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

Roy and Josie Fisher, et al.,  
Plaintiffs  
and  
United States of America,  
Plaintiff-Intervenor,  
v.  
Tucson Unified School District, et al.,  
Defendants,  
and  
Sidney L. Sutton, et al.,  
Defendants-Intervenors,

No. CV-74-00090-TUC-DCB

Maria Mendoza, et al.,  
Plaintiffs,  
and  
United States of America,  
Plaintiff-Intervenor,  
v.  
Tucson Unified School District, et al.  
Defendants.

No. CV-74-0204-TUC-DCB

**ORDER**

1 Motion for Reconsideration

2 On December 22, 2015, the Court adopted the 2015-2016 Unitary Status Plan  
3 (USP) Budget, as recommended by the Special Master. On January 18, 2016, TUSD  
4 filed a Motion for Reconsideration. A Motion for Reconsideration is a limited tool for  
5 correcting manifest errors of law or fact upon which the Court's judgment is based and to  
6 prevent manifest injustice. (R&R (Doc. 1888) at 2 n.3 (citations omitted);<sup>1</sup> *see also*  
7 (Order (Doc. 1878) at 4-5 (setting out standard of review for seeking reconsideration).

8 TUSD complains that the Court made two manifest errors of fact and seeks  
9 clarification of a third directive entered by the Court on December 22, 2015. 1) The  
10 Court erred in finding TUSD has delayed moving forward with the dual-language  
11 component of the USP and issued directives for TUSD to develop a plan to increase  
12 student access to dual language programs. 2) The Court erred in finding that the African-  
13 American Academic Achievement Task Force (AAAATF) "to date has not made any  
14 recommendations." 3) TUSD asks the Court to clarify that its directive to TUSD to  
15 notify the Plaintiffs and the Special Master prior to making a budget reallocation was  
16 intended to be consistent with the existing budget reallocation process. The Court grants  
17 reconsideration as to TUSD's second assertion of error, denies any error in respect to  
18 directives for a plan to increase student access to dual language programs, and clarifies its  
19 directive regarding the requirement that TUSD give notice prior to reallocating USP  
20 program funding.

21 The Court did not base its resolution of budget allocations to implement  
22 recommendations for the AAAATF on whether or not the AAAATF has made any  
23 recommendations. The Court found the issue was moot, pursuant to the agreement by  
24 TUSD to retain a set aside for implementing recommendations by the AAAATF. (R&R  
25 (Doc. 1833) at 16.) The Court will strike the objectionable language from its Order.

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27 <sup>1</sup> As there have been approximately 14 motions for reconsideration filed in this  
28 case, both the parties and the Court are familiar with the standard of review. The Court  
emphasizes that they should rarely be used and should not be used to ask the Court to  
rethink that which it has already thought through nor to make arguments which could  
have been but were not made to the Court.

1           The Court understood the Mendoza Plaintiffs' complaint that TUSD failed to  
2 allocate 910G funds for expanding the dual language program to mean that TUSD was  
3 not spending money to expand the program, not that TUSD was not allocating money for  
4 dual language programs. TUSD did not argue then as it does now that it was on track to  
5 meet milestones set by the Special Master for increasing the dual language program.  
6 Instead, Mark Alvarez, Director of Language Acquisition explained why he had not  
7 recommended the start-up of entirely new dual language programs because he first  
8 wanted to fortify and strengthen existing programs. (TUSD Response (Doc. 1840), Ex.  
9 5: Alvarez Decl. ¶ 4.) TUSD took the position that it was inappropriate to address  
10 program deficiencies in the budget review process. Perhaps, but the problem is that there  
11 is no Action Plan specific to the dual language program. Instead, dual language programs  
12 have been addressed in the context of the Administrative and Certified Outreach  
13 Recruitment and Retention (ORR) Action Plan, USP § § IV.E.3 and V.G.1.1, the  
14 Comprehensive Magnet Plan, USP § II.E.3, and the Advanced Learning Experiences  
15 (ALE) Action Plan, USP § V.C. The budget process is a logical point for Plaintiffs to  
16 comprehensively challenge the overall sufficiency of TUSD's various undertakings to  
17 grow the dual language program. The directives in the budget Order are in step with the  
18 directives being issued for an R&R to be filed by the Special Master in SY 2016-2017  
19 regarding the efficacy of the ALE Action Plan, which includes dual language programs.  
20 (Order (Doc. \_\_\_\_ ) directing Special Master to file R&R Re: ALE SY 2016-2017). Given  
21 this recent order by the Court, the District should coordinate the development of a plan  
22 for increasing student access to dual language programs with the review work being done  
23 by the Special Master in preparing the R&R regarding the ALE Action Plan.

24           The Court assumes that the Special Master is aware of the budget process related  
25 to mid-year under or over-expenditures, which was agreed-upon by the parties with the  
26 assistance of Dr. Vicki Balentine. He recommended, and the Court adopted, that she  
27 review and make further recommendations to improve the budget process, including the  
28 exchange of information in the future. The Court will clarify that it did not intend to

1 undo the existing agreed-upon budget procedures by directing TUSD to give timely  
2 notice to the Plaintiffs and the Special Master, if the District seeks to reallocate funds and  
3 assumes any further notice and review procedures will be developed and recommended  
4 by the Special Master with input from Dr. Balentine.

5 **Accordingly,**

6 **IT IS ORDERED** that the Motion for Reconsideration (Doc. 1888) is DENIED  
7 IN PART AND GRANTED IN PART.

8 **IT IS FURTHER ORDERED** that the Court's partial reconsideration is non-  
9 substantive and, therefore, it does not call for a response from the Plaintiffs or Special  
10 Master. LRCiv 7.2(g)(2).

11 **IT IS FURTHER ORDERED** that the Order (Doc. 1879) shall be is amended to  
12 omit "which to date has not made any recommendations" on page 6, line 8.

13 **IT IS FURTHER ORDERED**, given the directive issued for an R&R to be filed  
14 by the Special Master in SY 2016-2017 regarding the efficacy of the ALE Action Plan,  
15 including the dual language program, TUSD should coordinate its efforts taken pursuant  
16 to the Budget Order with the review work being done by the Special Master so as to not  
17 duplicate efforts and to avoid conflicts.

18 **IT IS FURTHER ORDERED** that the Court did not intend to undo the existing  
19 agreed-upon quarterly-review budget procedures by directing TUSD to give timely notice  
20 to the Plaintiffs and the Special Master,if the District seeks to reallocate funds. Any  
21 further notice and review procedures will be developed and recommended by the Special  
22 Master with input from Dr. Balentine.

23 Dated this 22nd day of January, 2016.

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David C. Bury  
United States District Judge