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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,

CV 74-90 TUC DCB  
(Lead Case)

v.  
Anita Lohr, et al.,  
Defendants,  
and  
Sidney L. Sutton, et al.,  
Defendants-Intervenors,

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

CV 74-204 TUC DCB  
(Consolidated Case)

1                                   **SPECIAL MASTER’S REPORT AND RECOMMENDATION**  
2                                   **RELATING TO THE TUSD USP BUDGET FOR 2016-17**

3                   **Overview**

4                   On July 12, 2016, TUSD approved its budget for 2016-17. Pursuant to the provisions of  
5                   the USP, the Mendoza plaintiffs filed objections to the District’s budget on July 22, 2016.

6                   Subsequently, the Court gave the District five days to respond to the Mendoza objections, which  
7                   it filed on August 8, and gave the Special Master ten days thereafter to prepare a related R&R to  
8                   the Court.  
9

10                  It should be noted that the USP does not allow the Special Master to object to the final  
11                  budget submitted by the District. Rather, the USP requires the Special Master to submit  
12                  comments to the District and the plaintiffs on the final draft of the budget before it is approved by  
13                  the Board of Governors. The Special Master submitted his recommendations on June 21, 2016  
14                  (see Exhibit A). The District did not incorporate any of the Special Master’s recommendations in  
15                  its budget though it agreed to submit clarifications of expenditures related to professional  
16                  development and student discipline. These clarifications are to be submitted no later than  
17                  September 1, 2016.  
18

19                  This R&R has two parts. The first deals with concerns about the budget process; the  
20                  second with specific expenditures that are inadequately addressed in the budget.  
21

22                  **Part I: The Budget Process**

23                  In their objections, the Mendoza plaintiffs detail numerous problems with the budget  
24                  process related to timelines and securing information necessary for meaningful comments by the  
25                  Special Master and the plaintiffs. Some of these problems, as well as others, are also identified in  
26                  the Special Master’s June 21 comments and recommendations. The Mendoza plaintiffs ask the  
27                  Court to ameliorate these problems in the future by having the Special Master provide recurrent  
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1 and frequent reports to the Court on the District's adherence to the provisions of the budget  
2 process to which the parties agreed prior to the initiation of the 2016-17 budget development.

3 The District responded to the Mendoza concerns by saying that it would propose changes  
4 to the budget process for consideration by the parties and the Special Master.

5 As the Court knows, the budget process has been a matter of contention each year. Each  
6 year the parties seek to make the process more specific and comprehensive with respect to both  
7 timelines and responsibilities.

8 The Special Master believes that there are no significant problems with the budget process  
9 agreed to by the parties. The problem is that the District did not comply with the process  
10 established and did not adequately provide information requested by the plaintiffs and the Special  
11 Master. This is not to say that changes in the process should not be entertained by the parties but  
12 the greater need is to establish a way of ensuring that the provisions in timelines and the budget  
13 process are followed. Since such monitoring is within the prerogatives of the Special Master,  
14 there is no need for the Court to act on the Mendoza plaintiffs' petition to mandate regular  
15 reporting, despite its validity, nor to require the District to alter the process.

16 The Special Master proposes to develop, in collaboration with the District and the  
17 plaintiffs, a detailed PERT chart using the current budget process as the framework. This PERT  
18 chart will be maintained online by the budget expert and updated every 10 days so that the parties  
19 can see whether the District is acting on the budget in a timely manner. Simultaneously, the  
20 budget expert will record and monitor all requests by the plaintiffs for information. In  
21 consultation with the District, the budget expert and the Special Master will set dates for a  
22 response to each request. Should the District believe that specific requests for information are  
23 inappropriate or unduly burdensome, it can ask the Special Master to make such a determination  
24 and, if it is unsatisfied with his response, the District can appeal to the Court as provided for in  
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1 the USP. All requests for information and responses will be available in a password-protected  
2 online file.

3  
4 Recommendation

5 The Court should confirm the importance of the District's timely implementation of the  
6 budget process and the need to respond to reasonable requests for information and to provide  
7 information as fully and promptly as possible.

8  
9 **Part 2: Inadequacy of Budget Allocations**

10 These concerns can be thought of as problems in implementing the budget process and/or  
11 assertions that there is insufficient funding for particular activities. They are of three types:

- 12 1. Budget expenditures that may be insufficient to accomplish the goals of the USP.
- 13 2. The need for clarification to reduce ambiguity about actual expenditures and related  
14 matters.
- 15 3. The use of unexpended funds to meet programmatic needs.

16  
17 Insufficient Funding

18 *Funding for AP Courses*

19 The Mendoza plaintiffs expressed concern about the adequacy of funding for Advanced  
20 Learning Experiences (ALE) but focus attention on the number of AP courses being offered and  
21 the number of students passing AP examinations. The Mendoza plaintiffs assert that the District  
22 "... [a]ppears to have reduced the number of AP classes it offered in 2015-16, a reduction it  
23 intends to carry into the 2016-17 school year."

24  
25 The District responds by saying that it did not reduce the number of classes in the period  
26 contested by the Mendoza plaintiffs and that enrollment by African American and Latino students  
27 increased significantly from 2012-13 to 2015-16. This response does not indicate when the  
28

1 increases occurred. It is the case that increases in the number of courses AP courses available  
2 over the last two years increased in only two of the ten District high schools. Both of these  
3 schools have predominantly white student bodies. Data on enrollment in the AP classes for fall  
4 2016 is not yet available, according to the District.

5  
6 On January 27, 2016, the Court ordered (ECF 1895) the Special Master to prepare an  
7 R&R on the progress the District was making with respect to the enrollment of African American  
8 and Latino students in ALE, taking into account data from 2016-17 enrollment<sup>1</sup>.

9 When the R&R ordered by the Court is completed, the Special Master will be in a position  
10 to make recommendations about the adequacy of AP funding. This, of course, is less than ideal.  
11 However, the District claims it will continue to promote enrollment in AP classes and that if  
12 student interest warrants additional classes, it will be able to offer these classes by reassigning  
13 teachers. Whether the District is making a concerted effort to promote AP enrollment among  
14 African American and Latino students will be assessed by the Special Master  
15

16 *Funding for Magnet Oversight and Support, Setting Goals and the Use of Non-certified*  
17 *Staff*

18 The Mendoza plaintiffs draw attention to the dramatic cutback in funding for central  
19 office oversight and support for magnet programs. The District responds by saying that it is  
20 investing substantially more funds at the school level, a response that is not relevant to the  
21 Mendoza objection. It would be easy to make a case that central office oversight of school level  
22 magnet programs has been inadequate (this is not a new story and transcends the USP). It would  
23 follow from such an argument that reducing the funding for such oversight makes little sense.  
24

25  
26 \_\_\_\_\_  
27 <sup>1</sup> In preparation for this R&R and to provide the District with information it could use in planning  
28 for ALE in 2016-17, the Special Master analyzed aggregate data on ALE enrollment and reported to the  
District that less than half of the schools had increased daily enrollment for African American and Latino  
students by more than 1% over the last four years.

1 However, at this stage of the progress toward unitary status, the Special Master believes that the  
2 District should enjoy wide latitude in its investments in administration except in those cases  
3 where violation of provisions of the USP are at issue. The District has been advised by the  
4 Special Master that the effectiveness of magnet schools in promoting integration is problematic  
5 and that its commitment and success in strengthening and enhancing the effectiveness of magnet  
6 schools will be a major consideration in any recommendations to be made with respect to the  
7 attainment of unitary status.

9 While the District should be allowed to make decisions about administration programs, it  
10 is surprising to see no funding provided for the director of magnet schools to participate in  
11 national conferences that virtually all people in his or her position have the opportunity to attend.  
12 At such meetings, persons responsible for magnet programs learn about effective practices and  
13 funding opportunities. Unless the District is anticipating that it will eliminate its magnet program  
14 should it attain unitary status, it would seem wise to provide for the professional development of  
15 the director of magnet programs and the information gathering that goes with this. Such funding,  
16 which would be modest indeed, seems particularly important given that the person the District  
17 proposed to hold this position on a half-time basis had no experience with magnet schools. If the  
18 District seeks to hire a different person to fill the full-time position, it is unlikely to attract a  
19 highly qualified person who would have no opportunities to learn from and contribute to the other  
20 leaders of magnet programs throughout the country.

23 Some school-level magnet budgets appear to include expenditures to support uncertified  
24 personnel who would be teaching struggling students. Such funding was not allowed in 2016.  
25 Some plans request technology which appears to have already been approved with funding from  
26 unspent allocations in 2016. In April 2016 the parties met and allocated substantial funds for  
27 technology and magnets schools. The District did not amend magnet school budgets to take this  
28

1 funding into account.

2 The Mendoza plaintiffs in their objection and the Special Master in his June 21 budget  
3 comments question whether the magnet school budgets involve supplementation – using 910g  
4 funds to support activities that should be funded from other District funds. The Special Master  
5 and the budget expert are undertaking an examination of this possibility and will report to the  
6 parties during this school term.

7  
8 While not a funding matter, the District was previously not allowed to ascribe academic  
9 goals for magnet schools that were lower than the goals they already attained. That the District  
10 permitted this for 2016-17 is unacceptable and sends a bizarre message to families, staff and  
11 students: “we are satisfied to do less well this next year than we have in the past.”

12  
13 Recommendations

14 The District should revise magnet school plans to (1) eliminate funding for noncertified  
15 personnel who would be providing support for struggling students and (2) modify the provisions  
16 in magnet school plans for technology when the needs for relevant hardware and software were  
17 met by the reallocation of unspent funds in 2015-16.

18 The District should be required to set academic goals for magnet schools that are at least  
19 as high as those they had most recently achieved.

20 The District should consider providing increased support for the administration of magnet  
21 programs.

22  
23 Ambiguity about Actual Expenditures

24 As the Mendoza plaintiffs explain in their objections to the District’s budget, the Special  
25 Master and the plaintiffs found it difficult to understand what the District was proposing and the  
26 rationale for year-to-year changes. Among the reasons for this difficulty are:  
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28

- 1 1. The District changed the way in which many expenditures had been coded making it  
2 difficult in some cases to determine what was being spent and how it compared with  
3 previous years.
- 4 2. Explanations for increases or decreases in previous expenditures focused on what was  
5 being done; when such explanations were provided, they typically identified changes  
6 in allocations rather the reasons for them.
- 7 3. The final version of the budget that the plaintiffs and Special Master received --  
8 Version 3 -- did not include comparisons to previous years.

9  
10 Three sets of activities were especially difficult to comprehend making meaningful  
11 comments on the adequacy of the budget proposals very difficult.

12  
13 *Teacher Induction*

14 The District has consolidated expenditures related to two sections of the USP -- the  
15 provisions for supporting first and second year teachers and the provision for supporting first-year  
16 teachers assigned to schools where students are underperforming. But, the budget does not  
17 specify what investments should be made in each. The key to success of both of these provisions  
18 of the USP is the number of and quality of mentors. The District is justifying its budget by citing  
19 the ratio of one mentor to fifteen based on studies of peer assistance and review (PAR) programs.  
20 However, PAR programs and induction programs, such as those provided for in the USP, have  
21 different purposes and mentors serve different roles. PAR programs work with experienced  
22 teachers in most cases.

23  
24 The USP intentionally makes the distinction between beginning teachers in general and  
25 those assigned to schools where students are underperforming. In the latter schools, the ratio  
26 should be closer to 1 to 10, a ratio the District has identified as appropriate to support beginning  
27 teachers working in culturally relevant courses. The District argued that it could not provide  
28



1 specifics because it could not predict how many teachers would be involved. But it could have  
2 developed an estimate. In any case, it now knows how many new teachers it has appointed and  
3 how many of these will be in their first year of teaching. The District can also identify the  
4 number of teachers who are eligible for extra support given their appointment to positions in  
5 schools where students are performing below the District average. Without such information, the  
6 adequacy of the District's support cannot be assessed and the Special Master cannot readily  
7 monitor the implementation of those provisions of the USP that are involved.  
8

### 9 Recommendation

10 The District should identify the number of mentors for each of the two programs  
11 supporting beginning teachers, provide the rationale for these provisions, and allocate the funds  
12 needed.  
13

### 14 *Identifying and Sharing Successful Disciplinary Practices*

15 Section VI.F.3 of the USP requires the District to identify effective practices for dealing  
16 with disciplinary problems and what it takes to implement these practices and to share what is  
17 learned throughout the District. Despite the fact that disciplinary problems in TUSD receive  
18 considerable negative attention in the community and generate concerns among teachers and  
19 principals, the District has not taken this provision of the USP seriously. While the USP does not  
20 indicate how this provision should be implemented, in response to concerns expressed by the  
21 Mendoza plaintiffs and the Special Master about the District's neglect of this matter in version 3  
22 of the budget, the District added only \$25,000 to the 2017 budget. This investment, if it can be  
23 called that, would allow MTSS teams to visit other schools and share effective practices. This  
24 strategy is likely to have little impact. First, it does not provide for the widespread sharing of  
25 effective practices. Second, it provides for no follow-on activities that would allow teachers and  
26 principals ongoing access to what is learned about how best to deal with different disciplinary  
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1 issues much less provide support this important information. It would be relatively simple for the  
2 District to develop a plan which allowed access to information about effective practices when the  
3 information is needed.

4  
5 Recommendation

6 The District should develop a viable plan for identifying and sharing effective disciplinary  
7 practices and finance that plan. This is not a particularly high-cost endeavor and it is hard to  
8 understand why the District would not want to adequately implement the relevant provision of the  
9 USP.

10  
11 *Professional Development*

12 The most powerful school-based influence on student learning is teacher effectiveness.  
13 Therefore, the investment the District makes in well-designed and effectively implemented  
14 professional development is among the most important investments that it can make to improve  
15 student learning opportunities and outcomes. However, based on the information provided by the  
16 District, it is not possible to determine whether the District expenditures for professional  
17 development are adequate to meet the requirements of the USP or whether the ways that PD is to  
18 be offered are likely to be productive.

19  
20 Recommendation

21 The District should specify who will receive what professional development, in what  
22 amount and in what ways, and at what cost. This assessment should be submitted to the plaintiffs  
23 and the Special Master no later than September, 1, 2016. The Court required the District to  
24 undertake a similar activity in previous budget years. The District has agreed to provide this  
25 information but this recommendation makes clear that the information provided shall be reviewed  
26 and commented upon by the Special Master and the plaintiffs.  
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1 *Activity Related to Student Behavior, Engagement and Discipline*

2 Understanding what changes are being made in policies and practices in many areas of  
3 District action is complicated by the District's continuing changes in the way it codes particular  
4 expenditures. And, while it has provided expenditure changes for aggregate categories of  
5 expenditure, the budget itself provides no such information at an adequate level of specificity.  
6 This not only makes it difficult to compare proposed with current and past expenditures, it is  
7 difficult to identify the purposes of some proposed activities. This is particularly the case with  
8 respect to a significant range of activities the District has combined under the heading, "Student  
9 Behavior, Engagement and Discipline." For example, in Attachment 1 of the District's May 10  
10 explanation of allocations related to student behavior, engagement and discipline, the District  
11 says that, "Attachment 1 outlines the District's prior and current expenditures and proposed  
12 allocation for each activity and describes how various components function as parts and of the  
13 District's overall approach...." However, for many of the proposed expenditures there is no  
14 comparison to current or past allocations. On page 8 of Attachment 1 of the District's  
15 explanation, the District essentially zeros out over \$1 million of expenditures on important  
16 activities by explaining that, "The following activities do not have specific funding lines although  
17 resources necessary to implement these activities are found in other sections of the budget and/or  
18 draw upon position structures and/or resources that exist outside the USP budget." There is no  
19 roadmap that would guide one to information about how much is being spent, if anything, on  
20 these activities.  
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23

24 Among the proposed expenditures that appear to be inadequate is the proposed investment  
25 in training and evaluation of the Positive Behavior Intervention and Support (PBIS) process that  
26 is at the core of the District's efforts to prevent discipline problems. The District has  
27 acknowledged that its approach to PBIS is significantly lacking but proposes to spend less than  
28

1 \$100,000 in PBIS training. And there is no indication of how this compares to past expenditures.

2 Recommendation

3 The District should specify how it proposes to invest the more than \$7 million that it  
4 wishes to allocate to student behavior, engagement and discipline, and to indicate what it is  
5 proposing to do more of, what it is doing less of, what it is proposing to do differently, and to  
6 identify the expenditures involved. This report to the plaintiffs and the Special Master should be  
7 submitted no later than September 1, 2016. The District has agreed to provide this information  
8 but this recommendation makes clear that the information provided shall be reviewed and  
9 commented upon by the Special Master and the plaintiffs.  
10

11 *“Funding” Important Programs with Unexpended Funds*

12 In its response to some objections and concerns related to the final version of the budget  
13 received by the plaintiffs and the Special Master, the District responded by saying that if  
14 additional action was required as it moves forward during the school year, it would finance these  
15 activities by reallocating funds unspent from the approved budget.  
16

17 These activities about which the District has deferred funding are:

- 18
- 19 • Culturally Relevant Courses
  - 20 • Utterback Auditorium
  - 21 • Outreach , Recruitment and Retention
  - 22 • Advanced Learning Experiences
  - 23 • Dual Language Programs
- 24

25 It should be noted that the last two of these activities involve potential shortcomings in  
26 implementation that are the focus of relatively recent Court Orders.

1 Based on past experience, a significant amount of money is likely to go unspent for a  
2 number of different reasons -- some intentional, most not. However, there appear to be a number  
3 of potential problems with this approach, especially when the issues to which these funds would  
4 be directed are of great importance. First, it alters the budget reallocation process agreed to by  
5 the parties. Second, when the need arises for reallocation, these funds may not yet be available.  
6 Third, it creates an incentive to hold off on low priority expenditures to ensure that the relatively  
7 high priority issues that the District has identified it would address with this strategy could be  
8 dealt with. Fourth, it allows the District to avoid making a commitment to dealing with issues the  
9 Special Master and/or the plaintiffs consider important thus denying them the opportunity to  
10 comment that s provided for in the USP. In short, the strategy that the District proposes is highly  
11 problematic and should not be allowed.

12  
13  
14 Recommendation

15 The District should be required to provide the plaintiffs and the Special Master with  
16 specific expenditures needed to effectively implement the five sets of activities identified above.

17 Respectfully submitted,

18  
19 \_\_\_\_\_  
20 /s/ Willis D. Hawley  
Special Master

21 Dated: August 22, 2016

**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2016, I electronically submitted the foregoing  
**SPECIAL MASTER'S REPORT AND RECOMMENDATION RELATING  
TO OBJECTIONS TO THE TUSD USP BUDGET FOR 2016-17**  
for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.  
[wbrammer@rllaz.com](mailto:wbrammer@rllaz.com)

P. Bruce Converse  
[bconverse@steptoe.com](mailto:bconverse@steptoe.com),

Oscar S. Lizardi  
[olizardi@rllaz.com](mailto:olizardi@rllaz.com)

Michael J. Rusing  
[mrusing@rllaz.com](mailto:mrusing@rllaz.com)

Patricia V. Waterkotte  
[pvictory@rllaz.com](mailto:pvictory@rllaz.com)

Rubin Salter, Jr.  
[rsjr@aol.com](mailto:rsjr@aol.com)

Kristian H. Salter  
[kristian.salter@azbar.org](mailto:kristian.salter@azbar.org)

Zoe Savitsky  
[Zoe.savitsky@usdoj.gov](mailto:Zoe.savitsky@usdoj.gov)

Anurima Bhargava  
[Anurima.bhargava@usdoj.gov](mailto:Anurima.bhargava@usdoj.gov)

Lois D. Thompson  
[lthompson@proskauer.com](mailto:lthompson@proskauer.com)

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Andrew H. Marks for  
Dr. Willis D. Hawley,  
Special Master