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Author

López, Francesca

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WHEN DESEGREGATION LIMITS OPPORTUNITIES TO LATINO YOUTH: The Strange Case of the Tucson Unified School District

FRANCESCA LÓPEZ*

Desegregation court orders in American schools stem from the 1954 *Brown v. Board of Education (Brown I)*¹ decision that overturned de jure segregation,² which had been previously upheld by the “separate but equal” decision in *Plessy v. Ferguson*.³ Whereas the *Brown I* decision “...pronounces the principle of separate as inherently unequal...,”⁴ *Brown v. Board of Education II (1955)*⁵ (“*Brown II*”) placed the burden of formulating a plan to “effectuate a transition to a racially non-discriminatory school system”⁶ on school districts and provided lower courts with the authority to evaluate the extent to which school districts had complied.⁷ *Brown II* set the precedent for District Court oversight of school district compliance with desegregation orders;⁸ however, the widespread resistance and apathy toward *Brown II* by school districts was not forcefully decried until the Supreme Court’s decision in *Green v. County School Board of New Kent County (1968)*, which introduced

* Francesca López, Ph.D. is an associate professor in the Educational Policy Studies and Practice department at the University of Arizona. Her research is focused on the ways educational settings promote achievement for Latino youth and has been funded by the American Educational Research Association Grants Program, the Division 15 American Psychological Association Early Career Award, and the National Academy of Education/Spencer Postdoctoral Fellowship. Dr. López is a *National Education Policy Center Fellow*, and is currently senior associate editor for *the American Journal of Education* and co-editor of the *American Educational Research Journal*.

¹ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

² De jure is Latin for “from law,” which here refers to segregation resulting from laws/policies.

³ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁴ Gloria Ladson-Billings, *Landing on the Wrong Note: The Price We Paid for Brown*, 33 *EDUCATIONAL RESEARCHER* 3, 7 (1994).

⁵ *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

⁶ *Id.* at 301.

⁷ *Id.* at 300.

⁸ *Id.*

desegregation criteria that continue to be at the center of desegregation oversight efforts by courts today.⁹ In his Opinion of the Court in *Green*, Justice Brennan explained that the immediate objective of *Brown II* “was with making an initial break in a long-established pattern of excluding Negro children from schools attended by white children”¹⁰ but that “[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*.”¹¹

Most often, courts ordered busing to achieve integration¹² which in effect integrated students by socioeconomic status because “race and poverty were strongly correlated at that time.”¹³ Busing, however, received steadfast resistance¹⁴ and gave way to voluntary desegregation measures¹⁵ with the implementation of magnet schools—schools with a unique focus designed to attract families throughout a district.¹⁶ Although there was notable progress in integration from the mid-1960s to the late 1980s, resegregation has been increasing steadily since that time.¹⁷

In her critique of *Brown II*, Ladson-Billings—a Professor at the University of Wisconsin-Madison and National Academy of Education member who specializes in critical race theory and the successful teaching of African American students—describes the work of desegregation as “working for the right cause,” but asserts that the issue lies in “the remedy, or more specifically, with the implementation of *Brown* as endorsed by the Court.”¹⁸ To date, desegregation continues to be defined as the extent to which students of color “attend school with White students.”¹⁹

⁹ *Green v. Cty. Sch. Bd. of New Kent Cty*, 391 U.S. 430 (1968).

¹⁰ *Id.* at 435-36.

¹¹ *Id.* at 439 (emphasis added).

¹² Erica Frankenberg, et al., *A Multiracial Society with Segregated Schools: Are We Losing the Dream*, HARV. CIV. RTS. PROJECT, Jan. 2003, at 17.

¹³ Gregory J. Palardy, *High School Socioeconomic Segregation and Student Attainment*, AM. EDUC. RES J., Aug. 2013, at 715.

¹⁴ Gary Orfield, *Public Opinion and School Desegregation*, 96, 4 TEACHERS COLLEGE RECORD 654 (Summer 1995).

¹⁵ *Green* 391 U.S. at 440 (stating that in desegregating a dual system, a plan utilizing “freedom of choice” is not an end in itself” and that voluntary desegregation had been in place prior to the decision, but magnet schools were meant to appeal to families as a way to achieve integration).

¹⁶ Mary Metz, *Life Course of Magnet Schools: Organizational and Political Influences*, 85 TEACHERS COLLEGE RECORD 411, no. 3 (Spring 1984).

¹⁷ Gary Orfield, et al., *The Growth of Segregation in American Schools: Changing Patterns of Separation and Poverty Since 1968*, 27 EQUITY AND EXCELLENCE IN EDUCATION 5 (1994).

¹⁸ Ladson-Billings, *supra*, at 5.

¹⁹ 27 Orfield, *supra*, at 6.

Despite exceptions,²⁰ this myopic view of desegregation remains largely unchallenged in the extant literature. Moreover, the surge of Latino students in schools due to immigration patterns²¹ coupled with the rising de facto segregation²² among Latinos²³ is rarely examined against the continued use of archaic desegregation criteria.

In this article, I present a case study of a large Southwestern school district's desegregation that exemplifies the conflict between the intent of *Brown I* and Court oversight of desegregation orders, and discuss the resulting implications for Latino students who are now the numerical majority in the school district. In examining the Tucson Unified School District's (TUSD) more than four decades old desegregation case, I elaborate on two key tensions surrounding the issue of desegregation for Latino students. The first involves the confounding and oversimplification of de jure and de facto segregation, both by the courts and desegregation scholars. That is, whereas *Brown I* and subsequent cases compelled school districts to formulate plans to address vestiges of de jure segregation, district court oversight has relied on evidence that is often an artifact of de facto influences. In more recent times, this includes demographic shifts of students within schools that have been shaped not only by immigration patterns, but also charter school and open-enrollment policies. Incongruously, state policies that explicitly contribute to segregation are considered de facto, and remain absent from consideration by the lower courts. The failure to consider distinctions between de facto and de jure influences by the lower courts has exacerbated obstacles Latino students face in their educational experiences. The second key tension is embedded in the treatment of race and ethnicity, which is most often reflected in an accounting-based formulation of diversity instead of one that acknowledges power and access. Here, I elaborate on the lower courts' reliance on the extent to which White students enroll in schools that serves to perpetuate the power differential rooted in de jure

²⁰ See Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, YALE L.J., February 1976; Ladson-Billings, *supra*; Jennifer Woodward, *How Busing Burdened Blacks: Critical Race Theory and Busing for Desegregation in Nashville-Davidson County*, J. NEGRO EDUC., Winter 2011.

²¹ Eugene E. Garcia & Ellen C. Frede, *Young English Language Learners: Current Research and Emerging Directions for Practice and Policy* 10-12 (2010).

²² De facto is Latin for "from fact," which here refers to segregation resulting from social practices rather than laws/policies.

²³ Richard Fry, *The Rapid Growth and Changing Complexion of Suburban Public Schools*, PEW HISPANIC CENTER 12 (2009).

segregation. For Latinos in the U.S., the tension is maintained due in part by the failure of lower courts to consider "...race as subordination, rather than race per se..."²⁴ in its oversight. To address these tensions and improve the educational outcomes of Latinos, I present evidence from TUSD magnet schools that support a reconceptualization of desegregation that can more effectively fulfill the goals of *Brown I* and improve educational outcomes for Latino students.

THE EVOLUTION OF *FISHER-MENDOZA V. TUSD*

In 1909, TUSD decreed the separate-but-equal²⁵ segregation of Black students in its schools,²⁶ and subsequently opened Dunbar, a K-8 school for African American students.²⁷ Three years prior to the reversal of segregative policies with the Supreme Court's decision in *Brown I*, however, TUSD became the first district in the state of Arizona to repeal mandatory segregation in 1951.²⁸ As a result, Dunbar was renamed John Spring and students were reassigned to the neighboring schools, Roosevelt and University Heights (TUSD, 1978).²⁹ Without a more fully-defined desegregation plan, the Department of Health, Education, and Welfare (HEW) determined in 1973 that TUSD schools still remained racially imbalanced and required more forceful action to be in compliance with the *Brown II* decision.³⁰ Despite ceasing new school construction in areas of population growth, modifying attendance lines, and initiating a voluntary "ethnic transfer policy to encourage student transfers to other schools when both schools would improve in ethnic balance,"²⁸ TUSD schools were still "racially identifiable"³¹ in 1974.³²

²⁴ Ian Haney-López, *Race and Colorblindness after Hernandez and Brown*, 25 CHICANA-LATINO L. REV. 61, 62 (2005).

²⁵ Plessy v. Ferguson, 163 U.S. 537 (1896).

²⁶ James Cooper, *The First Hundred Years: The History of Tucson School District 1, 1867-1967*, TUCSON UNIFIED SCHOOL DISTRICT (2015), http://www.tusd1.org/contents/distinfo/deseg/Documents/Deseg_TIMELINE.pdf.

²⁷ Georgia Cole Brosseau, *The History of Tucson School District, 1867-1993*, TUCSON UNIFIED SCHOOL DISTRICT (1993) <http://www.tusd.k12.az.us/contents/distinfo/history/history9303.asp>.

²⁸ *Id.*

²⁹ See Brown, *supra*; see also *The Desegregation Decision and its effect on the Tucson Unified District*, TUSD NEWS Vo. 21 No. 1 (Tucson Unified School District), Summer 1978.

³⁰ Brosseau, *supra*.

³¹ The term "racially identifiable" refers to schools where a majority of students share a particular race/ethnicity.

³² *Id.* at 47.

That same year, the National Association for the Advancement of Colored People (NAACP) and the Mexican American Legal Defense and Educational Fund (MALDEF) each filed a lawsuit against TUSD on the behalf of African American and Mexican American parents. The lawsuit charged the district with segregation and discrimination.³³ The cases were consolidated in 1975; Roy Fisher and Maria Mendoza “were certified as class representatives” for the students.³⁴ In its 1978 decision, the District Court found that TUSD had indeed failed to remedy vestiges of segregation and discrimination for African American students, but ...found no such dual school system had existed with respect to Mexican American students, nor did any continuing system-wide practice of intentional discrimination occur.³⁵

Nevertheless, to remedy “current effects of the past intentionally segregative acts of the School District”, the District Court ordered the desegregation of nine schools.³⁶ Of the six schools considered to be vestiges of prior segregation, John Spring, Roosevelt, and University Heights were closed in 1978.³⁷ The remaining three schools were considered to reflect past discriminatory acts that included the timing of construction and attendance boundaries, which resulted in a school that was predominantly White despite being situated in predominantly Mexican American community. TUSD submitted a Settlement Agreement that went beyond the Court’s order, delineating desegregation efforts in 21 schools by closing some schools and establishing magnet schools to promote voluntary desegregation. The Court approved TUSD’s desegregation plans, establishing federal oversight of the district.³⁸

Among the 28 schools deemed racially segregated by HEW in 1973 and the Court in 1978 were Borton, Carrillo, Davis Bilingual, and Holaday elementary schools.³⁹ As outlined in the Settlement Agreement, these elementary schools became magnet schools in the late 1970s and early 1980s to address desegregation by attracting non-minority students from other areas of the district.⁴⁰ Soon after their designation as magnet

³³ *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1341 (9th Cir. 1980).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Brousseau, supra.*

³⁸ *Mendoza*, 623 F.2d at 1353.

³⁹ *Brousseau, supra.*

⁴⁰ *Id.*

schools, all of the schools were lauded as successful exemplars of integration having met the court-ordered ethnic proportions that were not to exceed 50%⁴¹ in any category.⁴² The Superintendent of TUSD at the time wrote:

The Tucson Unified School District has avoided most of the negative and divisive results of desegregation. Credit is due largely to parent and community involvement, magnet programs that encouraged and produced voluntary transfers, and board support for and commitment to success rather than bare-bones compliance.⁴³

Although credit for meeting integration criteria is appropriately attributed to the appeal of magnet schools, there were other factors that abetted the increase of White student enrollment in previously majority-minority schools. One contributing factor was TUSD Board Policy 5090, which had been in place since 1969 to prevent students from transferring within the district unless the transfer improved the ethnic balance of both schools.⁴⁴ District demographics also played a role, given that White students represented a numerical majority (65%) of district enrollment at the time.⁴⁵ Together, these factors contributed to the appearance that integration was a success due to the voluntary nature of magnet schools.

Notwithstanding evidence that TUSD was compliant with the court-ordered ethnic proportions soon after the involvement of the courts,⁴⁶ it was more than a quarter of a century before the District Court issued a *sua sponte* order in 2004, compelling TUSD to file a petition for unitary status—a “unitary, nonracial system”⁴⁷—that would terminate federal oversight.⁴⁸ In response to TUSD’s petition in 2005, the District Court determined that TUSD had not provided sufficient evidence, resulting in the court’s inability to “make the requisite finding as to ... [w]hether the vestiges of *de jure* segregation have been eliminated to the

⁴¹ The proportion was based on the Office of Civil Rights criteria.

⁴² See Brousseau, *supra*; see also Merrill A. Grant, *How to Desegregate—And Like It*, 63 PHI DELTA KAPPAN 539 (1982).

⁴³ Grant, *supra*, at 539.

⁴⁴ E.g. Fisher v. United States, 549 F. Supp. 2d 1132, 1141 (D. Arizona 2008).

⁴⁵ JOHN CARROLL, TUCSON UNIFIED SCH. DIST., RESPONDING TO CHANGE IN TUCSON UNIFIED SCHOOL DISTRICT (2010).

⁴⁶ See Brousseau, *supra*; Grant, *supra*.

⁴⁷ *Green*, 391 U.S. at 391.

⁴⁸ E.g. Fisher v. Tucson Unified Sch. Dist., 652 F. 3d 1131, 1137 (9th Cir. 2011).

extent practicable”⁴⁹ and required TUSD to submit a comprehensive report detailing efforts to comply with student assignment requirements.⁵⁰ After a review of the compliance effort documentation, the District Court deemed TUSD unitary in 2009,⁵¹ in spite of its acknowledgement that the district had not monitored desegregation efforts to the extent required by the Court. Judge Bury asserted: “...the Court finds that TUSD’s lack of good faith is proven by the simple fact that these expert reports were only secured by the Defendant to belatedly support its Petition for Unitary Status.”⁵² Nevertheless, in his decision deeming TUSD unitary, pending the district’s submission of a post-unitary plan, Judge Bury stated:

The Court finds that the ethnic and race ratios required under the Settlement Agreement desegregation plans were implemented and maintained for 5 years, and eliminated to the extent practicable the vestiges of de jure segregation.⁵³

The Plaintiffs, Fisher and Mendoza, appealed the decision; the Ninth Circuit Court reversed and remanded the District Court’s decision.⁵⁴ In its decision, the Ninth Circuit Court considered the District Court’s findings that TUSD had neither demonstrated good-faith compliance with the desegregation efforts outlined in the Settlement Agreement nor eliminated vestiges of past discrimination given its negligence in addressing *Green* factors⁵⁵ that included transportation and extracurricular activities.⁵⁶ Accordingly, the Ninth Circuit Court decision pointed to Supreme Court precedent, which guides courts to grant unitary status only *after* good faith efforts are presented, and not when “a plan that merely promises future improvements is adopted.”⁵⁷ Given the complexities of the case, the District Court appointed Willis D. Hawley as Special Master in

⁴⁹ *Id.* at 1138.

⁵⁰ *Id.*

⁵¹ *Fisher*, 549 F. Supp. 2d at 1168.

⁵² *Id.* at 1144-45.

⁵³ *Id.* at 1141.

⁵⁴ *Fisher*, 652 F. 3d at 1134.

⁵⁵ The Supreme Court decision in *Green* (1968) shifted compliance with Brown II from cursory efforts to explicit racial balance. Among the factors that required consideration are race ratios for students and faculty, as well as equality in facilities, transportation, and extracurricular activities.

⁵⁶ *Fisher*, 652 F. 3d at 1139-41.

⁵⁷ *Id.* at 1142.

January 2012.⁵⁸ Hawley's role, as an expert on desegregation issues, was to oversee the creation of a unitary status plan (USP) for TUSD.⁵⁹

Although the District Court had found evidence that TUSD had previously maintained appropriate ethnic ratios in magnet schools when it granted TUSD unitary status, the reversal of the decision required that TUSD evaluate the current state of integration in all magnet schools.⁶⁰ In following the Court's orders, TUSD contracted Education Consulting Services (ECS) to review the magnet programs for integration. Among the agency's findings was that many of the magnet schools were racially identifiable and lacked the infrastructure that would enable the district to achieve court-ordered integration, which included central coordination and support; focus and strategy regarding diversity, outreach, and marketing; and recruitment efforts.⁶¹ It should be noted that the findings regarding TUSD's lack of integration in magnet schools after several years of meeting enrollment ratios came shortly after TUSD's Board Policy 5090, which had prevented students from transferring within the district unless the transfer improved the ethnic balance of both schools, was deemed unconstitutional by Judge Bury in 2007.⁶² Judge Bury based his decision on the Supreme Court's ruling in the consolidated cases of *Parents v. Seattle School District* and *Meredith v. Jefferson County Board of Education*,⁶³ which considered any use of race or ethnicity as a factor in voluntary desegregation student assignment plans unconstitutional.⁶⁴ The Supreme Court's decision, however, was based in part on the fact that the districts involved in the case were "not under a court-ordered desegregation decree."⁶⁵ As such, Judge Bury's error in eliminating

⁵⁸ *Fisher v. Lohr*, Nos. CV 74- 90 TUC DCB, 2011 WL 4102233, at *4 (D. Ariz. Sept. 14, 2011); *see, e.g., Fisher v. Lohr*, No. CIV 74- 090 TUC DCB (D. Ariz. Jan. 5, 2012).

⁵⁹ *Fisher*, No. CIV 74- 090 TUC DCB.

⁶⁰ *Fisher*, 549 F. Supp. 2d at 1141 (D. Ariz. 2008).

⁶¹ TUCSON UNIFIED SCHOOL DISTRICT, MAGNET PLAN UPDATE, SPECIAL MASTER, AND FOLLOW-UP MEETING (2013), available at <http://www.tusd.k12.az.us/contents/distinfo/superletter/Documents/update11-08-13.pdf>.

⁶² *Fisher v. United States*, Nos. CV 74-90 TUC DCB, 2007 WL 2410351 (D. Ariz. Aug. 21, 2007).

⁶³ The 2006 decision in the consolidated cases of *Meredith v. Jefferson County Board of Education* and *Parents v. Seattle School District* states that public school systems could not seek to achieve or maintain integration through measures that take explicit account of a student's race.

⁶⁴ *Parents Involved in Community Schools v. Seattle Sch. Dist. 1*, 551 U.S. 701, 706 (2007); *Meredith v. Jefferson County Bd. of Educ.*, 547 U.S. 1178 (2006) (mem.).

⁶⁵ OFFICE OF CIVIL RIGHTS, ARIZONA STATE SENATE ISSUE BRIEF: SCHOOL DESEGREGATION IN

Board Policy 5090 contributed in part to TUSD's inability to maintain the racial and ethnic balance across magnet schools that is essential to achieving unitary status.

Judge Bury directed Hawley to propose a magnet plan in collaboration with the Plaintiffs and TUSD that would result in the most effective remediation of past segregation reflected by no more than 70% of students belonging to any one ethnic or racial group⁶⁶—a modification of the original 50% racial concentration threshold that considered the current district demographics. To wit, at the time of the Court's decision in 1978, TUSD's student enrollment was 65% White; by 2013, it was 65% Latino.⁶⁷ After reviewing ECS's findings, Hawley, TUSD, and the Plaintiffs outlined a magnet plan that included the elimination of magnet status for several schools located in the most Latino-dense areas of the district whereas magnet status would be retained and potentially expanded in schools that were located in less Latino-dense areas. Thus, Borton and Holladay were labeled successful magnet⁶⁸ schools whereas Carrillo and Davis Bilingual were considered non-compliant and were threatened with the loss of magnet status by Hawley.⁶⁹

Although the schools deemed unsuccessful are located in the most Latino-dense areas of the district, non-compliance due to ethnic and racial proportions is a relatively recent phenomenon. Carrillo's Latino enrollment did not surpass the threshold until the 2003-2004 school year; the same year White student enrollment in the district dropped to approximately 36%.⁷⁰ For Davis Bilingual, the pivotal year was 2000-2001,⁷¹ the year Arizona's Proposition 203 replaced bilingual education with Structured English Immersion (SEI). Notably, English Learner (EL) enrollment at Davis (both students who were classified as ELs and reclassified as formerly EL) peaked the school year after the policy changed—a

ARIZONA, at 3 (2013), available at <http://www.azleg.gov/briefs/Senate/School%20Desegregation%20in%20Arizona.pdf>.

⁶⁶ Fisher v. United States, No. CV 74-204 TUC DCB, 2013 WL 6633955 at *7 (D. Ariz. Dec. 16, 2013).

⁶⁷ CARROLL, *supra*.

⁶⁸ Other successful magnets include Booth-Fikett K-8; Dodge Middle School; and Palo Verde High School.

⁶⁹ TUCSON UNIFIED SCHOOL DISTRICT, MAGNET PLAN UPDATE, SPECIAL MASTER, AND FOLLOW-UP MEETING (Nov. 2, 2013), available at <http://www.tusd.k12.az.us/contents/distinfo/super-letter/Documents/update11-08-13.pdf>. See *infra* Tables 1-4.

⁷⁰ See *infra* Figure 1.

⁷¹ See *infra* Tables 1-2.

level of enrollment that has been maintained since.⁷² Davis Bilingual has historically been at the center of much attention because of its efforts to instill bilingualism and culture as a means to promote achievement for Latino students in spite of Arizona's efforts to eliminate Mexican American cultural and linguistic heritage in schools with various state policies,⁷³ which is evident in their enrollment.⁷⁴ Indeed, the relatively high Latino enrollment at Davis Bilingual is in part attributed to the school's emphasis on language and culture, which has a particularly strong appeal to Latino families who select the magnet school so that their children can become biliterate and bicultural.⁷⁵ It is also important to note that although Borton and Holladay were considered compliant at the time of the magnet plan, both schools have witnessed the same steady declines in their White student populations⁷⁶ as the district overall.⁷⁷ Indeed, as of 2013-2014, Holladay was no longer considered compliant because their Latino enrollment surpassed the 70% threshold set forth by Hawley,⁷⁸ if enrollment patterns continue, Borton will likely also be out of compliance by the USP review year of 2017.⁷⁹

One of the many reasons segregation has been a lasting concern is due to the evidence that it promotes stratification of educational opportunity.⁸⁰ Despite reflecting a proportion of Latino students that was too high according to the Court's criteria, Carrillo and Davis Bilingual have been considered academically rigorous and successful in promoting academic achievement for their students, a majority of whom were identi-

⁷² See *infra* Figure 3.

⁷³ See FORBIDDEN LANGUAGE: ENGLISH LEARNERS AND RESTRICTIVE LANGUAGE POLICIES (Patricia Gándara & Megan Hopkins eds., 2010); EUGENE E. GARCIA, KERRY LAWTON, & EDUARDO H. DINIZ DE FIGUEIREDO, THE EDUCATION OF ENGLISH LANGUAGE LEARNERS IN ARIZONA: A LEGACY OF PERSISTING ACHIEVEMENT GAPS IN A RESTRICTIVE LANGUAGE POLICY CLIMATE (2010), available at <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/the-education-of-english-language-learners-in-arizona-a-legacy-of-persisting-achievement-gaps-in-a-restrictive-language-policy-climate/garcia-az-ell-gaps-2010>; Oscar Jiménez-Castellanos et al., *English Language Learners: What's at Stake for Arizona?* (2013).

⁷⁴ See *infra* Table 2; See *infra* Figure 3.

⁷⁵ Interview with Carmen Campuzano, Principal, Davis Bilingual Elementary Sch., in Tucson Ariz. (Oct. 2, 2013).

⁷⁶ See *infra* Table 3-4.

⁷⁷ See *infra* Figure 1.

⁷⁸ TUCSON UNIFIED SCHOOL DISTRICT, MAGNET PLAN UPDATE, SPECIAL MASTER, AND FOLLOW-UP MEETING (2013), available at <http://www.tusd.k12.az.us/contents/distinfo/superletter/Documents/update11-08-13.pdf>.

⁷⁹ See *infra* Tables 3-4.

⁸⁰ JAMES S. COLEMAN ET AL., EQUALITY OF EDUCATIONAL OPPORTUNITY 307 (1966).

fied as Latino. Carrillo is one of only a few TUSD schools to have earned an “A” rating on the state school grading system⁸¹ since 2012. Davis Bilingual, a school that provides blocks of academic literacy instruction in Spanish during the day to promote bilingualism, has consistently earned a “B” since 2012.

Hawley introduced a proposed magnet plan that suggested the elimination of several magnet schools⁸² during the 2013-2014 school year, but TUSD’s new Superintendent⁸³ opposed the plan on the grounds that it had been designed prior to his arrival and affected schools had not been provided with an opportunity to meet the criteria, since the criteria “until recently, did not exist.”⁸⁴ Superintendent-initiated community forums that took place in the affected schools made suggestions to modifications to the magnet plan, which included an evaluation of the ways in which ethnicity is reported and opportunities for the affected magnet schools to demonstrate compliance over two to three years. The TUSD Governing Board unanimously approved the modified magnet plan on October 22, 2013, sparing Carrillo and Davis Bilingual from losing magnet status—a salient feat given that the loss of magnet status is likely to promote the schools’ closures as a result of their dependence on magnet enrollees and the funding that follows enrollment.⁸⁵

⁸¹ *The A-F Letter Grade System*, ARIZ. DEP’T OF EDUC. (July 20, 2012), <http://www.azed.gov/research-evaluation/files/2012/08/2012-a-f-letter-grades-guide-for-parents.pdf> (documenting that the A-F school grading system comprises student growth for all students, student growth for the lowest 25% of students, percentage of students passing the state assessment, and the percentage of ELs reclassified as non-ELs).

⁸² Willis D. Hawley, *Magnet Plan Update, Special Master and Follow-up Meeting*, TUCSON UNIFIED NEWSLETTER (Nov. 8, 2013), <http://www.tusd.k12.az.us/contents/distinfo/superletter/Documents/update11-08-13.pdf> (documenting that three high schools were slated to have their magnet status eliminated).

⁸³ H.T. Sanchez replaced John Pedicone who resigned after serving only two of his five-year term. The fifth TUSD superintendent in ten years, Pedicone oversaw the dismantling of the highly controversial Mexican American Studies courses that were deemed illegal by the Arizona Department of Education in 2010.

⁸⁴ Alexis Huicochea, *Forums on Magnet Plans at 3 TUSD Schools Begin Today*, Arizona Daily Star (Oct. 1, 2013, 8:45 AM), available at: http://tucson.com/news/local/education/forums-on-magnet-plans-at-tusd-schools-begin-today/article_68550d2e-b4c8-5705-bb9a-5dc627c322e3.html.

⁸⁵ *Magnet Plan in Accordance with the Unitary Status Plan*, TUCSON UNIFIED SCH. DIST. (Oct. 22, 2013), <http://www.tusd1.org/contents/govboard/packet10-22-13/10-22-13-BA112.PDF>; see *Tucson Unified Sch. Dist. Governing Board Agenda for Regular Board Meeting*, TUCSON UNIFIED SCH. DIST. (Oct. 22, 2013), <http://www.tusd1.org/contents/govboard/actions/10-22-13R.pdf>.

Hawley, however, was unimpressed with the amended magnet plan. In a letter to the Superintendent on November 2, 2013, Hawley stated that the plan "...should make clear that the attainment of integrated status is not one of the criteria for magnet designation, it is the necessary criterion."⁸⁶ Thus, the TUSD desegregation case had evolved from one where the Court had found that no dual system existed for Latino students, to one that was compliant with ethnic ratios, to one that was not compliant because of other *Green* factors, which then became non-compliant according to Hawley due to Latino density in magnet schools regardless of other *Green* factors. Despite TUSD's opposition to Hawley's stance, the Special Master's position has remained steadfast. To be compliant, Carrillo and Davis were directed to enroll more White students, which required that they turn away the very students the desegregation order is supposed to protect.⁸⁷ Upon inspection of enrollment patterns, this pressure has resulted in slight increases in the number of White students attending Carrillo and Davis.⁸⁸ Although this has resulted in Hawley's decision to spare Carrillo and Davis from losing magnet status as of September 2015,⁸⁹ enrollment efforts have also reduced the number of Latino students who have access to these high achieving schools.⁹⁰ Integration has come at a cost for Latino youth in TUSD.

Desegregating schools with the use of magnet programs has long been lauded as the answer to segregation,⁹¹ but closer inspection reveals that because success is defined as appealing to White families,⁹² Black and Latino children often do not benefit from the programs. That is, magnet programs deemed successful are those that do not have a concentration of minority students, yet minority students may still reflect

⁸⁶ TUCSON UNIFIED SCHOOL DISTRICT, MAGNET PLAN UPDATE, SPECIAL MASTER, AND FOLLOW-UP MEETING (2013), available at <http://www.tusd.k12.az.us/contents/distinfo/superletter/Documents/update11-08-13.pdf>.

⁸⁷ See Alexis Huicochea, *Desegregation Overseer Faults Latest TUSD Plan*, ARIZONA DAILY STAR (Nov. 15, 2013), http://tucson.com/news/local/education/desegregation-overseer-faults-latest-tusd-plan/article_3e31696c-55a7-56c7-b72d-6cbcd09bfbc0.html.

⁸⁸ See *infra* Tables 1-2.

⁸⁹ Alexis Huicochea, *Magnet Status for 6 TUSD Schools in Jeopardy*, Arizona Daily Star (Sept. 9, 2015, 6:30 PM), http://tucson.com/news/local/education/magnet-status-for-tusd-schools-in-jeopardy/article_5f3e53e8-b20c-599c-92c7-3e25bd836eaf.html.

⁹⁰ *Id.*

⁹¹ LAURI STEELE & ROGER LEVINE, EDUCATIONAL INNOVATION IN MULTIRACIAL CONTEXTS: THE GROWTH OF MAGNET SCHOOLS IN AMERICAN EDUCATION (1994).

⁹² Ladson-Billings, *supra*.

disproportionate rates of school failure.⁹³ The practice of funding desegregation efforts that are centered on the attractiveness of a particular school to White families results in “the ongoing discussion in many communities of color that ask why is it that money and resources follow White middle class children?”⁹⁴ Certainly, TUSD has witnessed that very question arise among the Carrillo and Davis Bilingual schools’ communities given that the recommendations included removing magnet status from Latino-dense schools only to then expand magnet schools on the East-side of the city, where there is a larger proportion of White students. This proposition fails to consider both the fact that White student enrollment in TUSD is at an all-time low (approximately 21%) and Latino students are excelling at the Latino-dense magnet schools—in spite of the patterns of decreasing White student enrollment.⁹⁵

The TUSD desegregation case exemplifies the complex issues that surround desegregation orders when they are far removed from their original intent. Whereas the original TUSD desegregation case was consistent with the spirit of *Brown* in its admonition of vestiges of dual systems, the present status of the case suggests reliance on de facto evidence to support the notion that TUSD remains non-compliant. The forces that have prompted the de facto⁹⁶ segregation of Latinos in TUSD, often rooted in the propagation of “liberty, rather than equality,”⁹⁷ however, are ignored by the Courts to the detriment of Latino youth.

⁹³ AFRICAN AMERICANS AND THE RISE OF BUFFALO’S POST-INDUSTRIAL CITY, 1940 TO PRESENT: INTRODUCTION (Henry Louis Taylor, eds., 1990).

⁹⁴ Ladson-Billings, *supra*, at 9.

⁹⁵ See *infra* Figure 1.

⁹⁶ Ruben Donato and Jarrod S. Hanson, *Legally White, Socially “Mexican”*: *The Politics of De Jure and De Facto School Segregation in the America Southwest*, 82 HARV. EDUC. REV. 202, 204 - 205 (2012) (challenging the idea that the segregation of Mexican Americans was de facto and asserting that labeling forced segregation as de facto allows for easy dismissal of the impact and intentionality of policy decisions made at the local level, and it can hide the deliberate and racial nature of the segregation Mexican Americans experienced).

⁹⁷ Karen D. Thompson, *Is Separate Always Unequal? A Philosophical Examination of Ideas of Equality in Key Cases Regarding Racial and Linguistic Minorities in Education*, 50 AMERICAN EDUCATIONAL RESEARCH JOURNAL 1249, 1269 (2013).

TENSIONS SURROUNDING DE JURE AND DE FACTO SEGREGATION

Although recent evidence does not suggest that resegregation is returning us to a pre-*Brown* era,⁹⁸ some scholars have blamed the resegregation of students of color on the dismissal of court oversight.⁹⁹ About 800 desegregation court orders in American school districts exist; however, close to 400 had yet to be dismissed in 2010.¹⁰⁰ Scholars have also blamed resegregation on the waning of mandatory busing that began in the early 1980s and argue against the notion of White flight claiming that “there has been no significant redistribution between the sectors of American education.”¹⁰¹ There is evidence, however, that early resistance to integration by White families that prompted an increase in enrollment in private schools¹⁰² has evolved to present-day White flight in the name of “choice,” which often takes the form of mobility into charter schools,¹⁰³ as well as the use of open enrollment policies¹⁰⁴ across school districts.¹⁰⁵ There is also ample evidence for the “secession of the successful,”¹⁰⁶ or the propensity of White families to leave neighborhoods as the minority population increases—particularly when they have more resources to

⁹⁸ Kori J. Stroub & Meredith P. Richards, *From Resegregation to Reintegration: Trends in the Racial/ Ethnic Segregation of Metropolitan Public Schools*, 50 AMERICAN EDUCATIONAL RESEARCH JOURNAL 497 (2013).

⁹⁹ 27 Orfield, *supra*; Sean F. Reardon, et. al., *Brown Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 J. POLICY ANALYSIS & MANAGEMENT (2012).

¹⁰⁰ Data from the Common Core of Data cataloged by Reardon, Grewal, Kalogrides, and Greenberg (2012) includes all school districts with at least 2000 students ever under court order for desegregation.

¹⁰¹ For a detailed review of the methodological limitations of this body of work, see Stroub and Richards (2013); 27 Orfield, *supra*.

¹⁰² Ladson-Billings, *supra*.

¹⁰³ Erica Frankenberg, Genevieve Siegel-Hawley, & Jia Wang, CHOICE WITHOUT EQUITY: CHARTER SCHOOL SEGREGATION AND THE NEED FOR CIVIL RIGHTS STANDARDS (2010), available at: <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenber-choices-without-equity-2010.pdf>.

¹⁰⁴ Open enrollment policies encourage the enrollment of students in schools other than those to which they are assigned.

¹⁰⁵ Kori J. Stroub & Meredith P. Richards, *From Resegregation to Reintegration: Trends in the Racial/ Ethnic Segregation of Metropolitan Public Schools*, 50 AMERICAN EDUCATIONAL RESEARCH JOURNAL 497 (2013).

¹⁰⁶ Robert R. Reich, *Secession of the Successful*, N.Y. TIMES (Jan. 20, 1991), available at: <http://www.nytimes.com/1991/01/20/magazine/secession-of-the-successful.html?pagewanted=all>.

do so.¹⁰⁷ Indeed, zoning regulations have been found to be central in the “[perpetuation] and [exacerbation of] racial and class inequality.”¹⁰⁸ According to Rothwell and Massey, “...suburban residents often block the extension of public lines into their municipalities precisely to forestall the entry of poor minority families from the inner city.”¹⁰⁹ In the sections that follow, I elaborate on the role of the charter schools and open enrollment policies in exacerbating segregation, then turn to other Arizona-specific policies that explicitly require the segregation of students.

Charter Schools

In her analysis of the “consequences of the *Brown* decision,” Ladson-Billings describes a phenomenon she refers to as “White resistance to desegregation.”¹¹⁰ She explains,

In 1971 about a half million White children attended segregated private schools in the South. Despite the threat these schools posed to the court decision, only a limited number of legal challenges were mounted to combat them, because they did not receive direct public support in the form of tuition grants.¹¹¹

Resistance to desegregation in more recent times has not only been embodied in private schools,¹¹² but also in the proliferation of charter schools that purport giving parents choice and, unlike most private schools, do receive direct public support.¹¹³ Arizona passed legislation supporting the charter schools in 1994. To date, the state has the fastest growth of charter schools in the U.S. Within TUSD boundaries alone, there are 54 charter schools that comprise over 11,000 students, almost 40% of whom are White.¹¹⁴ Overall, the four largest charters within the TUSD bound-

¹⁰⁷ Kyle Crowder, *The Racial Context of White Mobility: An Individual-Level Assessment of the White Flight Hypothesis*, 29 SOCIAL SCIENCE RESEARCH 223 (2000).

¹⁰⁸ Jonathan T. Rothwell & Douglas S. Massey, *Density Zoning and Class Segregation in U.S. Metropolitan Areas*, *Social Science Quarterly*, 91(5), 1125.

¹⁰⁹ *Id.* at 1125.

¹¹⁰ Ladson-Billings, *supra*, at 7.

¹¹¹ *Id.*

¹¹² Joshua Cowen, et. al., *Going Public: Who Leaves a Large, Longstanding, and Widely Available Urban Voucher Program?*, 49 AMERICAN EDUCATIONAL RESEARCH J. 231 (2012).

¹¹³ Allison Roda & Amy Stuart Wells, *School Choice Policies and Racial Segregation: Where White Parents’ Good Intentions, Anxiety, and Privilege Collide*, 119 AMERICAN J. EDUCATION 261 (2013).

¹¹⁴ See *infra* Figure 2.

aries reflect between 45-74% White student enrollment, which translates into more than twice to almost four times the White student enrollment in TUSD.¹¹⁵

Open Enrollment

Some scholars believe the resegregation promoted by charter schools could be curbed by “[creating] and [promoting] more racially diverse, non-G&T schools” to keep the advantaged families, who tend to be White, in the public education system.¹¹⁶ There are, however, many advantaged White families who remain in the public education system. As the minority population in a particular area increases, however, they either flee to suburban public schools when they can afford to do so¹¹⁷ or, as is the case of students living within TUSD boundaries, use open-enrollment policies to attend public schools in another district within the county.¹¹⁸

Within Pima County, there are four majority-White school districts—all immediately surrounding TUSD. One of the school districts, Tanque Verde, was established in 2005 and is located on the east side of the county. To date, it remains the most White-dense district in the county with a minority population of 22%.¹¹⁹ What is particularly noteworthy about the relatively new school district is that it not only in effect seceded from TUSD, thereby confiscating a segment of TUSD’s White student population, but the district also willfully ignored TUSD policy efforts to comply with desegregation. In 2007, Tanque Verde enrolled a TUSD student, disregarding the TUSD regulation that had prevented students from using open-enrollment to attend other districts as an effort to maintain racial balance in TUSD schools.¹²⁰

¹¹⁵ Memorandum from David Scott, Dir. of Accountability and Research to Dr. John Pedicone, Superintendent of Tucson Unified Sch. Dist. (March 12, 2013) (on file with author).

¹¹⁶ Allison Roda & Amy Stuart Wells, *School Choice Policies and Racial Segregation: Where White Parents’ Good Intentions, Anxiety, and Privilege Collide*, 119 *Am. J. of Educ.* 261, 287 (2013) (defining that “G&T” refers to “gifted and talented” programs that are designed for students considered to have notably higher than average abilities, but contribute to stratification in schools given their reliance on test scores that are heavily influenced by socioeconomic status).

¹¹⁷ Kyle Crowder, *The Racial Context of White Mobility: An Individual-Level Assessment of the White Flight Hypothesis*, 29 *SOCIAL SCIENCE RESEARCH* 223 (2000).

¹¹⁸ Memorandum from David Scott, Dir. of Accountability and Research to Dr. John Pedicone, Superintendent of Tucson Unified Sch. Dist. (March 12, 2013).

¹¹⁹ *Id.*

¹²⁰ Jamar Younger, *Tanque Verde Schools Challenge TUSD*, *ARIZONA DAILY STAR* (Oct.

Despite evidence to the contrary, some affirm that the increased segregation of Latino students in particular is not an artifact of “White flight,” but due to “huge changes in birth rates and immigration patterns.”¹²¹ Immigration trends have certainly changed the ethnic and racial composition of schools; across the United States, schools have been witnessing a sharp increase in the number of Latino students over the past several decades.¹²² As Fry reports:

Suburban Hispanic students are increasingly attending schools whose student bodies have a high percentage of Hispanics. In 2006-07, the typical suburban Hispanic student attended a school that was 49% Latino, up from 4% Latino in 1993-94. By contrast, there was little change during this period in the level of racial isolation of black and Asian suburban students.¹²³

Although the immigration and birth rates of Latinos have certainly played a role in the changes of school demographics across the U.S., it is necessary to also consider the ways “choice” has contributed to school demographics. Without this acknowledgment, desegregation orders will continue to hinder the educational plight of Latinos in TUSD.

Consistent with national trends, TUSD Latino population has grown dramatically. As previously mentioned, the TUSD student population is now 65% Latino.¹²⁴ Although the increase in the proportion of Latino families in TUSD has been relatively steady, the exodus of White families has outpaced this increase. Since 1996, there has been a decline of approximately 18,000 White students whereas the increase of Latino students has only been close to 5,000, to date.¹²⁵ Moreover, since 2013, Latino student enrollment has declined by a total of over 1,200 students. As such, not only must the district contend with the White-to-Latino demographic shift in its charge to address vestiges of past discrimination, but also with the overall shrinking student population. Just fifteen years ago, enrollment in the district neared 62,300. The enrollment for the

29, 2007), available at: http://tucson.com/news/local/education/precollegiate/tanque-verde-schools-challenge-tusd/article_768383cb-949c-5735-9c1b-0fca6965b6cc.html.

¹²¹ Orfield, *supra*, at 7.

¹²² EUGENE E. GARCÍA & ELLEN C. FREDE, *YOUNG ENGLISH LANGUAGE LEARNERS: CURRENT RESEARCH AND EMERGING DIRECTIONS FOR PRACTICE AND POLICY* (2010).

¹²³ RICHARD FRY, PEW HISPANIC CENTER, *THE RAPID GROWTH AND CHANGING COMPLEXION OF SUBURBAN PUBLIC SCHOOLS* ii (2009).

¹²⁴ See *infra* Figure 1.

¹²⁵ See *infra* Table 5.

2015-16 school year in TUSD, however, was less than 48,000 students.¹²⁶ The decrease in student enrollment has compelled TUSD to close over 20 schools since 2010.¹²⁷ Consistent with Fry's description of Latino enrollment trends,¹²⁸ all districts within Pima county are also experiencing growth in their Latino populations—some doubling their proportion of Latino students over the past thirteen years.¹²⁹ If the growth patterns continue, TUSD will become close to 100% Latino. How will desegregation be defined then?

Arizona Policies that Promote Segregation

In addition to ignoring the de facto forces that have shaped TUSD's demographics, the Court has failed to consider the role of Arizona policies that have undermined integration for Latinos. Many of these policies, although considered de facto given that they address linguistic minority students, are arguably de jure practices.¹³⁰ Since 2006, Arizona policy has expressly required the segregation of ELs given its self-appointed status as an "English first" state.¹³¹ The SEI model used in Arizona requires that ELs are grouped homogenously to the extent possible based on English proficiency, and that they receive explicit English instruction in four-hour blocks.¹³² Thus, ELs are segregated from students with different levels of English proficiency as well as from academic content that is covered while they attend the four-hour block of English instruction. What is especially important about the Court's failure to consider state policies that contribute markedly to ELs' educational experiences is that the District Court holds TUSD responsible for ELs' achievement disparities. Namely, the Court requires the examination of student achievement given its finding "that as a measure of effectiveness, student achievement

¹²⁶ *Id.*

¹²⁷ TUCSON UNIFIED SCHOOL DISTRICT, CLOSED SCHOOL SITES (2012), available at <http://tucson1.org/contents/distinfo/schoolclosures.asp>; See also TUCSON UNIFIED SCHOOL DISTRICT, SCHOOL MASTER PLAN (2013), available at http://www.tusd1.org/contents/distinfo/masterplan/qanda_closures.asp.

¹²⁸ Fry, *supra*.

¹²⁹ Memorandum from David Scott, Dir. of Accountability and Research to Dr. John Pedicone, Superintendent of Tucson Unified Sch. Dist. (March 12, 2013).

¹³⁰ Donato, *supra*.

¹³¹ <http://www.azed.gov/english-language-learners/files/2013/02/oelasregionaltrainings-hb2064-.pdf>

¹³² ARIZONA DEP'T OF INSTRUCTION (ADE), STRUCTURED ENGLISH IMMERSION MODELS OF THE ARIZONA ENGLISH LANGUAGE LEARNERS TASK FORCE (2008), available at: <http://www.azed.gov/wp-content/uploads/PDF/SEIModels05-14-08.pdf>.

is relevant to TUSD's good faith commitment to the entirety of the Settlement Agreement..."¹³³ In reviewing evidence of student achievement, the Court—reiterating the Plaintiff's response—asserted, “most troubling are the low achievement rates by English Language Learners [(ELL)] on the Arizona Instrument to Measure Standards (AIMS) exam.”¹³⁴ Absent from consideration are the stipulations of Proposition 203 that have both impeded ELs' achievement statewide¹³⁵ and limited the extent to which TUSD can circumvent required practices that are harmful to ELs.¹³⁶ Notably, also absent from the Court's consideration are the academic successes among ELs at both Carrillo and Davis in spite of harmful policies and statewide trends. Davis Bilingual has had a history of success with *all* students by promoting “Spanish first” as its magnet focus¹³⁷—addressing both issues while vigilantly navigating Arizona policy.

TENSIONS SURROUNDING RACE, ETHNICITY, AND POWER

The *Brown* decision has been conceptualized by some as an issue of identity based on the Court's reference to Kenneth Clark's evidence¹³⁸ that segregation and racism have generated feelings of inferiority and psychological harm among African American children.¹³⁹ Supreme Court Justice Clarence Thomas vehemently disagrees with this position,¹⁴⁰ as exemplified by the following statement found in his concurring opinion for the Supreme Court's 1995 *Missouri v. Jenkins* decision: “It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior.”¹⁴¹ He later continues:

¹³³ *Fisher*, 549 F. Supp. 2d at 1164.

¹³⁴ *Fisher*, 549 F. Supp. 2d at 1165.

¹³⁵ Oscar Jiménez-Castellanos et al., *English Language Learners: What's at Stake for Arizona?* (2013).

¹³⁶ *Supplemental Declaration of Kenji Hakuta*, LANGUAGE POLICY WEB SITE & EMPORIUM, <http://www.languagepolicy.net/archives/hakuta3.htm> (1998).

¹³⁷ Elvia M. Hernandez, *The Effects of Proper Implementation of Bilingual Programs in Elementary Schools in the United States*, in PROCEEDINGS OF THE EIGHTH ANNUAL COLLEGE OF EDUCATION & GSN RESEARCH CONFERENCE, 62-68 (M.S. Plakhotnik, S. M. Nielsen, & D. M. Pane eds., 2009), available at http://education.fiu.edu/research_conference/docs/proceedings/COERC_2009_Proceedings.pdf.

¹³⁸ Kenneth B. Clark, *Effect of prejudice and discrimination on personality development*, COLLEGE MIDCENTURY WHITE HOUSE CONFERENCE ON CHILDREN AND YOUTH (1950).

¹³⁹ Gwen Berger, *White Preference: Brown v. Board, the Doll Tests, and the Politics of Self-Esteem*, 62 AMERICAN QUARTERLY 299 (2009).

¹⁴⁰ *Missouri v. Jenkins*, 515 U.S. 70, 121 (1995) (Thomas, J., concurring).

¹⁴¹ *Missouri*, 515 U.S. at 114.

Without a basis in any real finding of intentional government action, the District Court's imposition of liability upon the State of Missouri improperly rests upon a theory that racial imbalances are unconstitutional.... In effect, the court found that racial imbalances constituted an ongoing constitutional violation that continued to inflict harm on black students. This position appears to rest upon the idea that any school that is black is inferior, and that blacks cannot succeed without the benefit of the company of whites.¹⁴²

Justice Thomas' assertion is particularly salient given the striking parallels between the facts of *Missouri v. Jenkins*¹⁴³ and *Fisher-Mendoza v. TUSD*.¹⁴⁴ That is, the lower courts have conceptualized successful integration in both cases as contingent on whether White students would deem a particular school appealing. Considering the Court's decision in *Missouri v. Jenkins* (1995), contesting the notion of measuring success for students of color as contingent on the enrollment of White students merits serious consideration for the Latino students of TUSD. The situation in TUSD is additionally hindered by the archaic method in which ethnicity is monitored by American schools.

As of 2010, the United States Department of Education required schools to collect demographic information on students in a way that would separate ethnicity from race. Accordingly, Hispanics¹⁴⁵ of any race were to be aggregated together for reporting purposes, whereas non-Hispanics would be disaggregated as American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, or of "two or more races."¹⁴⁶ When a TUSD parent selects "Hispanic" for their child, they are not identified as having two or more races regardless of mixed heritage. Thus, despite the fact that there are students of multiple ethnicities who have Hispanic heritage, the reporting defaults to "Hispanic" in all cases, speciously resulting in schools' non-compliance.

¹⁴² *Id.* at 118.

¹⁴³ *Id.*

¹⁴⁴ *Fisher*, 652 F.3d 1131.

¹⁴⁵ I use the term Hispanic to be consistent with the reporting criteria used by TUSD. The terms Hispanic, Latino, and Mexican American are used interchangeably in this paper.

¹⁴⁶ ARIZONA DEP'T OF INSTRUCTION (ADE), NEW FEDERAL REGULATIONS FOR RACE/ETHNICITY DATE (2011), available at: <http://www.azed.gov/research-evaluation/files/2011/11/fy11federalraceethnicityguidance.pdf>.

In the same year as *Brown I*, the U.S. Supreme Court decision in *Hernandez v. Texas*¹⁴⁷ upheld that Mexican Americans were protected by the 14th Amendment. Having been classified as White, but clearly treated as a subordinate class, the *Hernandez* case acknowledged that ethnic identification had been used “as a basis for exclusion and subordination.”¹⁴⁸ Haney-López asserts that the *Hernandez* case “unambiguously insists, in a way that *Brown* does not, that it is race as subordination, rather than race per se, that demands Constitutional intervention.”¹⁴⁹ Although the ways Latinos are identified has changed numerous times across the years, ethnic identification for Latinos continues to be used by the Court as a basis for exclusion and subordination. Parents of children with Latino heritage are considered to contribute to the non-compliance of integration regardless of mixed heritage—ironically, one of the most explicit representations of integration that exist.

REDEFINING SEGREGATION

Despite its label as a Title I school with a large proportion of students who meet the criteria for free or reduced lunch, and 15% of whom are ELs,¹⁵⁰ Carrillo is among the top performing elementary schools in the state. Davis also exemplifies achievement for Latino youth, and additionally provides significant guidance in reframing desegregation: as previously described, despite demographic reports that default to Hispanic, the student population reflects varied ethnic and racial backgrounds; between 15-23% of students are ELs;¹⁵¹ and students come from varied socioeconomic backgrounds.

It is particularly noteworthy that the school circumvents both the segregation and anti-Spanish practices promoted by “English first” practices that are supported in the current USP with a bilingual approach. Dual language programs, also called two-way bilingual education or two-way bilingual immersion, are designed to promote bilingualism by bringing together a group of children who speak English as their

¹⁴⁷ *Hernandez v. Texas*, 347 U.S. 475 (1954).

¹⁴⁸ George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness*. 2 Harv. Latino L. Rev. 321, 320 (1997).

¹⁴⁹ Ian Haney Lopez, *Race and Colorblindness After Hernandez and Brown*, 25 Chicanos-Latino L. Rev. 61, 62 (2005).

¹⁵⁰ Prior to the current practice of labeling ELs as “former English learners” once they are proficient in English, ELs were simply aggregated with students who were never ELs.

¹⁵¹ See *infra* Figure 3.

native language and a group of children who share a non-English native language. In dual language programs, language learning is integrated with content instruction with goals to promote bilingualism, academic achievement, and cross-cultural understanding among all students. Indeed, dual language programs are considered the solution to traditional methods of providing equitable learning opportunities to ELs because they are viewed as assets to their peers.¹⁵² As Karen Thompson explains:

Dual-language programs hold appeal for another important reason, as well. Some critics of attempts to equalize opportunities within education via compensatory programs, such as temporary English as a Second Language pull-out programs, charge that these programs are inadequate because they do not capitalize on or develop the unique abilities of marginalized students. In the case of linguistic minority students, such compensatory programs leave the status quo, in this case the monolingual English norm, unchallenged, while ignoring the valuable bilingual skills that linguistic minority students bring to school.¹⁵³

Given the number of schools within TUSD that serve student populations that resemble those at Davis, it is feasible to expand dual language programs, thus addressing the needs of more ELs (who are likely to be Latino in TUSD). Whereas the desegregation order and Hawley's magnet plan conceptualize Latino-dense west side schools as non-compliant, re-conceptualizing one of the desegregation criteria as English proficiency would reframe one of the "unsuccessful" schools that is serving Latino students as exemplars of success which should be strengthened and replicated. By viewing integration in this manner, being Latino and an EL in TUSD is no longer a subordinate position, but one that is an asset to peers.

There are additional criteria that merit consideration when evaluating whether a Latino-majority school is indeed segregated, such as socioeconomic status.¹⁵⁴ Orfield and Lee assert:

¹⁵² Virginia P. Collier & Wayne P. Thomas, *The Astounding Effectiveness of Dual Language Education for All*, 2 NABE J. OF RES. AND PRAC., 1, 12 (2004).

¹⁵³ Karen D. Thompson, *Is Separate Always Unequal? A Philosophical Examination of Ideas of Equality in Key Cases Regarding Racial and Linguistic Minorities in Education*, 50 Am. Educ. Res. J. 1249, 1267 (2013).

¹⁵⁴ Ann Mantil, et al., *The Challenge of High-Poverty Schools: How Feasible is Socioeconomic*

One of the common misconceptions over the issue of resegregation of schools is that many people treat it as simply a change in the skin color of the students in a school. If skin color were not systematically linked to other forms of inequality, it would, of course, be of little significance for educational policy. Unfortunately that is not and never has been the nature of our society. Socioeconomic segregation is a stubborn, multidimensional and deeply important cause of educational inequality.¹⁵⁵

Given that socioeconomic status is perhaps the most egregious of all predictors of academic success and subsequent opportunity, it is necessary to consider its role in desegregation for TUSD.¹⁵⁶ Safier presents a map of state school grades in Pima County, and asserts in his analysis that they are almost perfectly correlated with socioeconomic status.¹⁵⁷ The fact that Davis Bilingual is an exception to this trend deserves serious consideration. Davis Bilingual's appeal to Latino families includes those who are not considered to be from lower socioeconomic status backgrounds (35% are from a lower socioeconomic status, using free lunch status as a proxy), a fact that indeed should matter if desegregation scholars' claims about the role of socioeconomic status in desegregation.¹⁵⁸ Nevertheless, the status quo in the desegregation literature and the courts' decisions appears to rest on a notion that Latinos are homogenous not only ethnically, but also linguistically and socioeconomically.

CONCLUSION

For over four decades, TUSD has been at the center of a desegregation case. As the first district in Arizona to voluntarily desegregate prior to the *Brown* decision, it remains the only district in the state still under court supervision. Although the demographic landscape has changed dramatically since the initial case was decided, the court order remains centered on defining successful integration as the absence of a

School Integration?, in THE FUTURE OF SCHOOL INTEGRATION: SOCIOECONOMIC DIVERSITY AS AN EDUCATION REFORM STRATEGY, 155-222 (R.D. Kahlenberg ed., 2012).

¹⁵⁵ Gary Orfield & Chungmei Lee, *Why Segregation Matters: Poverty and Educational Poverty*, HARV. CIV. RTS. PROJECT, Jan. 2005, at 4.

¹⁵⁶ See *infra* Figure 4.

¹⁵⁷ David Safier, *Income, Geography and Arizona School Grades*, BLOG FOR ARIZONA (Nov. 19, 2013), available at: <http://blogforarizona.net/income-geography-and-state-school-grades/>.

¹⁵⁸ See Orfield & Lee, *supra*.

concentration of Latinos in schools, which is increasingly onerous given the changes in district demographics propelled by “choice” in charter schools and open enrollment policies. Demographic shifts continue to reduce the number of White students available to attain racial balance for compliance, compelling schools with high rates of success to *turn away* Latino students. Racial balance is further impeded by the district’s use of federal criteria to designate student ethnicity that is reminiscent of the archaic “one drop rule.” The practice results in every student with any reported Hispanic heritage to be considered Hispanic, regardless of race or mixed heritage. Moreover, the district must adhere to state policy requiring the segregation of ELs, most of whom are Latino. Given these constraints, TUSD is unlikely to ever be in compliance with the court order so long as desegregation is defined without considering the nuanced context of the district.

Paradoxically, both *Brown II*¹⁵⁹ and *Green*¹⁶⁰ underscored the importance of considering both context and de jure practices when implementing desegregation measures. Indeed, it is the reason *Brown II* and *Green* both placed the burden of identifying desegregation strategies on school boards rather than the courts. In his opinion of the Court in the *Green* decision, Justice Brenner stated:

There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness.¹⁶¹

In spirit of Justice Brenner’s opinion, redefining desegregation to capture the nuanced demographics of TUSD (and other majority-minority urban districts), which have in part been shaped by immigration patterns and state policies on choice, can fulfill the goals of *Brown* by providing

¹⁵⁹ *Brown v. Bd. Of Educ.*, 349 U.S. 294 (1955).

¹⁶⁰ *Green v. Cty. Sch. Bd. of New Kent Cty.*, 391 U.S. 430 (1968).

¹⁶¹ *Id.* at 439.

students educational opportunities that have remained elusive. Indeed, the very notion that a protected class would be hindered from enrolling in schools of their choice runs counter to the spirit of *Brown*.

Although the culminating evidence suggests that the District Court will not support TUSD's efforts to formulate a plan that will comply with the desegregation order, Supreme Court precedent in the *Missouri* decision¹⁶² may challenge the District Court. In his Opinion of the Court, Justice Rehnquist stated:

Just as demographic changes independent of *de jure* segregation will affect the racial composition of student assignments, so too will numerous external factors beyond the control of the KCMSD [Kansas City, Missouri, School District] and the State affect minority student achievement. So long as these external factors are not the result of segregation, they do not figure in the remedial calculus.¹⁶³

In the meantime, schools like Carrillo and Davis are at the mercy of the District Court's decision regarding their magnet status, requiring them to turn away the very students desegregation purports to protect so they can avoid being added to the growing list of closed schools.

¹⁶² *Missouri v. Jenkins*, 515 U.S. 70 (1995).

¹⁶³ *Missouri*, 515 U.S. at 102.

TABLE 1

Carrillo Elementary, magnet school designated as non-compliant

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Overall change from 1996-2016
White	N 81	76	81	78	72	61	41	25	26	24	20	24	34	38	12	12	14	11	26	32	
%	33.6	32.2	35.8	32.1	30.0	25.7	18.1	13.1	16.0	13.9	10.7	10.3	11.0	10.8	3.5	3.8	4.5	3.6	8.8	11.3	
Change	-1.4	3.6	-3.7	-2.1	-4.3	-7.6	-5.0	2.9	-2.1	-3.2	-0.4	0.7	-0.2	-7.3	0.3	0.7	-0.9	5.2	2.5	-22.3	
African American	N 6	6	4	10	7	6	10	6	4	5	12	28	21	14	18	11	10	12	12	8	
%	2.5	2.5	1.8	4.1	2.9	2.5	4.4	3.1	2.5	2.9	6.4	12.1	6.8	4.0	5.3	3.5	3.2	3.9	4.1	2.8	
Change	0.0	-0.7	2.3	-1.2	-0.4	1.9	-1.3	-0.6	0.4	3.5	5.7	-5.3	-2.8	1.3	-1.8	-0.3	0.7	0.2	-1.3	0.3	
Hispanic	N 142	138	125	140	146	153	157	140	117	134	148	170	233	278	291	285	274	276	251	234	
%	58.9	58.5	55.3	57.6	60.8	64.6	69.2	73.3	72.2	77.5	79.1	73.3	75.6	78.8	85.8	89.6	88.4	89.6	84.8	83	
Change	-0.4	-3.2	2.3	3.2	3.8	4.6	4.1	-1.1	-1.1	5.3	1.6	-5.8	2.3	3.2	7.0	3.8	-1.2	1.2	-4.8	-1.8	24.1
Native American	N 11	16	16	15	14	17	17	20	15	9	7	10	19	23	16	9	10	7	6	8	
%	4.6	6.8	7.1	6.2	5.8	7.2	7.5	10.5	9.3	5.2	3.7	4.3	6.2	6.5	4.7	2.8	3.2	2.3	2	2.8	
Change	2.2	0.3	-0.9	-0.4	1.4	0.3	3.0	3.0	-1.2	-4.1	-1.5	0.6	1.9	0.3	-1.8	-1.9	0.4	-0.9	-0.3	0.8	-1.8
Asian	N 1	0	0	0	1	0	2	0	0	1	0	0	1	0	0	1	1	0	0	0	
%	0.4	0	0	0	0.4	0	0.9	0	0	0.6	0	0	0.3	0	0	0.3	0.3	0	0	0	
Change	-0.4	0.0	0.0	0.4	-0.4	0.9	-0.9	-0.9	0.0	0.6	-0.6	0.0	0.3	-0.3	0.0	0.3	0.0	-0.3	0.0	0.0	-0.4
Total	N 241	236	226	243	240	237	227	191	162	173	187	232	308	353	337	318	310	308	296	282	

Table created with demographic data retrieved from http://tustdats.tusdL.org/planning/demo_main.asp.

TABLE 2

Davis Bilingual Elementary, magnet school designated as non-compliant

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Overall change from 1996-2016
White	N 58	51	52	47	53	54	54	50	46	49	53	63	62	55	29	33	33	37	39	44	
	% 26.4	22.8	23.2	21.7	23	21.1	21	19.6	17.9	19.4	20.1	23.2	22.1	19.8	9.6	10.5	10.3	10.6	11.3	13.2	
% Change		-3.6	0.4	-1.5	1.3	-1.9	-0.1	-1.4	-1.7	1.5	0.7	3.1	-1.1	-2.3	-10.2	0.9	-0.2	0.3	0.7	1.9	-13.2
African American	N 13	15	11	10	8	8	7	6	5	3	3	3	1	4	4	5	5	6	3	8	
	% 5.9	6.7	4.9	4.6	3.5	3.1	2.7	2.4	1.9	1.2	1.1	1.1	0.4	1.4	1.3	1.6	1.6	1.7	0.9	2.4	
% Change		0.8	-1.8	-0.3	-1.1	-0.4	-0.4	-0.3	-0.5	-0.7	-0.1	0.0	-0.7	1.0	-0.1	0.3	0.0	0.1	-0.8	1.5	-3.5
Hispanic	N 139	146	152	153	165	185	190	187	192	184	192	195	207	208	259	267	272	296	297	269	
	% 63.2	65.2	67.9	70.5	71.7	72.3	73.9	73.3	74.7	73	72.7	71.7	73.9	74.8	85.5	84.8	85.3	85.1	86.1	80.8	
% Change		2.0	2.7	2.6	1.2	0.6	1.6	-0.6	1.4	-1.7	-0.3	-1.0	2.2	0.9	10.7	-0.7	0.5	-0.2	1.0	-5.3	17.6
Native American	N 9	10	9	7	4	9	4	9	11	11	10	5	5	6	9	7	7	6	3	6	
	% 4.1	4.5	4	3.2	1.7	3.5	1.6	3.5	4.3	4.4	3.8	1.8	1.8	2.2	3	2.2	2.2	1.7	0.9	1.8	
% Change		0.4	-0.5	-0.8	-1.5	1.8	-1.9	1.9	0.8	0.1	-0.6	-2.0	0.0	0.4	0.8	-0.8	0.0	-0.5	-0.8	0.9	-2.3
Asian	N 1	2	0	0	0	0	2	3	3	5	6	6	5	5	1	2	0	0	0	2	
	% 0.5	0.9	0	0	0	0	0.8	1.2	1.2	2	2.3	2.2	1.8	1.8	0.3	0.6	0	0	0	0.6	
% Change		0.4	-0.9	0.0	0.0	0.0	0.8	0.4	0.0	0.8	0.3	-0.1	-0.4	0.0	-1.5	0.3	-0.6	0.0	0.0	0.6	0.1
Total	N 220	224	224	217	230	256	257	255	257	252	264	272	280	278	302	314	319	348	345	333	

Table created with demographic data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

TABLE 3

Borton Elementary, magnet school designated as successful

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Overall change from 1996-2016
White	N 100	110	112	112	117	118	114	105	109	117	120	138	138	123	91	101	120	91	95	93	
	% 44.8	50	50.7	51.1	54.2	51.8	47.5	42.3	44.5	45	45.1	47.4	40.5	35.3	26.6	27.4	28.5	22	20.7	21.4	
% Change		5.2	0.7	0.4	3.1	-2.4	-4.3	-5.2	2.2	0.5	0.2	-4.9	-3.3	-11	-18.9	-25	-20	-14	-23	-24	-23.4
African American	N 14	14	13	10	12	10	19	20	20	15	23	20	26	19	12	14	5.1	20.0	26.0	25.0	
	% 6.3	6.4	5.9	4.6	5.6	4.4	7.9	8.1	8.2	5.8	8.6	6.9	7.6	5.5	3.5	3.8	2.9	4.8	5.7	5.7	
% Change		0.1	-0.5	-1.3	1.0	-1.2	3.5	0.2	0.1	-2.4	2.8	-1.7	0.7	-2.1	-2.0	0.3	-0.9	1.9	0.9	0.0	-0.6
Hispanic	N 105	91	91	91	79	91	95	109	106	122	118	120	154	178	201	216	248	259	293	283	
	% 47.1	41.4	41.2	41.6	36.6	39.9	39.6	44	43.3	46.9	44.4	41.2	45.2	51.1	58.8	58.7	58.9	62.6	64	65.1	
% Change		-5.7	-0.2	0.4	-5	3.3	-0.3	4.4	-0.7	3.6	-0.2	3	0	3.6	14.5	18.9	0.2	3.7	1.4	1.1	18
Native American	N 1	3	4	5	7	8	8	7	6	4	5	12	17	19	11	12	14	12	9	7	
	% 0.4	1.4	1.8	2.3	3.2	3.5	3.3	2.8	2.4	1.5	1.9	4.1	5	5.5	3.2	3.3	3.3	2.9	2	1.6	
% Change		1.0	0.4	0.5	0.9	0.3	-0.2	-0.5	-0.4	-0.9	0.4	2.2	0.9	0.5	-2.3	0.1	0.0	-0.4	-0.9	-0.4	1.2
Asian	N 3	2	1	1	1	1	4	7	4	2	0	1	6	9	6	6	8	6	10	7	
	% 1.3	0.9	0.5	0.5	0.5	0.4	1.7	2.8	1.6	0.8	0	0.3	1.8	2.6	1.8	1.6	1.9	1.4	2.2	1.6	
% Change		-0.4	-0.4	0.0	0.0	-0.1	1.3	1.1	-1.2	-0.8	-0.8	0.3	1.5	0.8	-0.8	-0.2	0.3	-0.5	0.8	-0.6	0.3
Total	N 223	220	221	219	216	228	240	248	245	260	266	291	341	348	321	349	421	414	458	435	

Table created with demographic data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

TABLE 4

Holladay Elementary, magnet school designated as successful

	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Overall change from 1996-2016
White	N 107	102	96	87	85	95	99	96	104	99	89	92	94	81	46	49	36	21	18	17	
%	46.5	46.2	50	43.3	41.1	45.5	52.9	55.2	46.2	45.6	48.1	43.8	38.7	33.6	24.2	17.9	13.4	8.1	7.1	6.3	
% Change	-0.3	3.8	-6.7	-2.2	4.4	7.4	2.3	-9.0	-0.6	2.5	-4.3	-5.1	-5.1	-9.4	-6.3	-4.5	-5.3	-1.0	-0.8	-40.2	
African American	N 27	25	14	16	18	19	22	15	22	24	18	21	23	27	19	26	35	28	36	41	
%	11.7	11.3	7.3	8	8.7	9.1	11.8	8.6	9.8	11.1	9.7	10	9.5	11.2	10	9.5	13	10.8	14.2	15.1	
% Change	-0.4	-4	0.7	0.7	0.4	2.7	-3.2	1.2	1.3	-1.4	0.3	-0.5	1.7	-1.2	-0.5	3.5	-2.2	3.4	0.9	3.4	
Hispanic	N 93	89	80	89	97	91	66	60	94	84	71	90	116	121	117	187	183	194	181	192	
%	40.4	40.3	41.7	44.3	46.9	43.5	35.3	34.5	41.8	38.7	38.4	42.9	47.7	50.2	61.6	68.2	68	74.6	71.5	70.6	
% Change	-0.1	1.4	2.6	2.6	-3.4	-8.2	-0.8	7.3	-3.1	-0.3	4.5	4.8	2.5	11.4	6.6	-0.2	6.6	-3.1	-0.9	30.2	
Native American	N 1	2	2	7	6	4	0	2	2	6	4	5	10	12	7	7	5	7	11	11	
%	0.4	0.9	1	3.5	2.9	1.9	0	1.1	0.9	2.8	2.2	2.4	4.1	5	3.7	2.6	1.9	2.7	4.3	4	
% Change	0.5	0.1	2.5	-0.6	-1	-1.9	1.1	-0.2	1.9	-0.6	0.2	1.7	0.9	-1.3	-1.1	-0.7	0.8	1.6	-0.3	3.6	
Asian	N 2	3	0	2	1	0	0	1	3	4	3	2	0	0	0	0	0	0	0	0	
%	0.9	1.4	0	1	0.5	0	0	0.6	1.3	1.8	1.6	1	0	0	0	0	0	0	0	0	
% Change	0.5	-1.4	1	-0.5	-0.5	0	0.6	0.7	0.5	-0.2	-0.6	-1	0	0	0	0	0	0	0	0	-0.9
Total	N 230	221	192	201	207	209	187	174	225	217	185	210	243	241	190	274	269	260	253	272	

Table created with demographic data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

TABLE 5
Tucson Unified School District

TUSD		1996-97	1997-98	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	Overall change from 1996- 2016
White/An glo	N	27960	27884	27279	26449	25437	24256	23075	21852	20872	19847	19011	17871	16846	16021	13250	12413	11806	10915	10252	10002	-17958
% Change	%	45.4	44.6	43.7	42.5	41	39.3	37.6	35.9	34.5	33	31.8	30.8	29.8	28.9	24.9	24.1	23.3	22.2	21.2	21	-0.2
A.F. Am.	N	3996	4109	4157	4158	4110	4024	3980	4065	4061	4138	4133	4144	4190	4189	3025	2887	2822	2676	2647	2667	-1329
% Change	%	6.5	6.6	6.7	6.7	6.6	6.5	6.5	6.7	6.7	6.9	6.9	7.1	7.4	7.6	5.7	5.6	5.6	5.4	5.5	5.6	5.6
Hispanic	N	25793	26480	26884	27559	28394	29292	30118	30823	31543	32102	32512	31867	31495	31140	32232	31574	31623	30941	30768	30418	4625
% Change	%	41.8	42.4	43	44.3	45.8	47.5	49.1	50.7	52.1	53.4	54.4	55	55.7	56.2	60.6	61.3	62.3	62.9	63.6	63.7	63.7
Nat. A.m.	N	2432	2552	2606	2511	2475	2491	2513	2482	2463	2426	2497	2504	2458	2510	2065	1961	1889	1855	1766	1787	-645
% Change	%	3.9	4.1	4.2	4	4	4	4.1	4.1	4.1	4	4.2	4.3	4.3	4.5	3.9	3.8	3.7	3.8	3.7	3.7	3.7
As. Am.	N	1469	1497	1557	1578	1590	1629	1614	1600	1577	1600	1626	1581	1562	1538	1349	1322	1214	1069	991	933	-536
% Change	%	2.4	2.4	2.5	2.5	2.6	2.6	2.6	2.6	2.6	2.7	2.7	2.7	2.8	2.8	2.5	2.6	2.4	2.2	2	2	2
Total	N	61650	62522	62483	62255	62006	61692	61300	60812	60516	60113	59779	57967	56551	55398	53186	51474	50758	49157	48364	47742	-0.4

Table created with demographic data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

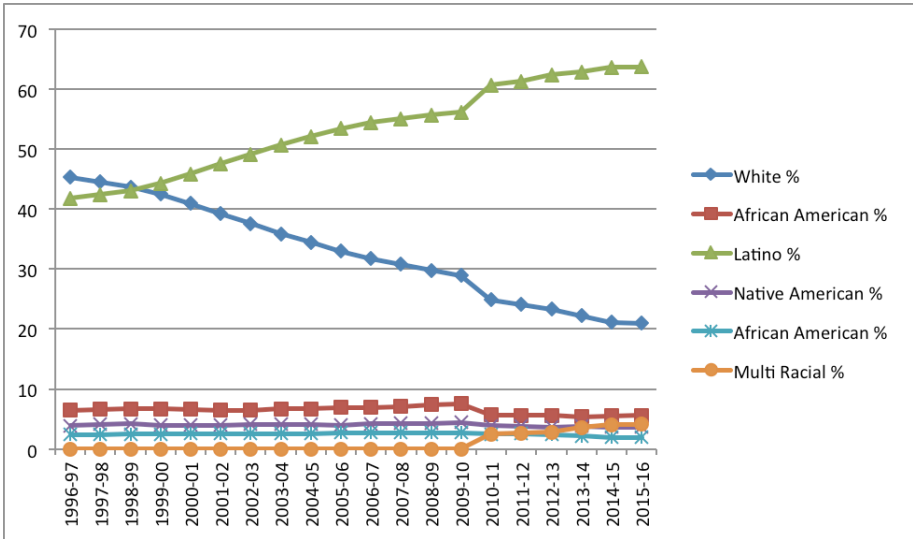


FIGURE 1. TUSD multi-year percentage of ethnic enrollment based on 100th day count. Figure was created with data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

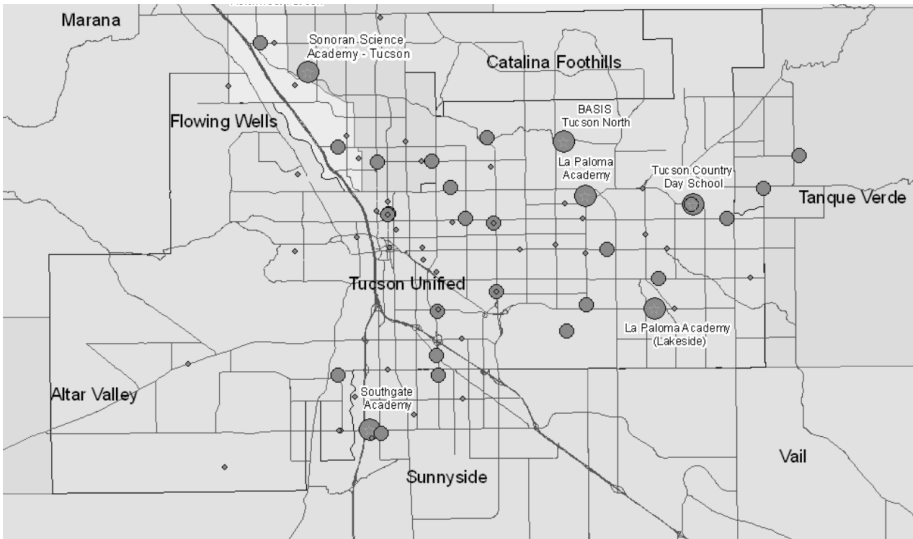


FIGURE 2. Distribution of charter schools within Pima County. Scott, D. (March 12, 2013) *Impact of charter schools on the enrollment of Tucson Unified School District Schools*. Department of Accountability and Research, TUSD. Reprinted with permission.

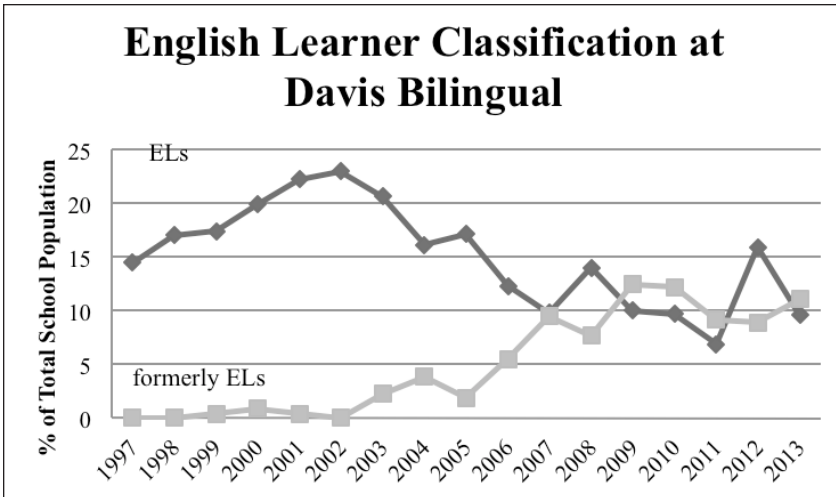


FIGURE 3. Proportion of students who spoke a non-English language at home who were labeled as “English learners” and “former English learners.” Figure created with demographic data retrieved from http://tusdstats.tusd1.org/planning/demo_main.asp.

Note: Fluctuations over time are in part due to changes in the way English learner status has been defined and collected in the state.

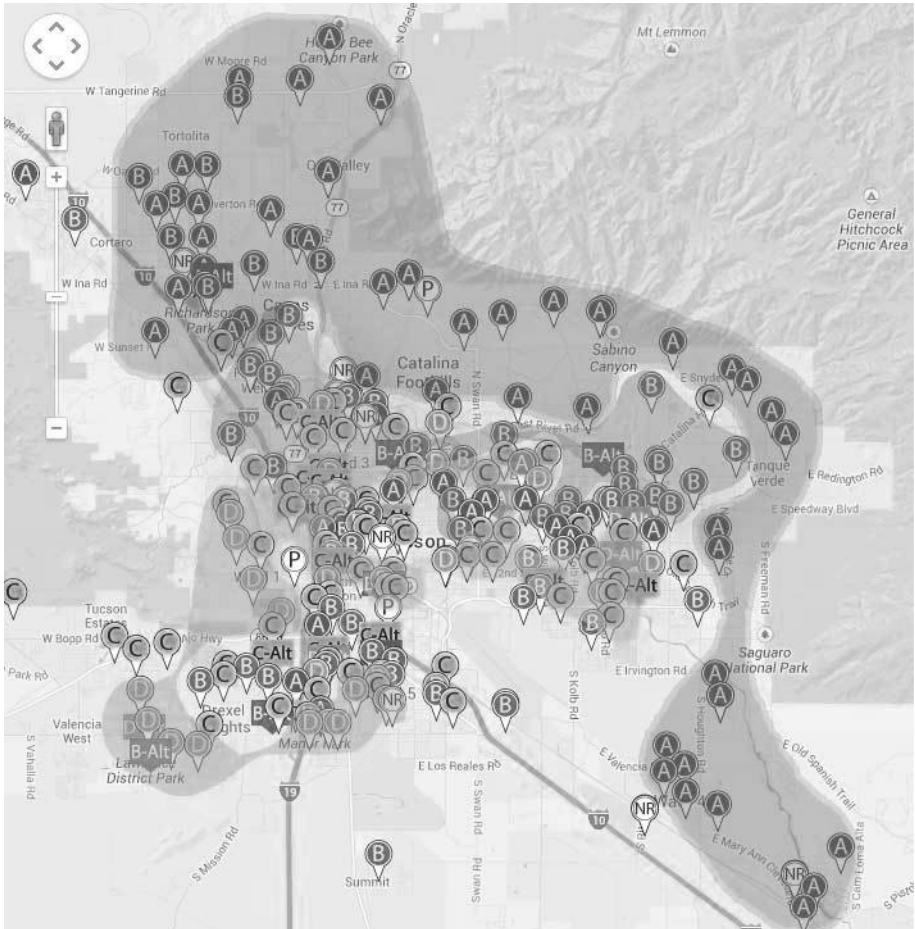


FIGURE 4. Distribution of school grades in Pima County. David Safer, *Income, Geography and Arizona School Grades*, Blog for Arizona (Nov. 19, 2013), available at: <http://blogforarizona.net/income-geography-and-state-school-grades/>. Reprinted with permission.

