the scope and
7 effectiveness of services provided by the Family Center(s)." In this regard, the District's
8 2015-16 "Analysis of the scope and effectiveness of services provided by the Family
9 Center(s)" is based entirely on "customer satisfaction surveys" (in connection with
10 unspecified provided services) and a mere 89 needs surveys collected over a five-month
11 period. (DAR, Appendix VII-28.)³⁷

12 Plainly, a large part of the reason the Special Master is constrained to note the need
13 for additional information in the SMAR is the District's inadequate data collection efforts
14 concerning family engagement, notwithstanding the USP and FACE Plan obligations and
15 recommendations for improved data collection. Given the significance of data collection in
16 measuring District compliance with related obligations, and to assessing outcomes in
17 measuring District's progress in implementing the USP's family and community
18 engagement provisions, the Mendoza Plaintiffs object to the omission of this discussion in
19 the SMAR.

20
21
22 ³⁶ Indeed, with respect to efforts at the site-level, the District has conceded that for the
23 2015-16 school year "[t]here was no process to review or assess school site family
24 engagement activities in place during the school year for SY2015-16." (TUSD Response
25 to RFI #857, attached as Exhibit 19.) Such lack of a process for review and assessment
26 seem to be exemplified by the fact that the District did not track participation at quarterly
27 informational events at seven, 14 and 17 racially concentrated schools in each of the
28 second, third and fourth quarters of 2015-16 school year, respectively. (DAR, Appendix
V-214.)

³⁷ Notably, the 2015-16 "evaluation" does not take into account the number of and reasons
for visits to family centers (beyond simply noting a total of approximately 7,000 visits), or
whether the services and information concerning, for example, Advanced Learning
Experiences or open enrollment and magnet schools, provided at centers are effective in
recruiting students.

1 For the reasons stated above, the Mendoza Plaintiffs respectfully request that the
2 Special Master be directed to supplement the SMAR to include discussion of the use of
3 Family Centers to integrate magnet schools and programs, the District’s lack of family
4 engagement in a “two way” approach, and the state of the District’s efforts to collect
5 family engagement data and conduct assessments of family engagement efforts.
6

7 **OBJECTION NO. 12**

8 **THE SMAR FAILS TO PROVIDE THE BASIS FOR THE SPECIAL MASTER’S**
9 **FINDING THAT IT DOES NOT APPEAR RACIAL COMPOSITION DIFFERS**
10 **SIGNIFICANTLY BETWEEN SCHOOLS PROVIDING ROBUST FAMILY**
11 **ENGAGEMENT AND THOSE THAT DO NOT, AND SUCH SUPPORT CANNOT**
12 **BE FOUND IN THE DAR BECAUSE IT PROVIDES NO FAMILY**
13 **ENGAGEMENT DATA FOR MANY SCHOOLS**

13 In the SMAR, the Special Master fails to discuss or identify any data he relied on in
14 making his finding that “it does not appear that the racial composition of the schools where
15 family engagement is more robust is significantly different than the racial composition of
16 schools with less assertive family involvement.” (SMAR at 28:13-16.) Further, the
17 SMAR does not address or analyze what constitutes “robust” family engagement and
18 Mendoza Plaintiffs found no such analysis with respect to racially concentrated and non-
19 racially concentrated schools in the DAR on which the SMAR statement may have been
20 based. Indeed, with respect to school-level family engagement efforts, the data in the
21 DAR appears to do no more than to catalog family engagement activities. (*See, e.g.*, DAR,
22 Appendices VII-1 (titled “Curricular Focus Training”) and VII-6 (list of family
23 engagement events by school).)

26 Moreover, Mendoza Plaintiffs do not believe the SMAR statement concerning site-
27 level family engagement could properly be based on DAR data as there are a significant
28

1 number of TUSD schools for which no such data is provided. By way of example, there
2 were no “Curricular Focus Trainings” nor any family engagement events listed for the
3 following racially concentrated schools: Banks, Ochoa, Oyama, Warren, Rose, Morgan
4 Maxwell, Safford, Valencia, and Pueblo.³⁸ (See DAR Appendices VII-1 and VII-6.) Thus,
5 because the site-level family engagement data in the DAR is so incomplete, they do not
6 understand that it could form the basis for the Special Master’s finding that “it does not
7 appear that the racial composition of the schools where family engagement is more robust
8 is significantly different than the racial composition of schools with less assertive family
9 involvement.” Mendoza Plaintiffs therefore object to this SMAR statement and
10 respectfully request that this Court direct the Special Master to supplement his SMAR to
11 set forth the factual basis for his finding.
12
13

14 **OBJECTION NO. 13**

15 **THE RECORD DOES NOT SUPPORT THE SPECIAL MASTER’S FINDING**
16 **THAT THE DISTRICT IS IMPLEMENTING THE PROVISIONS OF THE USP**
17 **WITH RESPECT TO EXTRACURRICULAR ACTIVITIES IN A SATISFACTORY**
18 **WAY.**

19 *Inequities in Participation Rates*

20 Based on their understanding of the record, Mendoza Plaintiffs object to the Special
21 Master’s finding that the District is implementing the provisions of the USP with respect to
22 extracurricular activities in a satisfactory way. (SMAR at 29.) In support of his finding,
23 the Special Master references data provided by the District after the submission of the
24 DAR and states that “[i]n general [from 2013-14 to 2015-16] , total percentages of
25 participation across ethnicities remained relatively constant.” (Id. at 29-30.) The SMAR
26
27

28 ³⁸ Significantly, each of Ochoa, Safford, and Cholla was a magnet school that recently lost its magnet status. (See Doc. 1984-1 at 1.)

1 does not further identify the information provided or any analysis that led to the stated
2 conclusion. Mendoza Plaintiffs reviewed data provided in the DAR and reached a
3 different conclusion – that is, that the participation “gap” between white students as
4 compared to Latino and African American students widened in that period³⁹. If the
5 Special Master has data that show a different result, Mendoza Plaintiffs ask that he
6 supplement his SMAR to provide that information together with an explanation from the
7 District as to why the data set forth in the DAR appears to lead to a different result.
8

9
10 Even if the Mendoza Plaintiffs’ finding after their review of the DAR can be
11 addressed with additional data, their review of information provided by the District in
12 response to their information requests indicates that there also is a serious question as to
13 whether extracurricular activities are being provided on an equitable basis . Until that
14 issue is addressed and resolved, Mendoza Plaintiffs object to the SMAR finding of
15 satisfactory implementation of the provisions of the USP relating to extracurricular
16 activities.
17

18 On March 15, 2017, the District provided information on participation in
19 extracurricular activities broken down by school. A copy is attached as Exhibit 20.
20

21
22 ³⁹ Mendoza Plaintiffs compared the participation numbers provided in Table 8.1 of the
23 DAR (at VIII-337) to the overall enrollment numbers for TUSD white, Latino, and African
24 American students in 2013-14 and 2015-16, using TUSD reported 40th day enrollment
25 figures for those years. That comparison revealed that the participation of white students
26 in TUSD extracurricular activities increased by 10% (from 20% of their total enrollment in
27 2013-14 to 30.2% of their total enrollment in 2015-16). By contrast, notwithstanding the
28 emphasis in the USP on equitable participation by Latino and African American students,
the participation rate of Latino students increased by 7.1% (from 14.6% of their total
enrollment in 2013-14 to 21.7% of their total enrollment in 2015-16) and the participation
rate of African-American students increased by 4% (from 20.6% of their total enrollment
in 2013-14 to 24.6% of their total enrollment in 2015-16). Thus the participation “gap”
appears to have widened rather than narrowed.

1 Mendoza Plaintiffs then used that data and information on 2015-16 school enrollment, as
2 set forth in the chart they prepared and have attached as Exhibit 21, to compare relative
3 participation in extracurricular activities by students in racially concentrated K-8 schools
4 and in K-8 schools that have 25% or more white enrollment (inclusive of elementary, K-8,
5 and middle schools). They then performed the same analysis looking at racially
6 concentrated high schools and high schools that have 25% or more white enrollment.
7
8 They found significant disparity.

9
10 At the K-8 level, there is a 19.8% participation rate in extracurricular activities by
11 students attending racially concentrated schools as compared to a 27.6% participation rate
12 by students attending schools in which the white student population constitutes 25% or
13 more of the total enrollment. That disparity increases significantly at the high school level.
14 There is a 31.4% participation rate among students attending racially concentrated schools
15 as compared to a 45 % participation rate among students attending high schools in which
16 the white student population constitutes 25 % or more of total enrollment. Mendoza
17 Plaintiffs believe that this data fails to evidence that the District has satisfactorily complied
18 with the USP mandate that it “provide students equitable access to extracurricular
19 activities.” (USP Section VII, A, 1.)
20
21

22 *Inadequate Showing of Interracial Contact in Positive Settings*

23 Mendoza Plaintiffs further object to the finding of the SMAR because it fails to
24 address the USP requirement that the District “ensure that extracurricular activities provide
25 opportunities for interracial contact in positive settings of shared interest....” (*Id.* at VIII, A,
26 2.) The DAR is virtually silent on this topic. The only place in which the racial and ethnic
27 breakdown of participants in specific extracurricular activities is discussed is in the
28

1 subsection of the DAR relating to leadership training. There reference is made to a
2 leadership program involving just over 500 participants, a Captain’s Academy with 45
3 participants, and a Harbor Experience with almost 350 participants. (DAR at VIII-342-
4 344.) But, according to that same DAR, approximately 11,250 students participated in at
5 least one extracurricular activity in 2015-16 (*Id.* at VIII-337, Table 8.1.). No breakdown
6 concerning the race and ethnicity of the particular programs (e.g., sports teams, clubs, etc.)
7 in which the vast majority of District students participated is included in the USP. Yet, it
8 is clear that such an analysis must occur before the District can be found to have
9 satisfactorily implemented the USP.

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

26 *Insufficient Data*

27 There is yet one other reason why the Mendoza Plaintiffs object to the Special
28 Master’s finding: the District has failed to provide sufficient and consistent information

1 relating to extracurricular activities thereby making it extremely difficult, if not
2 impossible, to accurately assess its performance of its USP obligations.

3
4 In the DAR, the District asserted that participation in K-8 extracurricular activities
5 increased in 2015-16 but also stated that “[i]ncluded in these numbers for the first time are
6 students who participated in extracurricular fine arts.” (DAR at VIII-337.) Thereafter, in
7 response to a Mendoza Plaintiff inquiry, the District stated that in earlier years
8 participation in fine arts had been included in a K-8 “club” category. Whether and to what
9 extent this new category in the report affects the ability to make “apples to apples”
10 comparisons with extracurricular participation data provided for prior years is compounded
11 by the fact that the District additionally asserted in the DAR that the improvement in
12 participation numbers also “reflected...improvements in the collection and reporting of the
13 data through better office staff training.” (*Id.* at VIII-338.)
14
15

16 When it explained these improvements in response to a Mendoza Plaintiff inquiry,
17 the District expanded on its DAR statement as follows. There were “increased efforts on
18 the part of the extracurricular department to inform school administrators of the necessity
19 to correctly submit this information and then to monitor submission.” The District
20 provided as an example that only “23 Elementary, K-8 and Middle Schools reported
21 athletic data in 2014-15, whereas 49 schools reported athletic data in 2015-16.” (*Id.*)⁴⁰
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24 ⁴⁰ This statement is of some concern given that the District made a similar claim about
25 having improved its data collection efforts in 2014-15. In the 2014-15 Annual Report, it
26 wrote: “In the 2014-15 school year, the District also developed training for administration
27 and office staffs at the elementary and K-8 schools to learn how to correctly input data into
28 the Mojave Interscholastic module to track participation” in extracurricular activities.
(2014-15 Annual Report, Doc. 1918-1, at VIII-283.) It should also be noted that issues
relating to data collection appear to have continued into the 2015-16 school year. The
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,

1 inconsistent with school FCI scores or revised FCI scores pursuant to the District's Master
2 Facilities Plan ("DMFP") (not addressed in the SMAR) have made that facilities data
3 unreliable. Therefore, because his SMAR statement that "it does not appear that the
4 quality of school facilities varies significantly by the proportion of students of different
5 races in a school" (SMAR at 30:11-12) is based on such data, it, too, may be unreliable.

7 Beyond issues concerning FCI and ESS weights, reallocation requests with
8 explanations that conflict with FCI and ESS data call into question the accuracy of that
9 data. In connection with March 8, 2016 reallocation request for repairs to Utterback
10 Middle School's auditorium, the District asserted the existence of significant disrepair,
11 including no working speakers, sound boards, microphones (sound system), no projection
12 system, and limited lighting as a result of it "hav[ing] had no upgrades or systemic repairs
13 since its inception in 1989." (See email chain re: Reallocations – Tully and Carrillo,
14 attached as Exhibit 22.) However, its ESS score indicated that Utterback's "Performing
15 Arts" space received a 4.0 rating out of a possible total of 5.0, indicating that it was in
16 "good condition."⁴² (See *id.*) Thus, the significant disparities between TUSD reallocation
17 requests and facilities data warranted investigation to determine the extent to which such
18 data does not accurately reflect school facilities condition before the Special Master drew
19 any conclusions about USP compliance in this area.

23
24 ⁴² Indeed, issues with reallocation requests inconsistent with TUSD facilities condition
25 assessments appear to have persisted past the 2015-16 school year. In connection with its
26 March 2, 2017 reallocation requests, the District states Safford's computer lab has "two
27 'holes' in the floor. Plywood has been secured to make sure no one falls through.
28 However, there is a noticeable dip when stepping on the plywood... this is an unsafe
condition that needs to be addressed." (See TUSD April 3, 2017 email attached as Exhibit
23.) Mendoza Plaintiffs presume that the development of "holes" big enough for children
to "fall[] through" reflects disrepair that developed over time, and note that with regard to
Safford's ESS scores (which covers computer labs), the District apparently had "no data"
whatsoever for the 2015-16 school year. (See DAR, Appendix IX-18.)

1 Further, during the 2015-16 school year, the District developed a “District Master
2 Facilities Plan” (“DMFP”) (attached as Exhibit 24) which it says involved assessments of
3 “HVAC, Roofing and Special Systems... at every school between September 2015 and
4 February 2016” and that it took “advantage of the assessments that were completed as part
5 of that project to make sure the conditions were reflected in the FCI as well.” (See TUSD
6 RFI response attached as Exhibit 25.) Although the District purports to have revised the
7 FCI in light of the DMFP assessments, it asserts that the “MYFP is not related to the
8 DMFP in any way.” (*Id.*) Contrary to the District’s assertion, the DMFP contains a
9 section devoted to the “Multi-Year Facilities Plan Background and Summary” and sets out
10 the assessment process that formed the basis of the DMFP. (Exhibit 24, at 3.0-1 *et seq.*)
11 Significantly, it describes only the creation of the FCI and the ESS and no additional
12 assessment work, and so far as Mendoza Plaintiffs have been able to determine, does not
13 refer to or incorporate any new assessment of “HVAC, Roofing, and Special Systems” as
14 referenced in the District’s response to their inquiry. Further, it makes no reference that
15 Mendoza Plaintiffs have been able to locate to any changes to the FCI to reflect such an
16 assessment. Thus, the nature and extent of changes to the FCI are opaque at best and
17 further complicate analysis concerning whether there exists a disparity in facilities
18 condition based on the racial composition of students at TUSD schools.

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23 Therefore, the Special Master’s assertion that “it does not appear that the quality of
24 school facilities varies significantly by the proportion of students of different races in a
25 school” may be based on inaccurate and unreliable data. Mendoza Plaintiffs therefore
26 respectfully request that the Court direct the Special Master to investigate and report
27 whether and to what extent TUSD’s unilateral revisions to the FCI and adjustments to
28

1 facilities scores in connection with the DMFP have resulted in inaccurate or unreliable
2 TUSD data, and what actions need to be taken beyond the District “return[ing] to the
3 originally agreed-upon FCI formula delineations”, if any, to provide for the type of
4 consistency in TUSD Annual Report data that would allow for accurate year-to-year
5 comparisons and analysis, and to revise the SMAR to the extent necessary once these data
6 issues have been addressed.
7

8 **OBJECTION NO. 15**

9
10 **THE SPECIAL MASTER’S LIMITED DISCUSSION OF THE DISTRICT’S**
11 **ACTIONS RELATING TO FACILITIES IN THE 2015-16 SCHOOL YEAR**
12 **INCORRECTLY OMITTS DISCUSSION OF THE DEVELOPMENT OF THE**
13 **DMFP, WHICH CONTAINS NO USP-MANDATED PRIORITIES, FUNDING FOR**
14 **WHICH THE DISTRICT NOW IS CONSIDERING WITH DRAFT BOND**
15 **ELECTION LANGUAGE FOR THE NOVEMBER 2017 ELECTION BALLOT**

16 The District’s DMFP, which do not contain USP-mandated priorities for facilities
17 projects, suggests the District intends to no longer comply with those provisions and bears
18 on the District’s good faith desegregation efforts as they relate to facilities and therefore
19 should have been addressed in the SMAR.

20 The District presented the DMFP it developed in 2015-16 (discussed above) to its
21 Governing Board on June 14, 2016. (See Jun 14, 2016 Agenda Items document attached
22 as Exhibit 26.) That DMFP sets a list of general “TOP PRIORITIES/OBJECTIVES” that
23 are unconnected to the priorities articulated in USP Section IX, A, 3. (Exhibit 24 at 4.0-1)
24 Notably missing is any weighting of priorities to address the needs of the District’s racially
25 concentrated schools. Significantly, while the DMFP does acknowledge that the MYFP
26 “assures Racially Concentrated Schools are not overlooked and are given a higher level of
27 consideration” (Id., at 3.0-4), there is no statement in the DMPF about how its “top
28

1 priorities” and those of the MYFP are to be reconciled and, as noted above, the District has
2 asserted that “the MYFP is not related to the DMFP in any way.” (TUSD Response to RFI
3 884 attached as Exhibit 27.)
4

5 While the DMFP “top priorities”⁴³ may be logical, they not only fail to
6 include the priority of focusing on racially concentrated schools; so far as Mendoza
7 Plaintiffs can discern they make no effort to reconcile the achievement of priorities like
8 achieving “optimum school size” or the expansion of teaching areas for successful
9 programs with the District’s desegregation obligations under the USP.
10

11 The significance of the omission of any discussion of this issue in the SMAR is
12 underscored by the fact that the District confirms its intent to proceed with implementation
13 of the DMFP by now considering November 2017 election ballot draft language for a bond
14 to implement the DMFP. (*See* May 23 Agenda Item document attached as Exhibit 28.)
15 Given the significant implications this issue has on future District implementation of USP-
16 mandated facilities project priority and on whether the District is in good faith
17 implementing USP facilities provisions, Mendoza Plaintiffs object to the omission of this
18 discussion in the SMAR. The Mendoza Plaintiffs further respectfully request that this
19 Court direct the Special Master to revise the SMAR to specifically address the
20 development of the DMFP and the implications of that plan and progress in preparing a
21 bond to fund it on the District’s implementation of the USP’s facilities provisions.
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27 ⁴³ The priorities listed on page ii of the DMFP are: repairs, key facility improvements to
28 enhance learning, technology, school renovations for 21st Century Learning and optimum
school size, support expansions of successful programs, reduce the number of active
portable classrooms, and “transportation”.

1 **CONCLUSION**

2 Based on the foregoing and the record herein, Mendoza Plaintiffs respectfully
3 request that the Court sustain their objections to the 2015-16 SMAR and direct that the
4 Special Master supplement and/or revise that SMAR in the following respects pursuant to
5 the oversight, monitoring, and reporting responsibilities assigned to the Special Master in
6 Section X,E of the USP and the Order Appointing Special Master:
7

8 (1) By preparing an R&R addressing the parties' dispute concerning whether ISI
9 and DAEP constitute "exclusionary discipline" and whether the District has amended
10 Regulations JK-R1 and JK-R2 in a manner that deprives students of their rights to due
11 process and/or hearing rights under the USP when referred to ISI and/or DAEP.
12

13 (2) By investigating and reporting whether and to what extent TUSD DAR data
14 reflect changes or inaccuracies in how ethnicity and ISI/DAEP referrals were reported,
15 what the nature of any such changes/inaccuracies were, and what actions need to be taken,
16 if any, to provide for the type of consistency in TUSD Annual Report data that would
17 allow for accurate year-to-year comparisons and analysis, and to revise the SMAR to the
18 extent necessary once these data issues have been addressed.
19

20 (3) By supplementing the DAR to include any data relating to (a) the racial/ethnic
21 breakdown of ridership on individual buses providing transportation to District schools and
22 (b) the racial/ethnic breakdown of students issued SunTrans passes for public
23 transportation to District schools that was considered by the Special Master in preparing
24 the SMAR that has not already been provided to the Plaintiffs.
25

26 (4) By revising the SMAR to specifically address the development of the Teacher
27 Diversity Plan and the parties' agreement concerning how diversity is to be measured
28

1 under that Plan and to report on the District's progress in achieving diversity under the
2 definitions and approach set forth in that Plan.

3 (5) By revising the SMAR to include the comprehensive assessment of the original
4 ALE Plan of Action and the Supplement, including UHS and ELLs, directed by the Court
5 in its Order of January 27, 2016 (Doc. 1895), including, finalization of the Special
6 Master's February 12, 2017 draft R&R concerning ALEs to *inter alia*, address goals to be
7 applied to assess the successful implementation of the USP provisions relating to access to
8 ALEs (inclusive of UHS and for ELLs and in the dual language programs), the relative
9 participation of white, African American and Latino (including ELL) students in ALEs and
10 their completion rates/outcomes, and any measures that could practicably be undertaken by
11 TUSD, acting in good faith, to improve participation and completion rates and outcomes.
12

13 (6) By revising the discussion of the GSRR in the SMAR to omit references to the
14 GSRR as it affected the 2016-17 school year.

15 (7) By supplementing the SMAR to include discussion of the use of Family Centers
16 to integrate magnet schools and programs, the District's failure to implement the "two
17 way" approach to family engagement set forth in its FACE Plan, and the state of the
18 District's efforts to collect family engagement data and conduct assessments of family
19 engagement efforts.
20

21 (8) By revising the his SMAR to address what the basis is for his finding that "it
22 does not appear that the racial composition of the schools where family engagement is
23 more robust is significantly different than the racial composition of schools with less
24 assertive family involvement."
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1 (9) By supplementing the SMAR to include any data relating to the participation
2 rates by race/ethnicity of TUSD students in extracurricular activities that was considered
3 by the Special Master in preparing the SMAR that has not already been provided to the
4 Plaintiffs and any explanation received from the District as to why such data leads to a
5 different conclusion from that set forth in the DAR.
6

7 (8) By investigating and reporting whether and to what extent TUSD’s unilateral
8 revisions to the FCI and adjustments to facilities scores in connection with the DMFP have
9 resulted in inaccurate or unreliable TUSD data, and what actions need to be taken beyond
10 the District “return[ing] to the originally agreed-upon FCI formula delineations,” if any, to
11 provide for the type of consistency in TUSD Annual Report data that would allow for
12 accurate year-to-year comparisons and analysis, and to revise the SMAR to the extent
13 necessary once these data issues have been addressed.
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15

16 (9) By revising the SMAR to specifically address the development of the DMFP
17 and the implications of that plan and progress in preparing a bond to fund it on the
18 District’s implementation of the USP’s facilities provisions.
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1 Dated: July 17, 2017

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MALDEF
JUAN RODRIGUEZ
THOMAS A. SAENZ

4

5

/s/ Juan Rodriguez
Attorney for Mendoza Plaintiffs

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PROSKAUER ROSE LLP
LOIS D. THOMPSON
JENNIFER L. ROCHE

9

10

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/s/ Lois D. Thompson
Attorney for Mendoza Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on I electronically submitted the foregoing MENDOZA PLAINTIFFS' OBJECTIONS TO THE SPECIAL MASTER'S 2015-16 ANNUAL REPORT AND REQUEST THAT HE BE DIRECTED TO SUPPLEMENT AND REVISE PORTIONS THEREOF 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: July 17, 2017

/s/ Juan Rodriguez

Juan Rodriguez