

Mendoza Plaintiffs' Further Comments on Draft #3 of the Proposed 2015-16 910(G) Budget and Changes to Draft #3

June 4, 2015

On May 7, 2015, Mendoza Plaintiffs provided the District with their comments and RFIs on the third draft of the proposed 2015-16 USP budget. The District responded to most of their RFIs in its May 14, 2015 responses. Mendoza Plaintiffs provide these budget comments in accordance with the schedule set in Martha Taylor's May 18, 2015 email, outlining the budget process leading up to the Governing Board's vote on the final proposed 2015-16 USP budget, but first take the opportunity to address issues raised by the District's June 3 email regarding budget process and format.

First, contrary to the District's assertion in its June 3 email, it did not follow the budget schedule outlined in Ms. Taylor's May 18 email. Issues of format aside, the District provided its budget updates in narrative form on June 1, 2015, three days after the Plaintiffs and Special Master were to have received the updated budget per the schedule in Ms. Taylor's email.

In addition, Mendoza Plaintiffs again state that they understood that budget "changes" would be provided in a fully revised USP budget, which would allow them to consider them within the context of the entire budget, as detailed in Mendoza Plaintiffs' June 2 email. In Dr. Vicki Balentine's report on the budget review criteria and process, she noted that with regard to the 2014-15 USP budget, "[a]s revisions were made to the budget, an updated proposed USP budget draft was not made available to the plaintiffs, the special master or the budget expert. But rather, a running narrative was provided... [which] is a very cumbersome and difficult to understand strategy in that there is never an updated spreadsheet of the most current proposed USP budget allocations for review... As a result, I recommend... that revised and updated USP budget drafts... be provided *with* whatever narrative the District thinks important to provide *throughout the process*." (Doc 1762-1 at 38 (emphasis added)). The District agreed with Dr. Baletine's recommendation as it did not modify or decline to adopt it. (*Id.*)

While the timeline for development of the 2015-16 USP budget does not provide for a fourth draft of the budget, that timeline did not contemplate that a substantial amount of further work would be needed on the third draft of the USP budget, as indeed is the case. The District has made significant substantive changes, including changes with regard to the In-School-Suspension and Life Skills programs. It also indicated that it is engaged in "time consuming line-by-line budget scrubbing," (Tolleson June 1, 2015 email), and that there will be "ongoing revisions to Draft 3 that are flowing from the budget scrubbing as well as the allocations to address expansion of alternatives-to-suspension," (Brammer June 3, 2015 email). Further, the District references several changes in its May 14 budget responses that will be included in the final version of the 2015-16 USP budget. For each of these changes, the applicable information that the parties agreed would be provided has not been provided. Nor do Mendoza Plaintiffs fully understand those changes within the context of the entire USP budget. Significantly, since the time draft three of the budget was provided, the Plaintiffs and Special Master have each provided comments on the District's comprehensive magnet plan. The District will presumably

be revising some of the individual school magnet improvement plans in response to these comments, which would result in further changes to the USP budget.

Given that the District proposes to present the Governing Board with the Budget for review two weeks later than scheduled, and for a vote three weeks later than scheduled “in order to provide additional time for comment and review,” (Brammer June 3, 2015 email), (a proposal with which Mendoza Plaintiffs agree), they are baffled as to why the District would not provide a fully revised budget to the Plaintiffs and Special Master. It apparently intends to instead provide a running narrative of “ongoing revisions,” which began with its June 1, 2015 emails, which is exactly what Dr. Balentine recommended against and what the District agreed it would not do. Mendoza Plaintiffs therefore ask that the District reconsider its position, and that it indicate a time by which it will provide the parties and Special Master with a fully revised USP budget, with sufficient time allowed for them to comment on it, and for the District to make any needed budget changes after considering those comments.

With regard to the expansion of the alternative-to-suspension program, the District indicates that for the first-year rollout, “approximately \$800k [will be allocated] and [potentially] coded to dropout prevention and PBIS.” (Tolleson June 1, 2015 email.) Mendoza Plaintiffs ask why the District apparently intends to pay for the entire cost of this rollout with 910(g) funds since, as we understand it, the District receives separate funds for dropout prevention for purposes that overlap with the alternative-to-suspension program? Further, given the close relation between suspension as a discipline and dropout prevention, they ask what expenses for dropout prevention activities are in the M&O budget? How do the 910(g) expenses fit into the overall dropout prevention effort?

The District indicates that it will conduct online student surveys under the teacher evaluation plan, (Tolleson June 1, 2015 email), which Mendoza Plaintiffs generally agree with. However, given that some students do not have easy access to computers and/or the internet, we ask that the District confirm that it will facilitate students’ access to and completion of those online surveys, and that it will do so in a way that preserves students’ privacy.

Mendoza Plaintiffs add that there are budget questions that they submitted to the District on May 7, 2015 that were not responded to in the District’s May 15 responses, and hereby reiterate these requests for this information. Specifically, Mendoza Plaintiffs again request that a “clear explanation of how the expenditures under [] activity section [0202, the Comprehensive Magnet Plan,] relate to the missions and the improvement plans of each of the magnet schools” as they seek to integrate and improve their students’ academic achievement? They also note that they have seen very few revisions to the budget that relate to the comprehensive magnet plan, on which Mendoza Plaintiffs commented on May 29, 2015, and therefore urge the District to prioritize making the needed related revisions to the budget as it appeared from the CMP that significant revisions are required.

In their May 7 comments, Mendoza Plaintiffs noted that services and initiatives under African American Student Support Services and Mexican American Student Support Services are divided across many activities, which makes it impossible to understand how much money is being allocated for these services. They now repeat their request that “such information be

provided in a manner that permits informed assessment of the proposed allocation to each of these departments.” (Mendoza Plaintiffs’ May 7, 2015 comments.)

The District indicates that “[f]or middle schools we allocate a coordinator FTE based on [a] formula which takes into consideration [the] number of ELLs and first and second year reclassified ELLs... [and that] K-8 has an allocation for grades 6-8 if the school has a departmentalized model.” (TUSD May 14, 2015 Budget Responses at 3.) Mendoza Plaintiffs again request that the District provide them with the formula used to allocate ELD coordinators at middle and K-8 schools. It is unclear from the District’s response whether any formulas were applied for the allocation of Counselors or “OCR/ESL techs” at the middle, K-8, and elementary school levels. If any such formulas were applied, Mendoza Plaintiffs request that the District provide them with these formulas.

Mendoza Plaintiffs noted in their May 7 comments their concern with the proposed expansion of the Learning Support Coordinator (LSC) position, particularly as the results of the evaluation the District has commissioned on LSCs has not yet been received. Mendoza Plaintiffs understand from a conversation with the Special Master that the District has agreed to not expand the number of LSCs beyond those funded in the 2014-15 school year. They now request that the District confirm its commitment to not expand the position for the 2015-16 school year.

The District’s May 15 budget responses indicate that a “revised OMA budget was submitted to Dr. Hawley” “[o]n Friday” and that the revisions “were based on collaboration between Dr. Hawley and Steve Holmes.” (TUSD May 14, 2015 Budget Responses at 7.) Mendoza Plaintiffs request that a copy of that budget be provided to the plaintiffs. Mendoza Plaintiffs cannot consider whether they will withdraw their budget objections regarding OMA until they receive the OMA budget referenced in the District’s May 15 budget responses.

The District indicates that “site-based [CRC teachers] are paid out of M&O. The CRC teacher [salaries included under activity 0510] are the itinerant teachers who were approved in the CRC Plan submitted to the court.” (*Id.*) To the extent that 910(g) funds are used to pay itinerant CRC teachers for time spent in classrooms that do not meet the low-threshold criteria, there remain supplantation issues. Mendoza Plaintiffs request that the District demonstrate that itinerant CRC teachers under activity 0510 meet the low-threshold criteria as described by the Court in its October 22, 2014 Order.

The District’s RFI response to IC member Becky Montano regarding Magnet transportation, provided by the District on May 28, 2015, raises another budget issue. That response indicates that “[a]ll magnet students are eligible for Magnet transportation” and that magnet program students “must have a magnet placement in the student information system.” (TUSD’s May 28, 2015 RFI Response.) The Comprehensive District Evaluation of Magnet Programs of January 2013 indicated that “[c]urrent enrollment processes for magnet high schools need to be revised... Of the students enrolled as magnet, 67% are not attending magnet strand courses. Schools believe that students often enroll as a magnet student because of transportation... Once students receive transportation, they don’t necessarily enroll in classes within the magnet strand.” (The Comprehensive District Evaluation of Magnet Programs attached to the Comprehensive Magnet Plan as attachment A (Doc 1803) at 73.) Mendoza

Plaintiffs ask what it means to have “magnet placement in the student information system”? Has the District addressed issues with its enrollment processes to ensure that students receiving magnet transportation enroll in magnet strand courses? If so, what has it done? Mendoza Plaintiffs object to the extent that the magnet transportation for these students is proposed to be funded from 910(g) funds as such use of those funds constitute supplantation.

Mendoza Plaintiffs are concerned with information provided in the District’s May 29, 2015 RFI responses regarding the District’s hiring freeze. Notwithstanding the District’s repeated assertions that there “is no hiring freeze,” on August 11, 2014, “all ‘out of classroom’ positions [were] put on hold.” (TUSD’s May 29, 2015 RFI Responses at 1, 3.) The hiring freeze or “hold” on USP-mandated positions, particularly with regard to magnet coordinators, is of great concern to the Mendoza Plaintiffs. They understood from the District’s documents that those schools that did not have magnet coordinators by August 11 were left without coordinators for, at least, the fall 2014 semester. Mendoza Plaintiffs are troubled by the ease with which the District apparently decided to stop filling positions it committed to provide under a desegregation budget involving a review process of many months and approval of the Court. They find it equally troubling that it failed to inform the Plaintiffs until months later, when the Fisher Plaintiffs specifically asked about the hiring freeze. Moreover, the District’s actions raise the issue of whether the District will implement the budget that is ultimately adopted for the 2015-16 school year in good faith, and whether it would again unilaterally deviate from a budget that had been expressly made subject to plaintiff, Special Master, and court review.

Mendoza Plaintiffs request that the District clearly identify each of the positions frozen or “put on hold” in the last year, and provide information on whether the positions have been filled, or whether the District is at least actively seeking to fill these positions now. Further, they request that the District remove the hiring freeze or “hold” on USP positions if it has not already done so and commit to filling any of these positions that may become vacant during the 2015-16 school year.

Mendoza Plaintiffs expressly reserve the right to assert additional objections to the draft budget once they have received a complete revised draft and have had the opportunity to assess the budget taken as a whole.