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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

14 Roy and Josie Fisher, et al., 15 16 v. 17 United States of America, 18 19 Anita Lohr, et al., 20 21 Sidney L. Sutton, et al., 22 23 Maria Mendoza, et al. 24 25 United States of America, 26 27 Tucson Unified School District No. One, et al. 28	Plaintiffs Plaintiff-Intervenor, Defendants, Defendants-Intervenors, Plaintiffs, Plaintiff-Intervenor, Defendants.	CV 74-90 TUC DCB (Lead Case) MOTION FOR RECONSIDERATION/ CLARIFICATION ON BUDGET ORDER (ECF 1879) CV 74-204 TUC DCB (Consolidated Case)
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1 **I. Introduction**

2 Pursuant to Local Rule 7.2,¹ Tucson Unified School District No. One submits this
 3 Motion for Reconsideration/Clarification of this Court’s order filed December 22, 2015
 4 Order (ECF 1879)(“Order”) regarding TUSD’s 2015-16 USP Budget because it is based
 5 upon manifest errors of law and fact in three areas: budget reallocation, dual-language and
 6 AAAATF. This motion is supported by the declarations of TUSD’s Chief Financial Officer,
 7 Karla Soto (“Soto Dec.”), TUSD’s Director of Language Acquisition, Mark Alvarez
 8 (“Alvarez Dec.”), TUSD’s interim Assistant Superintendent for Curriculum and Instruction,
 9 Richard Foster (“Foster Dec.”), and the Arizona Association of School Business Officials’
 10 Director of Professional Development, Jeff Gadd (“Gadd Dec.”).

11 First, TUSD seeks clarification that the Order’s provision on budget reallocation
 12 (paragraph 2 on page 7) was intended to be consistent with the parties’ agreed budget
 13 reallocation process. The Court previously ordered Plaintiffs’ budget expert (Dr. Vicki
 14 Balentine)² to develop, among other things, a budget reallocation process. ECF 1705 at 14.
 15 She did, and the process was filed with the Court on February 4, 2015 without objection
 16 from the Special Master, the Plaintiffs or TUSD. If the Court’s intent was to modify the
 17 existing reallocation process, TUSD seeks reconsideration as there is no basis to disturb the
 18 existing process. Although the Special Master in his R&R, ECF 1833, requested the Court
 19 to “prohibit deviations from Court-approved Budgets and the activities they involve without
 20 notification to and approval by the Court,” it would appear that the Special Master
 21 overlooked the existing process that Dr. Balentine and the parties developed pursuant to this
 22 Court’s order. ECF 1705, 1762. The District respectfully suggests that before the Court
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 24

25 ¹ This Motion is also made in accordance with the Court’s January 4, 2016
 26 order permitting extension of time to file on or before January 18, 2016. *See* ECF 1883.

27 ² Dr. Balentine was appointed by the Court as the “school budget operations
 28 expert” on December 20, 2013. ECF 1528.

1 considers or orders any modifications to the existing process, the parties and Dr. Balentine
2 be asked to weigh in with their observations on any such proposal.

3 In addition, if the Order was intended to require the District to provide immediate
4 notification to Plaintiffs and the Special Master of every single budget adjustment (the
5 Order does not define “reallocation” or “timely manner”), no matter the dollar amount or
6 significance to the District’s operations of the adjustment, such a process will significantly
7 impede, and perhaps impair, the District’s operations. *See* Soto Decl. ¶¶ 3-5; 8-11 and
8 Gadd Decl.

9 Second, the Order made a factual finding that TUSD delayed “moving forward with
10 the dual-language component of the USP.” Order, p. 6, ll 24-5. This finding is based on a
11 manifest error of fact – that no money was budgeted for expansion, *id.*, ll 17-18, when, in
12 fact, funds were budgeted for that precise purpose. ECF 1840 at p.43 (9/1/13 Karla Soto
13 Declaration). The Order’s finding failed to take into account that the required milestones
14 under the Special Master’s Implementation Addendum and his first Annual Report required
15 TUSD *first* to build and fortify the programs during SY2014-15 and *later* begin to expand
16 during SY2015-16. Thus, TUSD, which is now working on dual-language program
17 expansion (*see* Alvarez Dec.), is not delayed but right on target with the approved schedule.

18 Third, the Order’s factual finding that the African-American Academic Achievement
19 Task Force (“AAAATF”) “to date has not made any recommendations,” Order, p. 6, ll 8-9,
20 is a manifest error of fact that should be corrected. Foster Dec. ¶¶ 2-3.

21 Accordingly, as set forth below, these three portions of the budget Order must be
22 clarified or corrected.³

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24 ³ A motion for reconsideration may be granted where necessary to “correct
25 manifest errors of law or fact upon which the judgment is based,” and to “prevent manifest
26 injustice.” *Turner v. Burlington N. Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003)
27 (internal quotations and emphasis omitted). A party may file a motion to clarify court
28 orders, and the court has authority to provide such clarification of its orders. *See, e.g.*,
Kruska v. Perverted Justice Found., 2009 U.S. Dist. LEXIS 112892 (D. Ariz. Nov. 16,

1 **II. Budget Reallocation Process Already in Place.**

2 TUSD seeks an order clarifying that the Court's directive regarding budget
 3 reallocations (Order, p. 7 at ¶ 2)⁴ was intended to be consistent with the agreed budget
 4 reallocation process proposed by Plaintiffs' budget expert pursuant to this Court's earlier
 5 order (ECF 1705) and later agreed to by TUSD, the Special Master and Plaintiffs in
 6 February 2015. ECF 1762-1 at 42. The Order does not define "reallocate" or "timely
 7 manner" – nor does it refer to or overrule the existing reallocation process where those
 8 terms are defined. Under the existing reallocation process (ECF 1762-1 at 42), Dr.
 9 Balentine, the Plaintiffs' budget expert, defined "reallocation" as any expenditure
 10 adjustment that changes the spirit of a program from the original intent of the allocation.
 11 Soto Decl. ¶7. "Timely manner" is defined as providing a quarterly report to Plaintiffs and
 12 the Special Master of all the under or over-expenditures and/or needed allocations. ECF
 13 1762-1 at 42. Accordingly, TUSD requests the Court clarify that its Order does not conflict
 14 with, nor change, the existing reallocation process as set forth in ECF 1762 and its
 15 definitions of "reallocation" and "timely."

16 To the extent the Order was intended to modify the existing budget reallocation
 17 process, a process in place to which no party has objected, the Order must be vacated. The
 18 District respectfully requests that before the Court revises the budget reallocation process
 19 suggested by the Court-appointed budget expert and agreed to by the parties, it first obtain
 20 her opinion on whether a modification is necessary or is unduly burdensome on school
 21 district operations, as well as the District's input on those matters.

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 23 2009)(granting motion for clarification of order); *McManus v. Schriro*, 2006 U.S. Dist.
 LEXIS 55501 (D. Ariz. Aug. 8, 2006)(same).

24 ⁴ The Order requires that "if the District seeks to reallocate funds, it must
 25 inform the Plaintiffs and the Special Master in a timely manner to allow for objections prior
 26 to implementation of the proposed action. If the parties agree, the change can be noted in
 27 the District and Special Master's annual reports. If the parties do not agree, the District
 must seek leave of the Court to change the approved USP Budget item and the funded
 activity." ECF 1879 at 7:15-20.

1 If the Order is intended to require immediate notification to the Special Master and
2 Plaintiffs at the moment a district employee suggests the need for a budget adjustment (and
3 not quarterly), the Order likewise must be vacated because it is neither feasible nor
4 consistent with the reasonable operation of a public school district. As detailed in the
5 declaration of TUSD's CFO, there were 174 910(g) budget adjustments, or reallocations,
6 last year. Soto Dec. ¶¶3-5. If each of these required approval by the Special Master, the
7 Mendoza Plaintiffs and the Fisher Plaintiffs (and the Court if agreement among them and
8 the District cannot be reached), the District's operations would be delayed and it would take
9 a significant amount of District administrative effort to process these approvals for routine
10 district operations. Soto Dec. ¶¶3-6; 8-11; Gadd Dec. The existing process does not suffer
11 from this problem because it only relates to reallocations that involve changes to the spirit
12 of an expenditure from the original intent of the budget allocation.⁵

13 The burdensome nature of this provision of the Order is not just TUSD's
14 understanding of what will occur. An independent expert in school district budget
15 operations has reviewed the Order and the District's current 910(g) budget and agrees the
16 Order, if intended to require immediate notification and waiting for approval on every
17 budget adjustment, will have a negative impact on the District's operations. Gadd Decl.

18 And, in any event there seems to be no need for the modification the Special Master
19 has requested because neither he nor the parties have made any objections to the
20 reallocations thus far.

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24 ⁵ In addition to the existing reallocation process, there are USP and legal
25 obligations in place for funds that also address reallocations concerns. These include the
26 audit report under USP § X(7) which requires reporting annually on whether funds
27 allocated were spent in accordance with the budget and the legal requirements under state
28 law relating to 910(G) funds. These are discussed in TUSD's Budget Response and not
repeated herein. ECF 1840 at p.8:1-13; p.12:11-18.

1 **III. Dual-Language Compliance is Not Delayed.**

2 The Order appears to conclude that the District has delayed dual-language
3 implementation for two reasons. ECF 1879 at 6:24-25 (finding of “delay in moving forward
4 with the dual language component of the USP”).

5 The first is that the budget did not allocate funds to “build and expand” dual-
6 language programs. ECF 1879 at 6:17-21. This is a manifest error of fact. Relying on the
7 Mendoza Budget objection, the Special Master’s R&R erroneously states the 2015-16
8 budget does not fund expansion of dual language programs. ECF 1833 at 16: 6-8. The
9 Order, in turn, relies upon the R&R’s assertion to find that the District’s budget does not
10 fund dual-language program expansion. ECF 1879 at 6:17-21. This is a manifest error of
11 fact because the District has allocated \$2,628,896 towards the USP activity “Build and
12 Expand Dual Language Programs.” ECF 1840 at 43. The Order does not explain whether it
13 considered TUSD’s evidence or the declaration of TUSD’s Chief Financial Officer, nor that
14 if it did, on what controverting evidence it relied to reach its finding. *See* Rule 53 (*de novo*
15 review required).⁶

16 Second, the finding that the District had delayed “moving forward with the dual-
17 language component of the USP” appears to be based upon decreasing enrollment data in
18 dual-language programs. ECF 1879 at 6:17-21 (“the number of schools offering dual
19 language programs and overall enrollment in the programs has substantially declined.”)
20 The conclusion of District compliance delay does not follow, however, because TUSD is on
21 track with its dual-language program implementation. As memorialized in the Special
22 Master’s Annual Report, the District’s activities through SY 2014-15 relate to *first* building
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24 ⁶ A district court “must decide *de novo* all objections to findings of fact made
25 or recommended by a master, unless the parties, with the court’s approval, stipulate that:
26 (A) the findings will be reviewed for clear error; or (B) the findings of a master appointed
27 under Rule 53(a)(1)(A) or (C) will be final.” F.R.C.P. 53(e)(3). Thus, in reviewing
28 objections to the Budget R&R, this Court must give no deference to the R&R’s factual
findings.

1 and fortifying of the dual language program. ECF 1641-3 at 49-50. The District has
2 complied with the milestones set by the Special Master. ECF 1840 at 319-322. The
3 milestones require that TUSD *later* begin expanding the dual language program during SY
4 2015-16. ECF 1641-3 at 50 (requiring building in 2014-15 and expanding in 2015-16). The
5 District now is in the middle of SY 2015-16, and its expansion plans are under way.
6 Alvarez Dec. ¶¶1-9. This includes increasing the number students attending the current dual-
7 language programs and examining the feasibility of District sites as possible locations for
8 program expansion, and utilizing updated surveys to determine the needs and interests of
9 the parents of children scheduled to attend particular school sites. *Id.* Accordingly, the
10 finding of District “delay” was a manifest error of law because TUSD has complied with
11 the milestones set by the Special Master requiring TUSD to build first and expand later.

12 The Court’s order for TUSD to “develop a plan for increasing student access to dual
13 language programs which must be implemented by SY 2016-17,” ECF 1879 at 9:17-18,
14 likewise should be vacated for two reasons: first, because it is based upon the manifest
15 errors described above; and, second, because the District already is increasing student
16 access to its dual language programs in accordance with the Special Master’s milestones.
17 In any event, TUSD is moving forward, in consultation with its expert (Dr. Kathy
18 Escamilla) and the expert suggested by the Special Master (Ms. Rosa Molina) as described
19 in the declaration of Mark Alvarez, Alvarez Dec. ¶¶2, 8, to fortify and expand its dual
20 language programs.

21 **IV. AAAATF Made Recommendations.**

22 Without citing a source or any evidentiary support, the Budget R&R erroneously
23 states “there are [sic] been no recommendations from the [African-American Academic
24 Achievement] task force and thus no expenditures.” ECF 1833 at 15:24-26. In response,
25 TUSD filed an objection citing evidence that the AAAATF had made recommendations and
26 attached the AAAATF’s recommended plan. ECF 1840 at 20:1-4. Nevertheless, the Order
27 adopts the incorrect statement the Budget R&R offered. ECF 1879 at 6:7-9 (“the AAAATF
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1 [] to date has not made any recommendations.”). The Order does not explain the basis for
2 this finding, or whether it considered TUSD’s evidence. See Rule 53 (de novo review
3 required).⁷ For clarity, the AAAATF recommendations are attached hereto. Foster Dec. ¶¶
4 2-3. Accordingly, the factual finding in the budget order regarding AAAATF is a manifest
5 error of fact that must be corrected.

6 **V. Conclusion**

7 Based on the foregoing, TUSD respectfully requests the Court reconsider and/or
8 clarify its December 22, 2015 order as outlined above.

9 DATED this 18th day of January, 2016.

10 **RUSING LOPEZ & LIZARDI, P.L.L.C.**

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23 **ORIGINAL** of the foregoing filed via the CM/ECF
24 Electronic Notification System and transmittal of a
25 Notice of Electronic Filing provided to all parties
26 that have filed a notice of appearance in the District
27 Court Case, as listed below.

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⁷ See footnote 5.

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