

MENDOZA PLAINTIFFS' COMMENTS ON DRAFT R&R ON OBJECTIONS TO THE 2016 BUDGET

August 14, 2015

Mendoza Plaintiffs have reviewed both the draft R&R and the Fisher Plaintiffs' comments to that draft. They offer the following comments in response to both. The comments are organized pursuant to the headings in the draft R&R.

Draft Introduction

Mendoza Plaintiffs join the Fisher Plaintiffs in their expression of disagreement with the Special Master's statement that he will not address District failures to provide information during the budget process. The Court has expressed a particular interest in the preparation of a budget with significant Special Master and Plaintiffs input and the creation of a budget that is transparent and that the public can use both to understand USP financing and to hold the District accountable. To the extent the District's failures to respond have hampered that process and outcome, they should be addressed.

District Decision to Freeze Hiring

Mendoza Plaintiffs can agree to the Special Master's recommendation only if the District enters into a stipulation to be "so ordered" by the Court that says it will not "freeze", place "on hold" or desist in any way from the hiring (as by "eliminating" the position) of positions expressly called for in the USP or paid for with 910(g) funds as set forth in the budgets approved by the Governing Board and/or the Court after consideration of Plaintiff objections and Special Master recommendations.

Objection Related to the ISI and DAE Programs

In light of the recommendations of the Special Master and the comments/objections of the Fisher Plaintiffs, the Mendoza Plaintiffs clarify the positions they have expressed concerning the ISI and DAE Programs.

The Mendoza Plaintiffs elected not to assert an objection to the process the District followed in the development of the ISI and DAE Programs although it is clear that they should have been subject to the USP Section I,D,1 process **and** are precisely the sorts of programs that the Court directed be shared with the Plaintiffs and the Special Master as part of the 910(g)

budget process¹ because the District's actions had once again put the Plaintiffs and the Special Master "between a rock and a hard place." The current situation is deplorable, as the District itself admits.² Mendoza Plaintiffs recognized that they will have an opportunity to address the District's failure to adhere to mandated USP and budget processes when it is time to assess the District's good faith implementation of the USP. They also understood that if they pressed their process objections at this point, with the 2015-16 school year already started, students facing suspension while those process objections were being resolved and rectified would be subject to either the totally unacceptable versions of in school suspension currently in place in the District (notwithstanding an express statement in the existing Drop Out Prevention Plan of what ISI is supposed to be) or, being sent home from school rather than provided any sort of in school alternative if subject to long term suspension. Mendoza Plaintiffs therefore determined that in the best interest of those students they had no choice but to address the substance of those plans.

They therefore are gratified that the Special Master has recommended that the District address most of the concerns they raised concerning those plans³. Given the District's admission that it has been hard to ensure that students receive instruction from content certified teachers in the current ISI "program" Mendoza Plaintiffs ask that the District be required to report on the credentials of the teachers hired or assigned to the ISI and DAEP programs and that the Special Master and the IC closely monitor this critical aspect of the two programs.

¹ This is confirmed by the fact that among the Student Support Programs for which the District provided Student Support Forms during this budget process were Forms relating to In School Suspension, Life Skills, and CORE Plus. (See Martha Taylor email dated May 18, 2015 to all parties.) Such Forms are provided so that Plaintiffs and the Special Master can carry out their "charg[e] [of] offering advice regarding program efficacy relative to the USP" when reviewing the proposed budget. (See Court Order dated 6/7/13 at 4, Doc. No. 1477.)

² In its report dated June 19, 2015, the District admits that its in school suspension program does not conform to the requirements of the Drop Out Prevention Plan. Instead, it reports: "This past year eight schools in TUSD ran **some sort** of School Alternative to Suspension. Different programs run on different days, with different curriculum, some simply 'house' students under the supervision of the Assistant Principal. It has been hard to ensure that students continue receiving classroom instruction from content certified teachers or the socio-economic support needed. Our ISI programs will replace these programs and we will have consistency of practice." (Emphasis added.)

³ Such comment is appropriately considered in the budget process given the Court's statement of the charge to the Plaintiffs and the Special Master referenced above in note 1 and the fact that the ISI and DAE Programs are revisions/substitutes for programs that are subject to express reporting to the Plaintiffs and the Special Master at budget time via the Student Support Program Forms that exist as part of the mandated budget process.

They also join in and support the Fisher Plaintiffs' objection to placing DAEP students in racially concentrated schools. To do so would be, as the Fisher Plaintiffs suggest, totally inconsistent with a plan developed to implement the USP in this school desegregation case. The Special Master notes that the Fisher Plaintiffs have failed to suggest an alternative to the Project MORE site. Mendoza Plaintiffs respectfully suggest that when the Special Master concludes and recommends to the Court that DAEP students not be assigned to existing racially concentrated schools, as both sets of class Plaintiffs now urge, it is for the District to come forward with a proposal that passes USP and Constitutional muster.

Funding for Magnet Schools

Mendoza Plaintiffs are disappointed that the Special Master has accepted the District's assertion that Ochoa, Robison, Utterback and Holladay have more funding in the current year than they did in the previous year notwithstanding that the numbers that the District put forward when they made this assertion provided no indication of the source from which they were derived and that Mendoza Plaintiffs noted in their objections to the budget that they had been unable to confirm that assertion with reference to the 2014-15 and 2015-16 budgets. More important, however, is that the Special Master's unwillingness to require the District to fund robust success plans ignores the fact that every magnet school is supposed to have a budget that will help it meet its integration and achievement goals -- not treat failure as a forgone conclusion and therefore make failure a self-fulfilling prophesy.

Additional Objection from the Mendoza Plaintiffs – Dual Language

Mendoza Plaintiffs well understand why the Special Master may have concluded that outside resources and expertise are required to achieve expansion of dual language programs in TUSD given the District's failure to have complied to date with the clear USP mandate to expand dual language programs in the District. However, they do not agree that a "study" should now be undertaken with its results not to be provided until January 2016, and then some sort of feasibility analysis engaged in. The USP is clear: "the District shall build and expand its Dual Language programs...." (USP, Section V,C,1.) Therefore, the District should be directed to promptly develop a plan to expand its programs for implementation next school year (since, regrettably, it is too late to implement such expanded programs this year) and to engage the assistance of nationally recognized experts to help design that plan.

In that regard, Mendoza Plaintiffs remind the Special Master and the District that one such expert is working with them: Beatriz Arias. Just as the District agreed that experts who had been retained by the parties (Dr. Leonard Stevens and Dr. Gary Orfield) could be consulted by the Special Master when he addressed issues relating to student assignment, presumably because the District appreciated the value that Drs. Stevens and Orfield could bring to that

process, it should agree now that consultation with Dr. Arias notwithstanding that she also has been engaged by the Mendoza Plaintiffs would advance the development of a plan that would help the District to finally comply with its obligations under USP Section V, C, 1.