

1 Rubin Salter, Jr. ASBN 001710  
2 Kristian H. Salter ASBN 026810  
3 Attorneys for Fisher Plaintiffs  
4 177 North Church Avenue Suite 903  
5 Tucson, Arizona 85701-1119  
6 (520) 623-5706 (phone)  
7 rsjr3@aol.com (email)  
8 kristian.salter@azbar.org (email)

9 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

10 ROY and JOSIE FISHER, et al., )

No. CV 74-90 TUC DCB

11 Plaintiffs, )

**FISHER PLAINTIFFS' OBJECTION  
TO DEFENDANT TUSD'S  
2015-16 USP BUDGET**

12 Plaintiff-Intervenor, )

13 vs. )

14 ANITA LOHR, et al., )

15 Defendants, )

16 SIDNEY L. SUTTON, et al., )

Submitted to United States District  
Judge David C. Bury on 07/24/15

17 Defendants-Intervenors, )

18 MARIA MENDOZA, et al., )

No. CV 74-204 TUC DCB

19 Plaintiffs, )

20 UNITED STATES OF AMERICA )

21 Plaintiff-Intervenor, )

22 vs. )

23 TUCSON UNIFIED SCHOOL )

24 DISTRICT NO. ONE, et al., )

25 Defendants. )

1 **1. FISHER PLAINTIFFS OBJECT TO TUSD’S 2015-16 USP BUDGET**

2  
3 COME NOW, Plaintiffs Roy and Josie Fisher (hereinafter Fisher Plaintiffs), by and  
4 through counsel undersigned, Rubin Salter, Jr. (hereinafter Fisher counsel) to object to  
5 “the 2015-16 USP budget [(hereinafter the USP budget)] [...] adopted by the TUSD  
6 Governing Board on July 14” (at page 2 of document number 1827). The “activity  
7 summary” section of the USP budget was entered into record by Defendant TUSD on  
8 07/15/15 (at pages 12-16 of document number 1827). The full USP budget, showing  
9 both “activity summary” and “activity detail,” was not entered into record by the District  
10 with its 07/15/15 filing. The most recently circulated draft of the full USP budget was  
11 sent to the plaintiffs and the Special Master as an attachment to TUSD Senior Director of  
12 Desegregation Martha Taylor’s 06/19/15 email. That document was entered into record  
13 on today’s date by the Mendoza Plaintiffs as document number 1829-1.

14  
15 **1.1. STATEMENT OF CASE AND FACTS**

16  
17 Counsel undersigned states as follows:

18 1. On 02/02/15, Defendant Tucson Unified School District (TUSD) filed  
19 notice with this Court that it had adopted a process to draft and receive feedback on the  
20 Unitary Status Plan (USP) budget for the 2015-16 fiscal year (FY) (at page 2 of  
21 document number 1762 filed 02/04/15). As adopted by the District, the USP budget  
22 process anticipated that in July of 2015 the TUSD “Governing Board [would take] action  
23 on [the] 2015-16 USP Budget” (at page 34 of document number 1762-1 filed 02/04/15).  
24 The process further anticipated that “[w]ithin ten (10) days of Governing Board action, if  
25 necessary, objections [could be] filed for any plaintiff disagreement with the budget, as  
26 approved” (idem).

1           2.       On 06/01/15, TUSD counsel Julie Tolleson first provided notice of the  
2 existence of, and the District's plans to allocate \$1,350,000 from its USP budget to its In-  
3 School Intervention (ISI) program and its District Educational Alternative Program  
4 (DAEP) (see attached Tolleson 06/01/15 email). In her email, District counsel Tolleson  
5 explained that:

6           as part of an aggressive effort to address ongoing disparities in student discipline  
7 and excessive use of exclusionary consequences, the District is expanding [its]  
8 alternative-to-suspension program in an effort to eliminate the overwhelming  
9 majority of out-of-school suspensions. This effort is two pronged. First, it seeks  
10 to use an in-school intervention model in lieu of in-school suspension and in lieu  
11 of short-term out-of-school suspensions. That is, students who might otherwise  
12 face an in-school or out-of-school suspension will instead spend their suspension  
13 days in a classroom continuing regular curriculum with a highly qualified teacher.  
14 The ISI classroom/curriculum will also include a dedicated component of  
15 restorative practices and character/personal supports. Funding such a program at  
16 all high schools, middle schools, and large K8s would require approximately  
17 \$1.6M in staffing. However, the intention is to highlight approximately one dozen  
18 schools at the middle and HS level for the first-year roll out. Those sites will be  
19 identified based on the discipline statistics for 2015-16. The allocation to  
20 implement ISI will be approximately \$800k and coded to dropout prevention and  
21 PBIS (I think!). We are also going to expand our Life Skills program, which  
22 provides a curricular, campus-based alternative to students facing longer term  
23 suspension. This way, middle and high school students facing long-term  
24 suspension (for the most serious Levels 4 and 5 violations of the GSRR) or even  
25 expulsion will instead have the opportunity to continue their course of study at a  
26 District Alternative Education Program (DAEP) either at the SW Ed center or  
27 Project MORE. The budget for this expansion of Life Skills into a 75-seat DAEP  
28 offering is estimated at \$465,000" (idem).

1           3.       In an attachment to his 06/04/15 email, Mendoza counsel Juan Rodriguez  
2 requested further information regarding the District’s newly announced ISI and DAE  
3 programs (see attached Rodriguez 06/04/15 email). Specifically, the Mendoza Plaintiffs  
4 wrote that:

5           [t]he District has made significant substantive changes, including changes with  
6 regard to the In-School-Suspension and Life Skills programs. It also indicated that  
7 it is engaged in “time consuming line-by-line budget scrubbing,” (Tolleson June 1,  
8 2015 email), and that there will be “ongoing revisions to Draft 3 that are flowing  
9 from the budget scrubbing as well as the allocations to address expansion of  
10 alternatives-to-suspension,” (Brammer June 3, 2015 email) [...]. With regard to  
11 the expansion of the alternative-to-suspension program, the District indicates that  
12 for the first-year rollout, “approximately \$800k [will be allocated] and  
13 [potentially] coded to dropout prevention and PBIS.” (Tolleson June 1, 2015  
14 email.) Mendoza Plaintiffs ask why the District apparently intends to pay for the  
15 entire cost of this rollout with 910(g) funds since, as we understand it, the District  
16 receives separate funds for dropout prevention for purposes that overlap with the  
17 alternative-to-suspension program? Further, given the close relation between  
18 suspension as a discipline and dropout prevention, they ask what expenses for  
19 dropout prevention activities are in the M&O budget? How do the 910(g) expenses  
20 fit into the overall dropout prevention effort?

21           4.       In a 06/25/15 email, Fisher counsel requested the following information  
22 regarding the USP budget:

23           (1) What effect does the new court ruling on language acquisition have on the  
24 utilization of deseg funds; (2) Where in the Unitary Status Plan is the justification  
25 for the continual expansion of dual language programs with deseg funds; (3)  
26 Please provide the programmatic structure for the dual language program and what  
27 program is in place for students whose parents do not want a dual-language  
28 approach to learning; (4) What is the justification for paying Bryant Nodine's

1 salary from the deseg funds; (5) In regards to magnet funding, why are funds  
2 being allocated for Cragin, Mansfield, Ochoa, and Robinson, which are not  
3 magnet, but theme schools; (6) In terms of University [High School], what is the  
4 total amount of OCR funding that the school received and what is the total amount  
5 of deseg fund? Also, what is the position that Carmen Hernandez has been moved  
6 into and what is the funding source; (7) What is the justification for using deseg  
7 funds for Incentive Transportation; (8) What is the difference between ALE  
8 Itinerant teachers and resource teachers? Also, how many of these positions  
9 existed prior to 2015-2016 and prior to the USP? If these positions existed  
10 previously, what is the justification for funding them with the deseg budget; (9)  
11 Please provide an explanation as to why deseg [f]unds are being used to fund any  
12 part of the Pan Asian Department? Pan Asian students are not part of the USP or  
13 Fisher and Mendoza suits; (10) We would like a complete description of the  
14 D[A]EP – the goals, structure, and reason for choosing to fund it with deseg  
15 money; (11) Please explain what [...] the budget – especially the Quality of  
16 Instruction Section – does to improve the academic performance of African  
17 American students and the ending of their over-representation in suspensions and  
18 expulsions (see attached Salter 06/25/15 email).

19 5. In an attachment to his 07/02/15 email, Fisher counsel requested further  
20 information regarding the ISI and DAE programs (see attached Fisher 07/02/15 RFI). In  
21 the body of his email, Fisher counsel wrote that:

22 [i]n addition [to] funding questions raised in the attached RFI, the Fisher Plaintiffs  
23 have serious concerns about the substance and implementation of the ISI and  
24 DAEP programs. For example, the GSRR does not allow for students committing  
25 Level 1, 2, or 3 offenses to [be] removed from class. However, the guidelines for  
26 ISI state that a principal can place a student in ISI for repeated offenses at those  
27 offense levels. This creates a great deal of leeway for the disproportionate  
28 removal of African American students from classes, effectively undoing the

1           protections of the GSRR. In creating the DAEP proposal, did the District review  
2           the number of students in 2014-2015 who on long-term suspensions for Level 4 or  
3           5 offenses? How was the predicted number of 75 determined to be the maximum  
4           capacity? For these reasons, the Fisher Plaintiffs are opposed to the programs as  
5           described and believe that it is necessary to voice that opposition here. It is clear  
6           that the District is rushing the implementation of the DAEP program [sic] and is  
7           likely to have it in place before a formal objection can be lodged with the Special  
8           Master and the Court. The Fisher Plaintiffs are concerned that this rush to  
9           implementation is the latest instance of a recurrent and objectionable practice that  
10          appears to offer no other benefit than circumventing the critical plaintiff feedback  
11          mandated by the Court (see attached Salter 07/02/15 email).

12          6.       On 06/26/15, 07/08/15 and 07/10/15, Martha Taylor provided email and  
13          memorandum responses to requests included in the Fisher Plaintiffs' 07/02/15 RFI (see  
14          attached Taylor 06/26/15, 07/08/15 and 07/10/15 emails and Morado memorandum).

15          7.       On 07/13/15, Fisher counsel provided the TUSD GB with the Fisher  
16          Plaintiffs' final recommendations for the USP budget (see Salter 07/13/15 email and  
17          memorandum).

18          8.       On that same date, Mendoza counsel Thompson provided the TUSD GB  
19          with the Mendoza Plaintiffs' final recommendations for the USP budget (see Thompson  
20          07/13/15 email).

21          9.       On 07/15/15, the District filed notice of the TUSD GB's 07/14/15 adoption  
22          of the USP budget for the 2015-16 FY.

23          10.       In adherence to the stipulated time period to object to the District's USP  
24          budget (set forth at page 34 of document number 1762-1 filed 02/04/15), the Fisher  
25          Plaintiffs file timely on today's date the instant objection to the Defendant's USP budget  
26          for the 2015-16 FY.

1 **1.2. THE FISHER PLAINTIFFS OBJECT TO THE DISTRICT'S USP BUDGET**

2  
3 The Fisher Plaintiffs have conducted a careful review of Defendant TUSD's USP budget.  
4 The final revised form of the USP budget was approved by the TUSD GB at its 07/14/15  
5 meeting and entered into record on 07/15/15 as document number 1827. Based on their  
6 review of that document, and in light of the substantive and procedural concerns raised  
7 below, the Fisher Plaintiffs strenuously object to the USP budget and respectfully ask this  
8 Court to direct the District to revise its USP budget to provide the relief requested below.  
9

10 **1.2.1. The Fisher Plaintiffs object to the District's proposed allocation of**  
11 **desegregation funds to programs requiring, but never receiving, plans,**  
12 **desegregation impact analyses and plaintiff and Special Master feedback**  
13

14 The District proposes allocating over a million dollars in its 2015-16 FY USP budget to  
15 fund two heretofore unannounced programs: the In-School Intervention (ISI) and the  
16 District Alternative Education (DAE) programs. Both programs propose the  
17 reassignment of TUSD students for disciplinary purposes, impact the student assignment  
18 and discipline provisions of the USP, warrant desegregation impact analyses, formal  
19 plans and the solicitation of feedback from the Special Master and the plaintiffs. None of  
20 the above have occurred and yet the District asks this Court to approve, carte blanche, the  
21 allocation of over one million dollars. In addition to the objection to the substantive  
22 effect of the programs raised below (infra at 14-15), the Fisher Plaintiffs object to the  
23 District's proposal to budget programs clearly warranting plaintiff feedback and  
24 Governing Board (GB) approval insofar as the District has failed to conform to the  
25 standards set forth in this Court's 06/12/15 order where it explains that:  
26  
27  
28



1 the USP calls for the parties to work together to implement the USP, with the  
2 District having the benefit of input from the Plaintiffs before it acts. The Special  
3 Master put it best: [t]he fact that the Board takes action signals to the community  
4 its intent to go forward [...]. The purposes of review [...] include providing the  
5 District with input with respect to its decisions, not simply to allow for a veto.  
6 The District includes the Board [...]. This is true [...] the Board did not have the  
7 benefit of any perspective that the plaintiffs and the Special Master might offer  
8 [...]. [W]hen the Board acts without considering input from the Plaintiffs and the  
9 Special Master, [...] the Board has not acted consistently with the USP requirement  
10 that it consider the impact of its proposals in respect to its obligations under the  
11 USP (at pages 4-5 of order filed 06/12/15 as document number 1809 emphasis  
12 added and internal quotes and citations omitted).

13  
14 The District's failure to allow for meaningful GB review of the budget for the ISI and  
15 DAE programs (not to mention the programs themselves) is underscored by its apparent  
16 failure to provide the TUSD GB with the full USP budget prior to its vote. As the  
17 Mendoza Plaintiffs note in their objection filed on today's date, "[t]he budget detail  
18 apparently was not presented to the Governing Board when the Governing Board  
19 approved the budget [which] of course raises a question concerning how the Governing  
20 Board was able to fully understand and consider the recommendations of the Special  
21 Master and the Plaintiffs since virtually all of those recommendations reference  
22 expenditures and issues that cannot be fully understood (if at all) based only on the  
23 budget summary" (at lines 21-27 of page 2 of document number 1829 filed 07/24/15).  
24 For these reasons, the Fisher Plaintiffs respectfully ask this Court to direct deny the  
25 requested allocations in light of the District's evident failure to adhere to the procedures  
26 governing the development, implementation and funding of programs implicating the  
27 student assignment and discipline provisions of the USP.

28



1 **1.2.2. The Fisher Plaintiffs join the Mendoza Plaintiffs in their objection to TUSD’s**  
2 **practice of unilaterally freezing or placing holds on positions allocated funding**  
3 **under the USP budget**  
4

5 The Fisher Plaintiffs join the Mendoza Plaintiffs in requesting that “this Court [...] enter  
6 an order prohibiting the District from undermining effective implementation of the USP  
7 by imposing cuts in the approved desegregation budget or placing ‘holds’ on the hiring of  
8 personnel expressly called for by that budget without advance notice to the Plaintiffs and  
9 the Special Master and providing the Plaintiffs and Special Master an opportunity to  
10 object, and, if necessary, to seek an appropriate order from this Court” (at pages 9-10 of  
11 document number 1829 filed 07/24/15).  
12

13 **1.2.3. The Fisher Plaintiffs object to salary allocations in the USP budget out of**  
14 **proportion to a position’s percentage of USP-related job duties**  
15

16 According to the District’s website, Bryant Nodine is currently employed as Director of  
17 Planning Services.<sup>1</sup> The District’s website identifies Planning Services as a work group  
18 in its Operations Department responsible for enrollment projections, intergovernmental  
19 agreements, strategic facilities plans and the rental of District property. Notably, the  
20 description of the mission of Planning Services provided on the District’s website makes  
21 no mention of desegregation compliance:

22 Planning Services helps to create a strong link between academics, operations and  
23 the community by providing objective analyses, emphasizing the interrelatedness  
24 of decisions, creating and maintaining data for a wide range of clients and  
25 decisions, and assuring broad-based community involvement in TUSD’s move to  
26 the future (see <http://www.tusd1.org/contents/depart/efp/planning.asp>).  
27

28 <sup>1</sup> See <http://www.tusd1.org/contents/depart/efp/planning.asp>

1 According to Senior Desegregation Director Martha Taylor, in addition to his long-  
2 standing, assumedly full-time, responsibilities as the Director of Planning Services, Mr.  
3 Nodine is now also responsible for the District's compliance with its USP compliance:

4 Mr. Nodine's position has been funded using 910(g) funds for some time. As  
5 Planning Director he has been responsible for such items as conducting the  
6 boundary review, preparation of Desegregation Impact Analyses, and development  
7 of the "lottery" admissions process for oversubscribed schools. He took over the  
8 USP designated position of "Director of Student Assignment" in the summer of  
9 2014 (see attached Taylor 07/08/15 email response to Fisher 07/02/15 RFI).

10  
11 The Fisher Plaintiffs recognize that some percentage of Mr. Nodine's duties have been  
12 directly and usefully related to the implementation of the USP. The issue here is not  
13 whether, but to what extent, the District is justified in allocating desegregation funds to  
14 compensate Mr. Nodine for his work. Accordingly, the Fisher Plaintiffs must object to  
15 any allocation of desegregation funds to compensate Mr. Nodine beyond that percentage  
16 of his workload directly and demonstrably related to the implementation of the USP.  
17 This objection is supported by the District's 07/23/15 admission that only "fifty percent  
18 of Bryant Nodine's time is committed to USP issues" (see attached TUSD 07/23/15  
19 response to the SM's 07/15/15 RFI). At the request of Fisher counsel, TUSD budget  
20 expert Vicky Balentine conducted a review of the 2015-16 USP budget to aggregate all  
21 costs associated with the salary paid to Richard Foster in his capacity as "Interim Senior  
22 Director of Curriculum Deployment" (see attached Balentine 07/20/15 email and  
23 memorandum).<sup>2</sup> In that capacity under the proposed USP budget, the District has  
24 allocated a total of \$28,084. Without knowing the total amount of Dr. Foster's salary, a

25  
26 \_\_\_\_\_  
27 <sup>2</sup> The District's website identifies Dr. Foster as its "Interim Assistant Superintendent of  
28 Curriculum and Instruction" (<http://www.tusd1.org/contents/depart/depart.html>).  
Without further information, the conflicting titles raise the possibility that Dr. Foster  
serves in more than one capacity, with distinct or overlapping job duties.

1 sufficiently detailed description of his job duties and the percentage of his time devoted  
2 to each activity, the plaintiffs and the Court have no way of determining whether the  
3 proposed allocation is commensurate with the percentage of time Dr. Foster devotes to  
4 USP-related job duties. If the District can show that Dr. Foster will spend one quarter of  
5 his time attending to USP-related job duties and is paid a total annual salary of \$100,000,  
6 then the proposed allocation would not be unreasonable. The District has not provided  
7 the information necessary to make that assessment. In principle, if half of an  
8 administrator's time is committed to the implementation of the USP, then it follows that  
9 half of that administrator's salary can reasonably be drawn from the District's USP  
10 budget. The Fisher Plaintiffs are concerned that the two instances cited here may  
11 implicate other improper salary allocations in the USP budget and ask, therefore, that the  
12 District be directed to show, for each salary allocation, that the salaried employee's  
13 percentage of USP-related job duties correlates with that percentage of their total salary  
14 funded through the USP budget. On this basis, the Fisher Plaintiffs respectfully ask this  
15 Court to direct the District to revise its budget to show that it has eliminated all instances  
16 of salary supplanting exemplified by the allocations cited above.

17

18 **1.2.4. The Fisher Plaintiffs object to the inadequate justification for the proposed**  
19 **allocation of desegregation funds at University High School (UHS)**

20

21 In past years, University High School (UHS) was allocated funding under Office of Civil  
22 Rights (OCR) agreements to increase AA and H enrollment and retention at UHS. The  
23 Fisher Plaintiffs understand, but have been unable to confirm, that approximately 30% of  
24 the school's current enrollment is comprised of non-district students. For these reasons,  
25 the Fisher Plaintiffs are concerned that the District's proposed budget allocations to UHS  
26 may not be directly related to the implementation of the USP and may be inappropriately  
27 supplanting M&O funding for services provided to out-of-district students (where those  
28 services cannot be demonstrated to further the goals of the USP).

1 **1.2.5. The Fisher Plaintiffs object to the allocation of desegregation funds to place**  
2 **magnet coordinators at Ochoa and Cragin (schools which will lose their magnet**  
3 **status in the 2016-17 SY)**  
4

5 The Fisher Plaintiffs are concerned that the District has allocated magnet funds for  
6 schools that, either have already or are soon expected to lose their magnet status. For  
7 example, Cragin and Ochoa are both expected to lose their magnet status by the 2016-17  
8 SY and yet the USP budget for the 2016-17 FY includes allocations for magnet  
9 coordinator positions at both schools. The Fisher Plaintiffs, while recognizing the need  
10 to maintain funding at schools losing their magnet status, see no rational basis for funding  
11 magnet coordinators at schools that will not be functioning as magnets. Such allocations  
12 would be better spent on academic interventions recognizing that the schools at issue will  
13 not continue to operate as magnets. Of the District's twenty magnet schools, five  
14 (Cragin, Pueblo, Holladay, Robison and Utterback) were grouped in the category labelled  
15 "problematic" in the 05/15/15 version of the Comprehensive Magnet Plan (CMP). That  
16 category of schools was identified as likely to have magnet status and funding withdrawn.  
17 The District has since eliminated the label applied to the category and claims that the  
18 schools' inclusion in the category is no longer at issue. In their 06/18/15 objection to the  
19 District's CMP, the Fisher Plaintiffs noted that the elimination of a label does not  
20 eliminate the concerns that motivated the schools inclusion in the category and that:

21 [b]eyond maintaining basic school functions, schools likely to lose magnet status  
22 are likely to have high concentrations of low SES minority students [...]. The  
23 Fisher Plaintiffs believe that these schools [should] be targeted for additional  
24 assistance to counterbalance the challenges they face. That assistance, however,  
25 will be part of a zero-sum funding equation where the opportunity to "magnetize"  
26 a school will come at the cost of implementing viable educational interventions  
27 that are not naively predicated on a school's wan hopes of succeeding as a magnet  
28 (at page 13 of document number 1815 filed 06/18/15).

1 For these reasons, the Fisher Plaintiffs object to allocations in the 2015-16 FY USP  
2 budget to positions and programs intended to “magnetize” schools already recognized as  
3 likely to lose their magnet status in the near future as a misuse of desegregation funds.  
4

5 **1.2.6. The Fisher Plaintiffs object to the proposed ratio of desegregation to M&O**  
6 **funding for GATE**

7  
8 The District has indicated that, because the USP calls for the increased recruitment,  
9 enrollment and retention of minority students in the Gifted and Talented Education  
10 (GATE) program, preexisting positions in the GATE department can now be funded with  
11 desegregation funds. The Fisher Plaintiffs are concerned that such allocations  
12 inappropriately supplant M&O funding. The Fisher Plaintiffs are concerned that the  
13 desegregation funds allocated to the GATE program are meeting the District’s general  
14 budgetary needs, rather than targeting the increased enrollment of members of the  
15 protected plaintiff classes. The District proposes to fund 60% of its GATE classes from  
16 its USP budget and the remaining 40% of its GATE classes from its M&O budget. While  
17 the USP does call for the increased recruitment, enrollment and retention of African  
18 American and Hispanic students in these classes, the USP to M&O funding ratio is  
19 simply not supported by projected enrollment and the District’s recruitment efforts.  
20  
21  
22  
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24  
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28

1 **1.2.7. The Fisher Plaintiffs object to the District’s plans to spend over one million**  
2 **dollars to fund the In-School Intervention (ISI) and the District Alternative**  
3 **Education (DAE) programs**

4  
5 The District’s proposed budget allocates more than one million dollars to its In-School  
6 Intervention (ISI) and District Alternative Education (DAE) programs. The District  
7 explains that it intends to provide in-school placement for students who might otherwise  
8 be suspended out-of-school and expand the alternative program for students on long-term  
9 suspension. Versions of both programs predated the USP. The ISI program, for  
10 example, is little more than the latest version of the longstanding and ineffective District  
11 practice of in-school suspension. The proposed allocation of desegregation funds  
12 indicates the District’s belief that the students served by these programs will primarily be  
13 African American (AA) and Hispanic (H) students. The proposed allocation does  
14 nothing to address the District’s obligation under the USP to correct the  
15 overrepresentation of its AA and H students in suspensions. What it is likely to do is  
16 utilize desegregation dollars to segregate these students. The Fisher Plaintiffs object to  
17 this clearly counterproductive allocation of desegregation funding. In response to the  
18 Fisher’s request for information about the In-School Intervention (ISI) and District  
19 Alternative Education Program (DAE) programs, Dr. Morado states that the District has  
20 opted to place the programs at the schools with disproportionately high levels of  
21 suspensions of children of color. He goes on to state that “with no ISI programs in place,  
22 administrators have been suspending students home for level 3 violations. Under ISI  
23 programs, all of these students would continue their education on campus” (see attached  
24 Morado memorandum). Regarding the DAE program, Dr. Morado stated that “DAEP is  
25 for students who have committed level 4 or 5 violations and would otherwise be serving  
26 their suspensions at home.” Identifying the schools where these students are suspended  
27 at disproportionate rates is a long needed step. However, with this information what the  
28 District has decided to do is create a different consequence for the suspensions. That

1 solution does not address the core problem and only means that now these students will  
2 be disproportionately assigned to ISI and DAEP. What the District does not  
3 acknowledge is the need to train the faculty, staff and administrators at these schools to  
4 work sensitively and effectively with children of color. The million plus desegregation  
5 dollars would better be used to prevent the problem of disproportionate suspension, by  
6 providing training so that the message to its schools is that this discriminatory behavior  
7 will no longer be tolerated. These types of exclusionary programs were the basis for the  
8 Supreme Court's landmark ruling in *Brown v. Board of Education of Topeka*. See  
9 *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

10  
11 **1.2.8. The Fisher Plaintiffs object to the District's proposed allocation of**  
12 **desegregation funding for the Pan Asian Studies Department**

13  
14 The District has elected to allocate desegregation funding to its Pan Asian Studies  
15 Department (PASD) without, however, offering a sustainable rationale for the proposed  
16 allocation. The Fisher Plaintiffs note that the District's Pan Asian students are not party  
17 to this civil rights proceedings, nor are they targeted for remedial assistance under the  
18 USP. The District's justification for the proposed allocation (that the PASD also serves  
19 refugee students the District classifies as African American and Hispanic) is problematic.  
20 Without attempting here to resolve the appropriate classification of the District's refugee  
21 population, it is clear that TUSD students recognized and classified as AA and H are  
22 already targeted for services provided by the AASD or the MASD and that, because the  
23 mission of the PASD is assumedly to meet the needs of the District's Pan-Asian  
24 students,<sup>3</sup> the PASD should be funded from the District's M&O budget. On this basis,  
25 the Fisher Plaintiffs respectfully ask this Court to direct the District to revise its 2015-16  
26 USP budget to eliminate the proposed allocation as unrelated to the goals of the USP.

27  
28 

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<sup>3</sup> Students who, however deserving of services, are not classed as a party to this lawsuit.



1 **1.2.9. The Fisher Plaintiffs object to the District’s proposed allocation of**  
2 **desegregation funding for the African American Academic Achievement Task Force**  
3 **(AAAATF)**

4  
5 Activity number V.14 of the desegregation budget approved by the TUSD GB and  
6 entered into record as document number 1827 on 07/15/15, shows a total of \$723,399  
7 allocated to “AAAATF Recommendations.” The Excel spreadsheet of the final budget,  
8 circulated as an attachment to Martha Taylor’s 06/19/15 email, includes a separate tab  
9 showing “activity detail” (not just the “activity summary” appearing in the PDF  
10 document filed into record).<sup>4</sup> The individual allocations included under the AAAATF  
11 recommendations explicitly associated with the African American Student Services  
12 Department (AASSD) total \$612,929. The total sum of \$723,399 appearing in the budget  
13 under AAAATF recommendations includes \$110,470 in individual allocations associated  
14 with other departments. Without further justification for the latter class of allocations,  
15 the Fisher Plaintiffs must assume that it was inappropriately linked to the AAAATF  
16 recommendations, and that actual total proposed allocation of funds to implement the  
17 AAAATF recommendations is \$612,929. Further, the Fisher Plaintiffs are constrained to  
18 object to both totals as falling far short of the total allocation of \$1,200,000 promised by  
19 former TUSD Assistant Superintendent for Curriculum and Instruction Steve Holmes  
20 during budget negotiations with Fisher counsel.

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<sup>4</sup> The full USP budget, showing both activity summaries and details, was subsequently  
entered into record by the Mendoza Plaintiffs on 07/24/15 as document number 1829-1.

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**1.3. CONCLUSION**

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On the basis of the foregoing facts and law, the Fisher Plaintiffs respectfully ask this Court to sustain the substantive and procedural objections raised herein and direct the District to revise the USP budget accordingly.

Respectfully submitted this 24th day of July, 2015

s/ Rubin Salter, Jr.

RUBIN SALTER, JR., ASBN 01710  
Counsel for Fisher Plaintiffs

1 **2. CERTIFICATE OF SERVICE**

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3 I declare and certify that a full, correct and true copy of the foregoing document was  
4 electronically transmitted to the CM/ECF system for filing and transmittal of a notice of  
5 electronic filing to the following CM/ECF registrants on this 24th day of July, 2015. I  
6 certify further that, on this date, the CM/ECF system's service-list report showed that all  
7 participants in this case were CM/ECF registrants.  
8

9 WILLIAM BRAMMER ASBN 002079  
10 OSCAR S. LIZARDI ASBN 016626  
11 MICHAEL J. RUSING 006617  
12 PATRICIA V. WATERKOTTE 029231  
13 Attorneys for Defendant TUSD  
14 Rusing, Lopez & Lizardi, PLLC  
15 6363 N. Swan Rd., Suite 151  
16 Tucson, Arizona 85718  
17 (520) 792-4900  
18 brammer@rllaz.com  
19 olizardi@rllaz.com  
20 mrusing@rllaz.com  
21 pvictory@rllaz.com

JULIE C. TOLLESON ASBN 012913  
SAMUEL E. BROWN 027474  
Attorneys for Defendant TUSD  
Tucson Unified School District  
Legal Department  
1010 E. 10th St.  
Tucson, AZ 85719  
(520) 225-6040  
julie.tolleson@tusd1.org  
samuel.brown@tusd1.org

18 LOIS D. THOMPSON CSBN 093245  
19 JENNIFER L. ROCHE CSBN 254538  
20 Attorneys for Mendoza Plaintiffs  
21 Proskauer Rose LLP  
22 2049 Century Park East, Suite 3200  
23 Los Angeles, California 90067  
24 (310) 557-2900  
lthompson@proskauer.com  
jroche@proskauer.com

JUAN RODRIGUEZ CSBN 282081  
THOMAS A. SAENZ CSBN 159430  
Attorneys for Mendoza Plaintiffs  
MALDEF  
634 S. Spring Street, 11th Floor  
Los Angeles, CA 90014  
(213) 629-2512  
jrodriguez@maldef.org  
tsaenz@maldef.org

1 ANURIMA BHARGAVA, Chief  
2 ZOE M. ZAVITSKY CAN 281616  
3 JAMES A. EICHNER  
4 Educational Opportunities Section  
5 Civil Rights Division USDOJ  
6 950 Pennsylvania Avenue, NW  
7 Patrick Henry Building, Suite 4300  
8 Washington, D.C. 20530  
9 (202) 305-3223  
10 anurima.bhargava@usdoj.gov  
11 zoe.savitsky@usdoj.gov  
12 james.eichner@usdoj.gov

WILLIS D. HAWLEY  
Special Master  
2138 Tawes Building  
College of Education  
University of Maryland  
College Park, MD 20742  
(301) 405-3592  
wdh@umd.edu

10 ANDREW H. MARKS  
11 Law Offices of Andrew Marks PLLC  
12 1001 Pennsylvania Ave. NW, Suite 1100  
13 Washington, DC 20004  
14 (202) 218-8240  
15 amarks@markslawoffices.com

15 Respectfully submitted this 24th day of July, 2015

17 s/ Rubin Salter, Jr.

18 RUBIN SALTER, JR., ASBN 01710  
19 Counsel for Fisher Plaintiffs

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