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

Roy and Josie Fisher, et al.,

Plaintiffs

CV 74-90 TUC DCB
(Lead Case)

v.

United States of America,

Plaintiff-Intervenor,

**TUSD’S RESPONSE TO
MENDOZA PLAINTIFFS’
OBJECTIONS TO THE FY16-17
USP BUDGET**

v.

Anita Lohr, et al.,

Defendants,

Sidney L. Sutton, et al.,

Defendants-Intervenors,

Maria Mendoza, et al.

Plaintiffs,

CV 74-204 TUC DCB
(Consolidated Case)

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.

Defendants.

Introduction and Summary

Although their objection fills over three hundred and fifty pages including exhibits, the Mendoza Plaintiffs actually seek an order directing the District to modify just *two* areas, amounting to *less than \$700,000 – about 1% – of the \$63.4 million dollar USP budget*: (1) they ask the Court to order the District to increase the amount allocated to its magnet administrative office by \$272,674 to match the amount budgeted for FY15-16; and (2) they ask the Court to order the District to increase its budget to provide more AP classes.¹ Both objections are based on misunderstandings as to how much money the District actually spent in these areas last year and how much the District actually needs to spend this year.²

The District has actually *increased* the amount of the USP budget going to its magnet programs this year, allocating funds across multiple departments to maximize the reach and benefits of the District’s magnet programs. Amounts budgeted for magnet programs increased from \$10.8 million in FY15-16 to more than \$13 million in FY16-17, *a year-over-year increase of more than 20%*. Any reduction in amounts budgeted for the magnet administrative office (a) is more than offset by an increase in individual school budgets, and (b) is reflective of common-sense administrative decisions on efficient expense management. The change in the budget for the magnet administrative office in no way reflects some “sea change” in the District’s historic and constant dedication to magnet programs.

Similarly, the request that the District increase its budget to provide more AP classes fails to recognize that the *District is already offering as many AP classes as students have*

¹ The Mendoza Plaintiffs complain that the District did not file a “Notice of Adoption” of its USP budget. There is no requirement to file such a notice in either the USP or the agreed budget process. However, the District provided a copy of the final budget to plaintiffs and the Special Master in June, 2016, and notified plaintiffs and the Special Master of the adoption of the budget by e-mail dated July 14, 2016, two days after its adoption. A copy of that e-mail notice is attached hereto as Exhibit 1.

² The Mendoza Plaintiffs also spend a significant portion of their Objection addressing the budget *process*, which is addressed in section C, below.

1 *signed up to take (subject to guidelines for student enrollment) and the budget includes*
 2 *sufficient funds to offer those classes.* Increasing budgeted amounts for AP teachers will
 3 not significantly increase the number of students taking AP classes this year, or the number
 4 of classes they choose to take.

5 In sum, the relief sought by the Mendoza Plaintiffs is not justified, and their
 6 objections should be overruled. It would require the District to take limited funds already
 7 allocated to other existing USP needs (without any direction as to where to cut) and
 8 redistribute those funds to areas of the budget where they will ultimately go unused because
 9 the needs are already being met through appropriate allocations.

10 Detailed Analysis

11 A. The Objection to the Budget for the Magnet Administrative Office Should 12 be Overruled.

13 The Mendoza Plaintiffs seek an order requiring the District to re-set its budget line
 14 for its magnet administrative office to the same amount budgeted for the FY15-16 year,
 15 making the unjustified and incorrect assumption that the \$272,674 year-to-year difference
 16 in this line item (out of an overall magnet program budget exceeding \$13,000,000)
 17 somehow indicates a failure to take seriously the District's magnet programs. However, the
 18 District's FY16-17 magnet program budget actually reflects a **\$2,200,000 budget increase**
 19 above what was actually spent in the FY15-16 year (from an estimated \$10.8 million spent
 20 in FY15-16 to a budgeted \$13 million for FY16-17). Most of these funds are budgeted
 21 directly to individual school magnet programs, rather than through the magnet
 22 administrative office. The individual school magnet program budgets have increased by far
 23 more than any decrease in the budget for the magnet administrative office.

24 The limited reductions to the budget for the magnet administrative office are
 25 perfectly reasonable and reflect sound budget practice. The magnet administrative office
 26 spent approximately \$494,000 in FY15-16. The District has budgeted approximately
 27 \$221,000 for the magnet administrative office in FY16-17, reflecting a difference of
 28

1 approximately \$273,000 (this includes an increase of \$75,000 to the magnet administrative
2 office budget for a magnet consultant).

3 In the Final USP Budget, the “administrator salary” line item of the magnet
4 administrative office budget was reduced by one-half FTE from last year, reflecting the
5 District’s plan for a single person to serve as Magnet Director and ALE Coordinator. In the
6 past week, the District received an objection to this plan and has agreed to separate these
7 two positions into two full-time FTEs. As a result, the District is seeking to *increase* the
8 budget for the magnet administrative office through a budget modification by salary and
9 benefits for one-half FTE – an increase of approximately \$65,000.³ Thus, the difference
10 between years will be further reduced from \$273,000 to \$209,000. Most of the remaining
11 difference in administrative magnet costs stem from the following four items:

12 1. Last year, the District included approximately \$84,000 in the magnet
13 administrative office budget for advertising. In practice, these funds were administered by
14 the communications department (with direction and coordination from the magnet
15 department). This year, magnet advertising funds were moved to a separate line item in the
16 communications department budget (properly reflecting that department’s administration of
17 these funds), and were *increased* to \$100,000.⁴ ***Thus, there is no reduction in magnet
18 advertising (actually, a 20% increase) and no change in the way these funds are
19 managed.*** Moreover, this was explained to the Mendoza plaintiffs by memorandum in
20 May, 2016.⁵ This transfer to the communications department represents approximately
21 \$84,000 of the \$209,000 difference in amounts budgeted for the magnet administrative
22 office between years.

23 _____
24 ³ The District notified the plaintiffs and Special Master of its intention to fund a full-time magnet
director on August 8, 2016. A copy of that e-mail notice is attached hereto as Exhibit 2.

25 ⁴ Though coded to the communications department, these magnet advertising funds are still listed
26 under the magnet budget code (80202).

27 ⁵ A copy of the memorandum is attached as Exhibit 3: May 10, 2016 Memo – Draft 3 Narrative
28 (*see* page 3, paragraph D).

1 2. The “added duty” line item of the budget for the magnet administrative office
2 was set at zero, because the District transferred all “added duty” allocations directly to site
3 budgets and *increased* the total amount by approximately \$94,000.⁶ *Thus, there is no*
4 *reduction in added duty (actually, a 20% increase), just a change in where the funds are*
5 *allocated.* This transfer from the magnet administrative office to sites represents \$34,500 of
6 the \$209,000 difference in amounts budgeted for the magnet administrative office.

7 3. A review of supplies, equipment, and technology on hand during the last
8 school year demonstrated that the magnet administrative office had sufficient stock to meet
9 most of its needs through the FY16-17. The magnet administrative office budget for
10 department supplies, equipment, and technology for the FY15-16 was thus reduced from
11 \$111,642 for FY15-16 to \$6,500 for the FY16-17. There is simply no present need to
12 purchase significant additional supplies, equipment, or technology. This needs-based
13 reduction represents approximately \$105,142 of the \$209,000 difference in amounts
14 budgeted for the magnet administrative office. Ordering the District to spend \$111,000 on
15 supplies and technology solely because it spent that amount last year is illogical and would
16 not represent sound budgeting practice.

17 4. The District reduced magnet administrative office travel expenses from
18 \$47,227 for the FY 15-16 to \$4,000 for the FY 16-17, reflecting the District’s business
19 judgment that management of the magnet programs could be accomplished efficiently with
20 much less travel expenses than occurred in FY 15-16. This needs-based reduction
21 represents about \$43,000 of the \$209,000 difference in amounts budgeted for the magnet
22 administrative office.

23 Together, these four items represent approximately \$266,000 in reductions. When
24 combined with the \$75,000 increase for the magnet consultant, these four items represent
25 approximately \$191,000 of the \$209,000 difference between this year’s magnet
26

27 _____
28 ⁶ “Added” duty refers to payments to existing staff for work performed beyond their regular duties.

1 administrative office budget and last year's budget.⁷ None of these items is inappropriate;
 2 none represent some sort of failure of commitment to the magnet program, and all represent
 3 sound management judgment and stewardship of public funds. In fact, the first two items
 4 represent reductions to the magnet administrative office but also represent *corresponding*
 5 *increases totaling more than \$100,000 to the total magnet budget*. Accordingly, the
 6 Mendoza plaintiffs' objection to the transfers and reductions of administrative costs from
 7 the magnet administrative office budget for FY16-17 should be overruled.

8 **B. The Objection to the District's Budget for Advanced Placement Should be**
 9 **Overruled.**

10 The Mendoza Plaintiffs assert that because the District "*appears*" to have reduced
 11 the number of AP classes it offered in FY15-16, the District "*apparently intends*" to
 12 decrease the amount of AP classes offered in FY16-17. This is incorrect and reflects a
 13 fundamental misunderstanding of the District's AP program.

14 The number of AP classes was not reduced in FY15-16 from the prior year. The
 15 number of AP classes offered is dependent on actual student enrollment in those classes.
 16 The District's FY15-16 budget initially included funds for the number of AP teachers
 17 sufficient to cover the projected enrollment in AP courses for that year. During the year,
 18 once actual enrollment figures became known, the District determined that the budget
 19 included more AP teachers than necessary to cover the actual AP class enrollment, and
 20 adjusted the budget to allow the funds reserved for those unneeded AP teachers to be used
 21 elsewhere.⁸

22 In fact, through the District's significant attention to the AP program and efforts to
 23 increase the participation and success of African American and Latino students in AP, the
 24 number of African American students enrolled in AP courses has risen from 133 students in

25 _____
 26 ⁷ The remaining differences between the budget for last year and this year are spread over a number
 27 of small items not addressed here. Each difference represents a judgment as to amounts actually
 28 needed for the operation of the magnet administrative office.

⁸ See Memorandum dated June 24, 2016, ECF 1948-17, at 2-3.

1 FY12-13 to 212 students in FY15-16, and Latino student enrollment has risen from 1,048
 2 students to 1,508 students in the same time frame.⁹ Moreover, African American and
 3 Latino students now constitute the majority of all students enrolled in AP classes.

4 There is no plan or intent to “reduce” the number of AP classes in FY16-17. Again,
 5 the number of AP classes is dependent on student enrollment in those classes. The FY16-
 6 17 budget contains funds for sufficient AP teachers to cover projected enrollment in AP
 7 classes. If actual enrollment in AP courses exceeds projections, the District will find a way
 8 to reallocate funds for additional teachers. There are only a fixed number of periods in the
 9 school day, and thus a sudden surge in requested AP courses will of necessity be
 10 accompanied by a corresponding drop in other requested courses, resulting in a normal
 11 resource reallocation issue of the type that every school district in every state deals with
 12 every year. The District seeks to accommodate all requests for AP classes, subject only to
 13 guidelines on minimum enrollment and unavoidable class scheduling conflicts.

14 Accordingly, the Court should overrule the objection to the District’s budget for AP
 15 classes. Increasing the FY16-17 budget allocations for AP teachers will not increase the
 16 amount of minority students taking AP classes. Ordering the District to allocate funding
 17 where it is not needed – and where it will go unspent – would reduce the funds available for
 18 portions of the budget where they are actually needed and used.

19 **C. The Requested Changes to the Budget Process are Premature.**

20 Despite airing a number of perceived grievances, the Mendoza plaintiffs actually
 21 request relief in only two areas: (1) they ask this Court to order the Special Master to
 22 provide monthly reports to the Court regarding the budget process for FY17-18; and (2)
 23

24 _____
 25 ⁹ For example, the District, through its ALE Plan has institutionalized strategies to increase African
 26 American and Latino student participation and success on AP exams. The ALE Plan includes
 27 several goals related to AP exam participation and success, including: encouraging all students who
 28 take an AP class to take the AP final exam; educating students, parents and AP teachers as to the
 benefits of taking the final AP exam; offering exam preparation classes; and paying AP fees for
 identified low-income students.

1 they ask Court to order that the District provide written responses to each comment made
2 by the Special Master and Plaintiffs to any draft budgets for FY17-18.

3 Each year since the inception of the USP, and largely at the request of the plaintiffs,
4 the USP budget development process has changed, including timelines, requested
5 information, budget activity codes, budget references, forms, and/or format. There has been
6 frustration – on both sides – about implementing an ever-changing process. The
7 development of the FY16-17 budget was no different.¹⁰ Nevertheless, the District
8 participated in this process in good faith and sought to be as accurate, transparent,
9 communicative, and responsive as possible. The result was a budget to which the
10 Department of Justice and the Fisher Plaintiffs did not object, and to which the Mendoza
11 Plaintiffs objected to approximately 1% of budgeted funds.¹¹

12 _____
13 ¹⁰ In the fall of 2015, Dr. Balentine submitted draft recommendations to improve the budget
14 process, which the parties met and reviewed, and which Dr. Balentine subsequently refined. On
15 December 22, 2015, the Court ordered Dr. Hawley to submit Dr. Balentine's recommendations.
16 ECF 1879 at 7. From the date of the order until submission of Draft 1 of the USP budget on March
17 9, the District helped finalize the Budget Development Process and forms based on Dr. Balentine's
18 recommendations, worked with Dr. Balentine to develop a budget reallocation process, planned for
19 implementation of both processes, and executed both processes to the best of its ability given the
20 time constraints. Within that time, Dr. Hawley shared the draft BDP, the District shared the draft
21 forms, and the Mendoza plaintiffs provided feedback.

22 Dr. Hawley circulated the final budget development process for FY16-17 in March 2016. No party
23 objected. The final plan provided for three successive drafts, and an opportunity for the plaintiffs
24 and Dr. Hawley to comment or object to each draft over a period lasting more than three months,
25 including a two-day, in-person meeting of all parties at the District in April, 2016.

26 ¹¹ The District provided Draft 1 of the FY16-17 USP budget to the plaintiffs and Dr. Hawley on
27 March 9, 2016, in a series of forms designed by Dr. Balentine (in both excel and pdf format),
28 including detailed comparisons to prior years' budgets. In response to feedback, the District
submitted a supplement to Draft 1 that included a description of changes between the FY15-16 USP
Budget and Draft 1, and a checklist identifying all required forms and information.

TUSD staff considered the comments it received to Draft 1 and provided Draft 2 to the plaintiffs
and the Special Master on April 8, 2016. The materials provided were again in a series of forms
and formats as requested by Dr. Balentine's plan. The parties and special master discussed Draft 2
at the budget summit meeting on April 20-21, 2016.

Again, TUSD staff worked diligently to consider and incorporate comments and suggestions on
Draft 2 into Draft 3, which it submitted to the plaintiffs and the Special Master on May 6, 2016.
Again, the materials were presented in a detailed set of forms and formats as requested by Dr.
Balentine. On May 10, 2016, the District submitted a supplement to Draft 3 that included a
detailed, narrative description of the major programs funded, a comparison of budgeted amounts to

1 Though the District agrees the budget process can be improved, it does not agree
 2 with the Mendoza Plaintiffs' unilateral suggestions for improvement. The budget process
 3 has evolved into a huge, cumbersome project that consumes an undue amount of District
 4 time and resources. The District estimates that the development of the FY16-17 USP
 5 budget alone consumed well over 2,000 hours of District staff time, and over \$250,000 in
 6 out-of-pocket costs (fees for the Special Master, plaintiffs' counsel, and District counsel).

7 The District has analyzed the issues raised by all parties about this year's budget
 8 process, and will work with the parties to revise and streamline the process for development
 9 of the USP Budget for FY17-18. The District hopes that the draft plan attached hereto as
 10 Exhibit 4 will serve as the first step in reaching that goal in a collaborative manner.
 11 However, the District believes that it is premature to order specific procedural elements,
 12 particularly those which add additional layers to an already costly and unwieldy process,
 13 and particularly without communication, consultation, or collaboration between the parties.
 14 If the parties are unable to agree on a process this fall, the Special Master can present the
 15 dispute to the Court at that time for resolution.

Conclusion

16
 17 This Court should overrule the Mendoza Plaintiffs' objections to the District's
 18 FY16-17 Budget, because those objections are based on an incorrect understanding of the
 19 budget, and because the relief sought would not improve the budget or the budget process,
 20 but would instead create additional and ultimately unused budgeted funds, and interfere
 21 with successful programs for which an appropriate budget has been adopted.

22 Respectfully submitted this 8th day of August, 2016

23
 24 actual spending in prior years, and a detailed narrative outlining the District's discipline-related
 allocations. The District also submitted all 19 magnet plans, including budgets.

25 After consideration of all remaining comments and recommendations, District staff prepared the
 26 Final Proposed Budget and submitted it to Dr. Hawley and the plaintiffs on June 29, 2016.
 27 Dedicated staff members from multiple departments worked extremely hard, including after hours
 and on weekends, to make the process informative and meaningful to all participants, spending at
 28 least 2,000 staff-hours throughout the process.

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**TUCSON UNIFIED SCHOOL DISTRICT
LEGAL DEPARTMENT**

s/ Samuel E. Brown

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Certificate of Service

1
2 **ORIGINAL** of the foregoing filed via the CM/ECF Electronic Notification System and
3 transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of
4 appearance in the District Court Case.

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6 s/ Samuel E. Brown

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