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12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,

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

**MENDOZA PLAINTIFFS’
OBJECTIONS TO THE TUSD 2015-16
DESEGREGATION BUDGET**

Hon. David C. Bury

Action Required

1 Maria Mendoza, et al.,
 2 Plaintiffs,
 3 United States of America,
 4 Plaintiff-Intervenor,
 5 v.
 6 Tucson United School District No. One, et al.,
 7 Defendants.

Case No. CV 74-204 TUC DCB

8 **Introduction**

9
 10 On July 15, 2015, the Tucson Unified School District, No. 1 (“TUSD” or “the
 11 District”) filed its Notice of Adoption of 2015-16 Budget (Doc. No. 1827). For reasons
 12 that it did not explain, rather than attach the full 2015-16 desegregation budget to its filing,
 13 it submitted documentation it had prepared for submission to the State of Arizona pursuant
 14 to A.R.S. §15-910(J)(3), which apparently only calls for delivery to the State of a budget
 15 summary (*see* Doc. No. 1827 at 11-16) rather than the entire, detailed budget. Because it
 16 is not possible to understand the objections raised by the Mendoza Plaintiffs without
 17 reference to the budget detail, Mendoza Plaintiffs have attached the full budget (summary,
 18 followed by detail) to this filing as Exhibit A.¹

19 In its Objection to Report and Recommendations regarding the Revision of TUSD’s
 20 Comprehensive Magnet Plan (“TUSD Objection”) (Doc. 1828), the District complained

21 ¹ The budget detail apparently was not presented to the Governing Board when the
 22 Governing Board approved the budget. (It is not included in the materials that accompany
 23 the budget presentation on the Governing Board’s Agenda for July 14, 2015, the meeting
 24 at which it approved the budget. *See* www.tusd1.org/contents/govboard/gbpacket07-14-15.) [This of course raises a question concerning how the Governing Board was able to
 25 fully understand and consider the recommendations of the Special Master and the Plaintiffs
 26 since virtually all of those recommendations reference expenditures and issues that cannot
 27 be fully understood (if at all) based only on the budget summary. (*Compare* Doc. 1827 at
 28 137-140 *with* Exhibit A hereto.)] Mendoza Plaintiffs have included in Exhibit A the
 budget detail they received on June 19, 2015. They have been informed of no changes in
 that detail between June 19 and July 14, and believe there were none since the budget
 summary they received on June 19 appears to be identical to the budget summary filed by
 the District as part of Doc. No. 1827.

1 about the nature of the objections Plaintiffs have asserted to its magnet and other plans
2 and, without having filed a motion or any other document to suggest it was seeking
3 affirmative relief from this Court, asked the Court to issue an order limiting objections.
4 (Doc. 1828 at 1-2.) It suggested that it was seeking such an order because it “anticipate[d]
5 further programmatic policy objections to be submitted shortly by Plaintiffs in connection
6 with the 2015-16 budget....” (*Id.* at 2, n.2.) Mendoza Plaintiffs will leave for another day
7 and a more appropriate context discussion of the basis and support for the scope of
8 objections they have asserted to plans and policies that like the magnet plan are governed
9 by USP Section I, D, 1. As to the budget, governed by USP Section X, B, Mendoza
10 Plaintiffs note the following:

11 The USP is the result of negotiation and agreement among the parties, including
12 TUSD. In that USP, the parties expressly agreed that Plaintiffs have the right to “provide
13 their comments on the USP Budget” (USP, Section X, B, 4) – comments, not a bill of
14 particulars setting forth instances in which the proposed budget fails to conform with the
15 USP or this Court’s orders. Further, Section X, B, 4 then states that after receiving the
16 Plaintiffs’ comments, the Special Master “shall communicate...his suggestions, if any, for
17 modifying the proposed budget – again, suggestions for modifying, not a statement by him
18 that he agrees or disagrees with an assertion that some aspect of the proposed budget fails
19 to conform to the USP or this Court’s orders. Section X, B, 4 next goes on to state: “[a]ny
20 recommendation of the Plaintiffs and the Special Master not included in the
21 Superintendent’s final USP Budget proposal shall be noted and separately provided to the
22 Governing Board for consideration.” (Emphasis added.) This sentence would make no
23 sense if all that was to be conveyed to the Governing Board was a statement that a Plaintiff
24 or the Special Master had asserted that a provision of the budget violated the USP or a
25 Court Order and that the Superintendent disagreed. Plainly, it contemplates that the
26 Governing Board will consider substantive recommendations relating to the budget that the
27 Superintendent had determined not to accept.

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1 This Court has repeatedly underscored the necessity for active oversight *given the*
2 *history of this case.* (See., e.g., Order filed 6/7/13, Doc. No. 1477 at 3.) In language the
3 District omitted when it quoted a limited portion of this Court’s Order of June 7, 2013 in
4 the TUSD Objection, this Court stated: “The Special Master and the Plaintiffs’ role in this
5 case regarding the desegregation budget is more than ‘spectators shouting from the
6 sidelines,’ they are charged with offering advice regarding program efficacy relative to the
7 USP.” (*Id.* at 4; emphasis added.) Mendoza Plaintiffs’ objections to the budget are entirely
8 consistent with their role as delineated by this Court and with the governing provisions of
9 the USP.

10 Although the Mendoza Plaintiffs have a number of concerns about the budget, they
11 have limited their objections to those they consider most pressing if the District is to carry
12 out its obligations under the USP and this Court’s Orders.

13 They also seek an express direction from this Court prohibiting the District from
14 undermining effective implementation of the USP by imposing cuts in the desegregation
15 budget or placing “holds” on the hiring of personnel expressly called for by that budget
16 without advance notice to the Plaintiffs and the Special Master and an opportunity to be
17 heard. As explained more fully below, last year, the District determined to stop hiring (to
18 place on “hold”) a number of open positions including those of magnet coordinator and
19 teacher mentor notwithstanding that such positions were explicitly provided for in the
20 desegregation budget and 910(g) funding had not been cut. Mendoza Plaintiffs believe
21 Court intervention is required to prevent a repeat of such actions this year or in future
22 years.

23 **TUSD Has Once Again Failed to Use 910(g) Money to Expand Dual Language** 24 **Programs**

25 Last year, when the Mendoza Plaintiffs challenged certain proposed expenditures
26 for dual language teachers on supplant vs. supplement grounds, they discussed the
27 District’s obligation under the USP to “build and expand its Dual Language programs in
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1 order to provide more students throughout the District with opportunities to enroll in these
2 programs” (USP, Section V,C,1) and showed that no such expansion was occurring. (*See*
3 *Mendoza Plaintiffs’ Objections to the TUSD 2014-15 USP Budget, Doc. 1667, at 5.*) This
4 Court also referenced that obligation when it ordered TUSD to reassess the number of
5 Dual Language teachers whose salary would be paid from 910(g) funds to ensure that such
6 funding was based solely on the District’s “low-threshold” methodology. (Order filed
7 10/22/14, Doc. No. 1705, at 5.)

9 This year notwithstanding that it has set forth expenses relating to the dual language
10 effort under a budget heading entitled “Build/Expand Dual Language Programs,” (*see*
11 Exhibit A at 2 and budget detail at Activity V.4, USP # 504), it still is not using any
12 910(g) money to expand dual language programs. In fact the number of schools offering
13 dual language programs and overall enrollment in the programs has substantially declined.

14 Attached as Exhibit B is a chart setting forth the enrollment in dual language
15 programs in the District from 2012 through 2015. It was given to the Mendoza Plaintiffs
16 on May 15, 2015, in response to an information request.

17 The chart reveals that enrollment in dual language courses dropped from 3,192 in
18 2012 to 2,257 in 2015. Moreover, the program contracted with the closing of Wakefield,
19 the termination of the bilingual program at Tucson High, and the abandonment of the dual
20 language effort at both Manzo and Ochoa. (While there has been a decline in enrollment
21 at McCorkle and Mission View as those schools have restructured their programs, per
22 Exhibit B, that accounts for less than 20% of the total decline.) Of particular concern is
23 the explanation for the termination of the dual language program at Manzo and Ochoa
24 recited on Exhibit B: “not being able to sustain program with teachers.” Such an
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1 explanation cannot be countenanced given that the USP explicitly says that the District
2 will build and expand its dual language programs “by encouraging new and current
3 certified staff with dual language certifications to teach in such programs and by focusing
4 recruitment efforts on appropriately certified teachers.” (USP, Section V, C.)

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6 By email dated July 8, 2015, Mendoza Plaintiffs asked the District to promptly
7 prepare a plan to build and expand its dual language programs and to ensure that there is
8 sufficient money allocated for this purpose in the 2015-16 budget. The District did not
9 respond to this request.² Mendoza Plaintiffs therefore now ask this Court to order the
10 District to revise the desegregation budget to allocate the money necessary to build and
11 expand its dual language program and bring the District into compliance with USP Section
12 V, C.

14 **Inadequate Funding of Magnet Schools**

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16 Before Mendoza Plaintiffs can discuss this objection, they must first address the
17 problems with the District’s budget presentation. If the Court looks at the budget detail for
18 the magnet school programs (Exhibit A, budget detail, under Activity II.2, USP #202), it

19 ² Mendoza Plaintiffs anticipate that the District will protest that there is no room in this
20 year’s budget to expand the dual language program. Mendoza Plaintiffs have the
21 following response: Given where we are in the year, with school to start next month, they
22 understand that, unfortunately, no new dual language classes can be offered in the 2015-16
23 school year. They therefore are calling for budget modifications to pay to create an
24 aggressive plan to ensure expansion in 2016-17 and to undertake those actions necessary
25 to accomplish that, specifically including, but not limited to, the recruitment of
26 appropriately certified teachers. Such activity in the 2015-16 budget year will not require
27 a great deal of money. While they have not pressed the point in these objections, they
28 continue to believe that the \$711,662 allocated to the marketing, outreach, and recruitment
plan (*see* Exhibit A at 1 and budget detail under Activity II.4, USP #204) contains
activities that are more properly paid for from the M&O budget. They also believe that the
allocation is a disproportionately large part of the total 910(g) budget particularly when
one notes that recruitment activities to be engaged in by magnet coordinators and other
school specific recruitment initiatives are separately included in each magnet school’s
improvement plan and accounted for under the comprehensive magnet plan portion of the
budget. (These activities are set out in each magnet school’s improvement plan, on file
with the Court in Doc. No. 1816.)

1 will see that the budget lacks a clear presentation of how much 910(g) money is allocated
2 to each magnet school. (While it is possible, working in Excel, to isolate that information,
3 an understanding of the USP budget should not be available only to those to whom the
4 District provides a version of the budget in Excel.) Mendoza Plaintiffs have repeatedly
5 asked that such information be presented in the pdf version of the budget but the District
6 has failed to honor that request. The USP mandates that, upon approval, “the District shall
7 post a copy of the final USP Budget on the USP Web Page....” (USP, Section X, B, 6.)
8 Mendoza Plaintiffs therefore ask the Court to direct the District to provide a version of the
9 budget that details by school the funding under Activity 202 for each magnet school so
10 that the public will have the information it needs to understand the budget. (Given that the
11 District failed to file the budget detail with the Court, but provided instead the
12 documentation generated for filing with the State, Mendoza Plaintiffs also ask that the
13 District be directed to post on its web site the detail of the 910(g) budget, once revised to
14 include a presentation of each magnet school’s budget, as well as the budget summary.)

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18 When they reviewed the individual school magnet plans, the Mendoza Plaintiffs
19 were able to gain some understanding of the sums being allocated to support those plans
20 from the plans themselves. (Mendoza Plaintiffs respectfully invite the Court’s attention to
21 Doc. 1816, the TUSD filing of the individual magnet school improvement plans. Because
22 of its volume (in excess of 200 pages) they are not again filing that volume with this
23 pleading.)

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26 In their comments and objections to the individual magnet school improvement
27 plans (Doc. No. 1822), the Mendoza Plaintiffs discuss the funding disparity between
28 magnet schools and show that four in particular (Holladay, Robison, Ochoa, and

1 Utterback) have been allocated insufficient funds (and therefore have inadequate plans) to
2 attempt to meet the USP’s requirements with respect to achievement and integration.

3 In response, without citing any sources³, the District asserts that each school has
4 more funding than it had last year. (Doc. No. 1824 at 6.) But that is not the point: the
5 issue is whether the schools now have sufficient funds to implement the robust
6 improvement plans that are needed if they are to meet their integration and achievement
7 goals. Moreover, as this Court noted when it ordered the preparation of the magnet school
8 improvement plans: “The Court does not disregard the Mendoza Plaintiffs’ point that
9 existing magnet schools have been starved of leadership and adequate resources for over
10 30 years....” (Order filed 1/16/15, Doc. No. 1753, at 15.) Therefore, comparison with last
11 year’s individual school allocations proves nothing.
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14 If this Court agrees with the comments and objections set forth in Mendoza
15 Plaintiffs’ Comments and Objections to the Individual Magnet School Improvement Plans
16 in the TUSD Comprehensive Magnet Plan (Doc. No. 1822) as they relate to the funding of
17 those improvement plans, they ask that it direct the District to make the budget
18 adjustments necessary to support robust improvement plans at the Holladay, Robison,
19 Ochoa, and Utterback magnet schools.
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26 ³ As noted above, numbers for individual schools are virtually impossible to determine (at
27 least without a great deal of work) from the face of the USP budget documents. (This was
28 less true last year (*see* Doc. No. 1667-1 at 9-15) but the numbers set forth by the District in
its response to the Mendoza Plaintiffs’ objections for last year (in Doc. 1824 at 6) are not
readily apparent on the face of Doc. No. 1667-1, the desegregation budget for last year.

1 **TUSD Must be Prohibited from Acting Unilaterally to “Freeze” or Place**
2 **“Holds” on Positions for Which Funds Have Been Allocated in the Desegregation**
3 **Budget or Otherwise Failing to Expend Funds as Required by That Budget**

4 On May 29, 2015, in response to a request posed by the Fisher Plaintiffs concerning
5 rumors of a hiring “freeze” in the District, TUSD stated that while there had been no
6 “freeze” it had indeed put certain open positions “on hold.” (The District’s May 29, 2015
7 response to the Fisher Plaintiffs’ request is attached as Exhibit C.) On August 11, 2014, the
8 District’s Chief Human Resources Officer issued a memorandum putting all “ ‘out of
9 classroom positions’ ...on hold” and made that action “effective today.” (Exhibit C at 3.)
10 Among those positions were Magnet Coordinator, for which express allocations existed in
11 the 2014-15 desegregation budget (*see, e.g.*, Doc. No. 1667-1 at 9-15), as well as Teacher
12 Mentor, a position central to the professional development mandated by the USP and also
13 expressly included in the 2014-15 desegregation budget (*id.* at 41, under Project 12,
14 Professional Development, providing for eight teacher mentors). The District never
15 informed the Plaintiffs of this decision.

16 Promptly after they received the District’s May 29 response to the Fisher Plaintiffs’
17 RFI, Mendoza Plaintiffs expressed their concern to the District. In an email dated June 4,
18 2015, a copy of which is attached as Exhibit D, they wrote as follows: “The hiring freeze
19 or ‘hold’ on USP-mandated positions, particularly with regard to magnet coordinators, is
20 of great concern to the Mendoza Plaintiffs. They understood from the District’s
21 documents that those schools that did not have magnet coordinators by August 11 were left
22 without coordinators for, at least, the fall 2014 semester. Mendoza Plaintiffs are troubled
23 by the ease with which the District apparently decided to stop filling positions it
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1 committed to provide under a desegregation budget involving a review process of many
2 months and approval by the Court. They find it equally troubling that it failed to inform
3 the Plaintiffs until months later, when the Fisher Plaintiffs specifically asked about a hiring
4 freeze. Moreover, the District’s actions raise the issue of whether the District will
5 implement the budget that is ultimately adopted for the 2015-16 school year in good faith,
6 and whether it would again unilaterally deviate from a budget that had been expressly
7 made subject to plaintiff, Special Master, and court review.” (Exhibit D at 4.)

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

17 Although the District informed Mendoza Plaintiffs in a telephone conversation on
18 June 22, 2015 that it was preparing a response to these requests (*see* email from Juan
19 Rodriguez to Julie Tolleson and Sam Brown dated July 7, 2015, attached as Exhibit E), no
20 response has been received.

22 Mendoza Plaintiffs now ask this Court to enter an order prohibiting the District
23 from undermining effective implementation of the USP by imposing cuts in the approved
24 desegregation budget or placing “holds” on the hiring of personnel expressly called for by
25 that budget without advance notice to the Plaintiffs and the Special Master and providing
26 the Plaintiffs and Special Master an opportunity to object, and, if necessary, to seek an
27 appropriate order from this Court.
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Conclusion

1
2 For the reasons set forth above and in Mendoza Plaintiffs’ Comments and
3 Objections to the Individual Magnet School Improvement Plans in the TUSD
4 Comprehensive Magnet Plan (Doc. No. 1822), Mendoza Plaintiffs ask this Court to sustain
5 their objections to the 2015-16 TUSD desegregation budget, to direct the District to revise
6 that budget to provide clear and readily understandable budgets for each magnet school,
7 and to post both the detail and the summary of the 2015-16 desegregation budget on its
8 web site. Mendoza Plaintiffs further request this Court to enter an order prohibiting the
9 District from undermining effective implementation of the USP by imposing cuts in the
10 approved desegregation budget or placing “holds” on the hiring of personnel expressly
11 called for by that budget without advance notice to the Plaintiffs and the Special Master
12 and providing the Plaintiffs and Special Master an opportunity to object, and, if necessary,
13 to seek an appropriate order from this Court.
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20 Dated: July 24, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2015, I electronically submitted the foregoing Mendoza Plaintiffs’ Objections to the TUSD 2015-16 Desegregation Budget to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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I further certify that on I sent an e-mail copy of the foregoing to the following that is not a CM/ECF registrant:

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Dated: July 24, 2015

s/ Marco Gomez