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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
 Plaintiffs,
v.
United States of America,
 Plaintiff-Intervenor,
v.
Anita Lohr, et al.,
 Defendants,
and
Sidney L. Sutton, et al.,
 Defendants-Intervenors,

Maria Mendoza, et al.,
 Plaintiffs,
United States of America,
 Plaintiff-Intervenor,
v.
Tucson Unified School District No. One, et al.,
 Defendants.

CV 74-90 TUC DCB
(lead case)

ORDER

CV 74-204 TUC DCB
(consolidated case)

1 On July 15, 2015, the District filed a Notice that its Governing Board had adopted
2 the 2015-2016 Unitary Status Plan (USP) Budget. Both Plaintiffs filed Objections. The
3 District sought and was granted leave to file a Reply to Plaintiffs' Objections. The Court
4 asked the Special Master to file his Report and Recommendation, and directed the District
5 to file one reply, thereafter. The Special Master filed the R&R on August 24, 2015. The
6 District filed a 21-page Reply, which in large part asserts the Plaintiffs' Objections and the
7 Special Master's recommendations exceed the scope of this Court's judicial authority. The
8 Court has repeatedly made a record of its position regarding the scope of its authority.
9 Relying on these previous discussions, the Court rejects the District's assertions that it may
10 not adopt the Special Master's recommendations for addressing the Plaintiffs' concerns. The
11 Court adopts the 2015-2016 USP Budget as recommended by the Special Master, as outlined
12 below.

13 Failure to provide information to Plaintiffs and the Special Master

14 The Special Master reports that he has asked Dr. Vicki Balentine, member of the
15 Implementation Committee, to review strengths and weaknesses of the budget process,
16 including the exchange of information and to recommend any changes to improve next year's
17 process.

18 Hiring freezes that modify the Budget

19 The Special Master reports that regardless of whether the District "put a hold" on
20 hiring of personnel which were provided for in the 2015 Budget, an investigation at this point
21 in time would be time consuming and substantively meaningless. He recommends that in the
22 future, if the District seeks to reallocate funds, it should be required to inform the Plaintiffs
23 and the Special Master in a timely manner to allow for objections prior to implementation
24 of the proposed action. If the parties agree, the change can be noted in the District and
25 Special Master's annual reports. If the parties do not agree, the District must seek leave of
26 the Court to change an approved Budget item and the funded activity.

1 In-School-Intervention (ISI) and District Alternative Education (DAE)

2 In spite of the nexus between these programs and the Guidelines for Student Rights
3 and Responsibilities (GSRR), which is being implemented pursuant to the USP, the Special
4 Master reports it is unclear whether the review provisions of USP § I.D.1 apply, and the ISI
5 and DAE were not submitted to the Plaintiffs and Special Master for review and comment.
6 The ISI and DAE modify the District's existing short and long term suspension policies and
7 were adopted by the District in response to concerns by the Plaintiffs, the Special Master, and
8 a District consultant, about the District's drop out rate. "Because suspensions are highly
9 correlated with dropping out and failing to graduate, it is important that policies and practices
10 with respect to suspensions and dropout prevention are coherent." (R&R (Doc. 1833) at 5.)
11 The Special Master asks the Court to approve the ISI and DAE in spite of procedural
12 objections from the Plaintiffs because it is urgent to provide options to current out-of school
13 and in-school suspensions that have no educational value. The Court finds it would have
14 been preferable to allow review of ISI and DAE by Plaintiffs and the Special Master,
15 pursuant to the USP § I.D.1, than to face the option now of putting the programs on hold
16 while the District justifies these expenditures during the budgetary process. However, the
17 Court agrees with the Special Master that delay is not warranted given the urgency of the
18 subject matter.

19 The Special Master addresses the Plaintiffs' substantive objections as follows:

20 1. Placements at Project More of DAE students will increase the racial
21 concentration of the school: The Special Master, nevertheless, recommends the placement
22 of DAE long-term suspensions at Project More because assigning DAE students to multiple
23 schools and/or other schools, which do not have the skilled staff available at Project More,
24 would be expensive. Project More is uniquely qualified to house the DAE program and
25 alternatives are fiscally prohibited.

1 2. ISI and DAE do not address strategies to prevent behavior that results in
2 suspensions, i.e., the inadequacy of discipline related development: The Special Master
3 reports that the District has revised its plan for professional development related to student
4 discipline. The Special Master recommends that he monitor implementation of the plan,
5 report on progress made pursuant to the plan, and recommend any further measures where
6 warranted with respect to professional development that would reduce student misbehavior
7 issues.

8 3. The District's attempt to introduce social and emotional learning (SEL) to the
9 ISI and DAE programs is not based on any solid research reflecting the "7 Habits" program
10 will be effective: The Special Master commends the District for including SEL in its ISI and
11 DAE programs and recommends that the Court require the District to utilize a research-based
12 SEL component.

13 Funding Magnet Schools

14 The Court notes that the recent Stipulation (Doc. 1865) filed by the Mendoza
15 Plaintiffs and the District, as approved by the Court on November 19, 2015, (Order (Doc.
16 1870)), affects this recommendation. Here, the Special Master addresses the Plaintiffs'
17 concerns regarding funding levels for the individual magnet schools. He reports a disconnect
18 between Budget provisions and expenditures listed in school level plans, which made it
19 difficult to make his recommendations with specificity. Therefore, he asks the Court to issue
20 generalized broad directives as follows:

21 1. Fully fund the activities identified in the school level plans embodied in the
22 Comprehensive Magnet Plan submitted to the Court whether these funds come from A.R.S.
23 § 15-910(G) or other sources. Or, the District should modify its school-level magnet plans
24 and resubmit these to the plaintiffs, the Special Master and the Court.

25 2. Direct the District to identify the expenditures budgeted for each magnet school
26 program in sufficient detail to allow the public to understand how the activities in the plan
27

1 will be supported. This information shall be posted on the District website as provided for
2 in the USP. (USP (Doc. 1713) § X (Accountability and Transparency)).

3 3. Ensure that activities needed to implement the academic improvement plans in
4 magnet schools now identified as C and D schools include family engagement. These family
5 engagement activities may be funded from other sources than 910(G) and may be part of the
6 District's overall family engagement plan. (USP (Doc. 1713) § VII (Family and Community
7 Engagement)).

8 The Court makes these directives as to the magnet schools, except to the extent the
9 provisions of the Stipulation apply to Elementary Schools Bonillas, Ochoa, Robison,
10 Holladay; Safford K-8; Middle School Utterback; and Cholla and Pueblo high schools. The
11 Court agrees with the Special Master that the District's commitment to implement a new
12 magnet school at Cragin Elementary School, which is being withdrawn by the District,
13 should be honored in respect to hiring of personnel for the current budget year.

14 910(G) Funding Objections

15 The Court directs the parties to apply the Formula Plus Rule, as adopted by
16 agreement of the parties, to resolve concerns that 910(G) funding is supplanting rather than
17 supplementing other funding sources. The Special Master agrees to undertake the
18 examination of how 910(G) funds are used at University High School (UHS) to determine
19 whether they are used to support students who do not reside in TUSD and report his findings
20 to the parties no later than January 15, 2015. He will do the same regarding the use of
21 910(G) funding for GATE classes. This report will be submitted to the parties by February,
22 2016. The issue of 910(G) funding for "Pan-Asian and Refugee Student Services" (Asian
23 and/or Pacific Island and Refugee Student Services Department (APIRSSD)) can be
24 examined in the context of the District's current study being undertaken to assess the roles
25 being played by the African-American Student Services Department and the Mexican-
26 American Student Services Department. The District should include an assessment of the

1 needs of refugee students from Africa and Latin America and how those needs are being met
2 and should be met in the future and what the budget implications are for all student services
3 departments. The District must provide a detailed rationale for 910(G) funding for the
4 APIRSSD in its proposals for the 2016-17 Budget.

5 Budget Allocations to Implement Recommendations for the African-American Academic
6 Achievement Task Force (AAAATF)

7 This issue is moot because the District has agreed to retain and set aside \$500,000
8 for implementing recommendations of the AAAATF, which to date has not made any
9 recommendations.

10 Dual Language

11 Again, the Mendoza Plaintiffs express concern that the District has failed to use
12 910(G) funding to expand the dual language program. Last year, the Mendoza Plaintiffs
13 challenged proposed expenditures for dual language teachers on supplant vs. supplement
14 grounds, and noted that the District must ““build and expand its Dual Language programs in
15 order to provide more students throughout the District with opportunities to enroll in these
16 programs.”” (R&R (Doc. 1833), Ex. B: Mendoza Objections (Attach 2) at 3 (citing USP,
17 Section V.C.1: Quality of Education)). Still this year, the District fails to budget 910(G)
18 money to expand dual language programs. “In fact the number of schools offering dual
19 language programs and overall enrollment in the programs has substantially declined.” *Id.*
20 at 4. Suffice it to say: “If not now, when?” The target end-date for operating TUSD under
21 the USP is SY 2016-17.

22 The Court adopts the Special Master’s recommendation that the District be required
23 to develop a plan for increasing student access to dual language programs which must be
24 implemented by SY 2016-17. Given the delay in moving forward with the dual language
25 component of the USP, the District should engage one or more nationally recognized
26 consultants to assist in studying and developing the plan, which must be prepared and
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1 presented to the parties and Special Master for review and comment in a timely fashion for
2 implementation in SY 2016-17.

3 Additionally, the District's study should consider what types of dual language
4 programs may be effective for integration purposes and examine whether locating dual
5 language programs in other sections of the District and in schools that do not have a Latino
6 student population in excess of 75% would attract students of all racial and ethnic
7 backgrounds. *See* (Stipulation (Doc. 1865) ¶ E.)

8 **Accordingly,**

9 **IT IS ORDERED** that the 2015-2016 USP Budget (Doc. 1827), passed by the
10 Governing Board on July 14, 2015, is adopted by the Court as recommended by the Special
11 Master (Doc. 1833), as follows:

- 12 1. Upon the completion of Dr. Balentine's review, the Special Master shall submit
13 to the Court any recommendations made by her which will improve the budget
14 process, including the exchange of information, in the future.
- 15 2. Subsequent to Court approval of the USP Budget, if the District seeks to
16 reallocate funds, it must inform the Plaintiffs and the Special Master in a timely
17 manner to allow for objections prior to implementation of the proposed action.
18 If the parties agree, the change can be noted in the District and Special Master's
19 annual reports. If the parties do not agree, the District must seek leave of the
20 Court to change an approved USP Budget item and the funded activity.
- 21 3. The Court approves the ISI and DAE programs, including placement at Project
22 More. The Special Master shall monitor implementation by the District of its
23 revised plan for professional development, report its progress and make
24 recommendations to the District regarding any further measures necessary with
25 respect to professional development that would reduce student misbehavior

1 issues. The SEL component to the ISI and DEA programs shall be based on solid
2 research reflecting program effectiveness.

- 3 4. As for funding Magnet Schools, the District shall: 1) fully fund the activities
4 identified in the school level plans embodied in the Comprehensive Magnet Plan
5 submitted to the Court whether these funds come from 910(G) or other sources.
6 Or, the District should modify its school-level magnet plans and resubmit these
7 to the plaintiffs, the Special Master and the Court; 2) within 30 days of the filing
8 date of this Order, identify the expenditures budgeted for each magnet school
9 program in sufficient detail to allow the public to understand how the activities
10 in the plan will be supported, and post this information on the District website as
11 provided for in the USP; 3) ensure that activities needed to implement the
12 academic improvement plans in magnet schools now identified as C and D
13 schools include family engagement. These directives are excepted to the extent
14 they conflict with any provisions of the Stipulation (Doc. 1865), and adopted by
15 Order of the Court (Doc. 1870), applicable to Elementary Schools Bonillas,
16 Ochoa, Robison, Holladay; Safford K-8; Middle School Utterback; and Cholla
17 and Pueblo high schools.
- 18 5. For the current budget year, the District shall maintain its commitment to
19 implement a new magnet school at Cragin Elementary School, to the extent that
20 it must honor plans for hiring of personnel.
- 21 6. In respect to 910(G) funding, the parties shall apply the Formula Plus Rule to
22 resolve concerns that 910(G) funding is supplanting rather than supplementing
23 other funding sources.
- 24 7. The Special Master shall undertake the examination of how 910(G) funds are
25 used at University High School (UHS) to determine whether they are used to
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1 support students who do not reside in TUSD and report his findings to the parties
2 no later than January 15, 2015.

3 8. He will do the same regarding the use of 910(G) funding for GATE classes. This
4 report will be submitted to the parties by February, 2016.

5 9. The District shall examine the issue of 910(G) funding for “Pan-Asian and
6 Refugee Student Services” (Asian and/or Pacific Island and Refugee Student
7 Services Department (APIRSSD)), including refugee students from Africa and
8 Latin America, in the context of the current study being done assessing the roles
9 played by the African-American Student Services Department and the Mexican-
10 American Student Services Department. The District must provide a detailed
11 rationale for 910(G) funding for the APIRSSD in its proposals for the 2016-17
12 Budget.

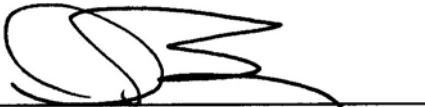
13 10. The issue of budget allocations to implement recommendations for the African-
14 American Academic Achievement Task Force (AAAATF) is moot; the District
15 agrees to retain and set aside \$500,000 for implementing any such
16 recommendations.

17 11. The District shall develop a plan for increasing student access to dual language
18 programs which must be implemented by SY 2016-17. The District should
19 engage one or more nationally recognized consultants to assist in studying and
20 developing the plan, which must be prepared and presented to the parties and
21 Special Master for review and comment in a timely fashion for implementation
22 in SY 2016-17.

23 12. The District shall consider what types of dual language programs can be effective
24 for integration purposes and examine whether locating dual language programs
25 in other sections of the District and in schools that do not have a Latino student
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1 population in excess of 75% would attract students of all racial and ethnic
2 backgrounds.

3 DATED this 21st day of December, 2015.

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6 David C. Bury
7 United States District Judge
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