

**The Special Master’s Report to the Parties with Respect to
the Adequacy of the Districts USP Budget for 2016-17
June 17, 2016, Revised June 21, 2016**

Overview

This report is required by Section X.B.1 of the USP which provides that the Special Master shall review the District’s proposed budget for funding of the USP and any objections made by the plaintiffs. This report comments on the third version of the USP of the District’s budget taking into account objections to the District budget by the Mendoza plaintiffs and commitments made by the District in a June 13, response to the Mendoza Plaintiffs and the Special Master. The Department of Justice and the Fisher plaintiffs did not file objections. Version 3 of the budget is not included with this report because the District indicates that the budget it will file with the Court will be different from this third version.

One of the goals of the USP has been to move increasingly from a focus on what was being done to focus on the effects of actions and expenditures. The Special Master has characterized this proposed transition as a moving from “checking the boxes” to evidence-based accountability. The purposes of such evidence-based accountability are to focus on outcomes, to provide the District with discretion about how it would implement the USP, and to avoid debates about whether particular approaches to implementing the USP are more productive than others when the efficacy of particular strategies is difficult to assess. While the capacity of the District to maximize evidence-based accountability is not fully developed, it seems time to move cautiously forward in this respect.

For purposes of review and comment in this report, the Special Master has identified budgeted actions as falling into three broad categories:

1. Those for which there are measurable goals as defined by the USP or agreed to by the District as part of an action plan, a Court order, or its own initiative. (The District's efforts to define goals are often in response to or to obviate challenges by the plaintiffs or the Special Master). For these proposed actions, the Special Master takes the position that if the District chooses to reduce its expenditures or to make limited additional investments and progress is not made, the District *may* be judged as not having made an adequate effort to achieve relevant goals.

Proposed expenditures for these types of activities, even if they were challenged during the budget process, are not opposed by the Special Master.
2. A second type of activity is one in which there is (a) evidence from research or other reliable sources about best practice with respect to the investment being planned by the District, (b) the USP is sufficiently specific with respect to intent to determine whether the District proposed actions will achieve that intent, or (3) the District itself has identified what needs to be done but it's proposal does not align with its own measure. For these types of activities, where the Special Master determines that the District has not made sufficient investments, the Special Master makes recommendations with respect to levels of funding that go beyond what the District proposes.
3. A third type of activity involves high visibility elements of the USP for which outcomes are implicit or difficult to measure. For these activities or clusters of activities, the Special Master is proposing that the District provide additional information but that the District be allowed to move forward with its proposed activities. However, by a specified date, the District will be required to report on

these matters to the plaintiffs and the Special Master. The plaintiffs would then have 10 working days to comment, the District would have five days to respond, and the Special Master would have five days thereafter to make his report to the Court.

This third category of activities effectively makes the two sets of budget allocations involved tentative. The alternative is to hold up needed action by the District as it readies for the 2016-17 school year. This approach is needed because the initial timelines were not met and the level of information provided by the District has left the plaintiffs and the Special Master unable to make reasoned judgments about the adequacy of expenditures.

Recommendations

This report focuses on issues raised by the Mendoza plaintiffs and the Special Master. The Special Master intends to make recommendations only on the District's proposed expenditures in categories two and three that he believes warrant additional investment or require further explanation. However, the Special Master has concerns about the activities included in Category 1 and means to suggest that these activities will receive particular attention as to whether the expenditures involved deal yield the results expected of them.

Category 1: Issues of Concern for Which the District Should be Held Accountable

To repeat, the expenditures identified here are those about which concerns have been raised and that the Special Master believes the District *may* have invested insufficient resources. In April 2015, the Special Master met with senior District staff and identified aspects of the USP in which progress has been limited and perhaps inadequate to satisfy the intent of the USP. The Special Master emphasized that the purpose of providing such information to the District was to

highlight concerns about which additional effort might be needed. Most of the six sets of activities identified below were identified in this April briefing.

In making the level of investments the District is making, the District is expressing confidence that it can meet the goals set out in previous documents. It can be assumed that the District will accept the consequences if progress is not made by the end of the 2016-17 school year. In other words, in budgeting the funds it has invested in these activities, the District is saying that it is doing what needs to be done. Contested expenditures in this category of activities include those that deal with:

- Integration
- Advanced learning experiences
- Multicultural curriculum
- The expansion of dual language learning opportunities
- Extracurricular activities
- Culturally relevant courses (CRC)

With respect to CRC, in January 2015 the District negotiated a budget for implementing the provisions of the USP relating to CRC in order to avoid the possibility of being declared noncompliant. While the District made considerable progress in increasing the number of students taking CRC in 2015-16, the District departed substantially from the budget that had been approved by the Court. In its defense of such action, the District has argued that the commitments and that budget represented a three-year plan and provided an example of its intentions with respect to the appointment of Itinerant Teachers. It seems clear, however, that the District is not adhering to the 2015 Court approved budget. The budget itself is described as

the 2015-16 budget. Whether the District should be allowed to unilaterally amend this budget, which it seems to have argued is both a three-year budget and a one-year budget, might be determined by the Court. Confusion about the scope of the CRC implementation budget is likely to be revisited in the context of debates about whether the District has acted in good faith in implementing the USP. To obviate this potential problem, the District should submit a revised agreement related to the implementation of the CRC and explain its rationale for this plan and the expenditures that would be required for its implementation.

Category 2: Best Practice Issues

Teacher Induction

The District has consolidated expenditures related to two sections of the USP -- the provisions for supporting first and second year teachers and the provision for supporting first-year teachers assigned to schools where students are underperforming. But, the budget does not specify what investments should be made in each. The key to success of both of these provisions of the USP is the number of and quality of mentors. The District is justifying its budget by citing the ratio of one mentor to fifteen based on studies of peer assistance and review (PAR) programs. This seems reasonable for beginning teachers working in less challenging environments. However, PAR programs and induction programs, such as those provided for in the USP, have different purposes and mentors serve different roles. PAR programs work with experienced teachers in most cases. The USP intentionally makes the distinction between beginning teachers in general and those assigned to schools where students are underperforming. In the latter schools, the ratio should be closer to 1 to 10, a ratio the District has identified as appropriate to support beginning teachers working in CRC. The District implies that it cannot provide specifics because it cannot predict how many teachers will be involved. But it can certainly develop an

estimate because it knows about how many new teachers will have to be appointed and, based on past experiences, can determine roughly how many of these will be in their first year of teaching. The District also can estimate the number of teachers who would be eligible for extra support given their appointment to positions in schools where students are performing below the District average.¹ The District should identify the number of mentors for each of the two programs supporting beginning teachers and allocate the funds needed.

Identifying and Sharing the Successful Disciplinary Practices

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

¹ More than half of first-year appointees were assigned to schools where students were achieving below the District average in 2015 16. This reality is not consistent with the intent of the USP.

is hard to understand why the District would not want to adequately implement the relevant provision of the USP.

Revision of School-level Magnet Plans

Some school-level magnet budgets appear to include expenditures, as the Special Master has noted in a memorandum to the parties, to support uncertified personnel who would be teaching struggling students. Such funding was not allowed in 2016. If the District proposes to make such expenditures, it should explain why the proposed activities are acceptable now but were not previously. Other plans request technology which appears to have already been approved with funding from unspent allocations in 2016. The District should revise magnet school plans accordingly.

Category 3: Sets of Activities about which Further Information is Needed

Professional Development

The most powerful school-based influence on student learning is teacher effectiveness. Therefore, the investment the District makes in well-designed and effectively implemented professional development is among the most important investments that it can make to improve student learning opportunities and outcomes. However, based on the information provided by the District, it is not possible to determine whether the District expenditures for professional development are adequate to meet the requirements of the USP or whether the ways that PD is to be offered are likely to be productive. I recommend that the District specify who will receive what professional development, in what amount and in what ways, and at what cost. This assessment should be submitted to the plaintiffs and the Special Master no later than August 15, 2016. In the interim, the District should be allowed to implement the professional activities

provided for in the 2017 budget. The Court previously required the District to undertake a similar activity.

Activity Related to Student Behavior, Engagement and Discipline

As noted in the introduction to this report, understanding what changes are being made in policies and practices in many areas of District action is complicated by the District's continuing changes in the way it codes particular expenditures. And, while it provides expenditure changes for aggregate categories of expenditure, the budget itself provides no such information. This not only makes it difficult to compare proposed with current and past expenditures, it is difficult to identify the purposes of some proposed activities. This is particularly the case with respect to a significant range of activities the District has combined under the heading, "Student Behavior, Engagement and Discipline." For example, in Attachment 1 of the District's May 10 explanation of allocations related to student behavior, engagement and discipline, the District says that, "Attachment 1 outlines the District's prior and current expenditures and proposed allocation for each activity and describes how various components function as parts and of the District's overall approach...." However, for many of the proposed expenditures there is no comparison to current or past allocations. On page 8 of Attachment 1 of the District's explanation, the District essentially zeros out over \$1 million of expenditures on important activities by explaining that, "The following activities do not have specific funding lines although resources necessary to implement these activities are found in other sections of the budget and/or draw upon position structures and/or resources that exist outside the USP budget." There is no roadmap that would guide one to information about how much is being spent, if anything, on these activities. Among the proposed expenditures that appear to be inadequate is the proposed investment in training and evaluation of the Positive Behavior Intervention and Support (PBIS) process that is at the core of

the District's efforts to prevent discipline problems. The District has acknowledged that its approach to PBIS is significantly lacking but proposes to spend less than \$100,000 in PBIS training. And there is no indication of how this compares to past expenditures. The District should specify how it proposes to invest the more than \$7 million that it wishes to allocate to student behavior, engagement and discipline, and to indicate what it is proposing to more of, what it is doing less of, and what it is proposing to do differently, and to identify the expenditures involved. This report to the plaintiffs and the Special Master should be submitted no later than September 1, 2016. In the interim, the District should be allowed to invest in those activities in accordance with the provisions of the budget it is presenting to the Court.

Summary

The Special Master identifies several important areas of concern relating to the 2017 USP budget. Several of these concerns fall into Category 1, as defined above. With respect to these sets of activities, the Special Master and the Implementation Committee will assess whether adequate progress appears to have been made in terms of previously set goals. The Special Master will report these assessments in his recommendations to the Court regarding the District's bid for unitary status. This report identifies three sets of activities that it recommends that the District to invest in further. Each of these three sets of activities involve relatively minor expenditures. The report also recommends that the District to provide the plaintiffs and the Special Master with significantly greater and more detailed information with respect to two critically important sets of activities representing a substantial proportion of the overall USP budget. At the same time, the Special Master recognizes that providing such information -- which the plaintiffs and the Special Master might have expected to receive earlier -- will be time-consuming, especially if the substantive implications of the expenditures are carefully

considered. Therefore, the District should be allowed to move forward in addressing the tasks embodied in the proposed budget.

Final Comments

In its response to some objections and concerns related to the final version of the budget received by the plaintiffs and the Special Master, the District responded by saying that if additional action was required as it moves forward during the school year, it would finance these actions by reallocating funds unspent from the approved budget. Based on past experience, a significant amount of money is likely to go unspent for a number of different reasons -- some intentional, most not. However, there appear to be a number of potential problems with this approach, especially when the issues to which these funds would be directed are of great importance. First, it alters the budget reallocation process agreed to by the parties. Second, when the need arises for reallocation, these funds may not yet be available. Third, it creates an incentive to hold off on low priority expenditures to ensure that the relatively high priority issues that the District has identified it would address with this strategy could be dealt with. Fourth, it allows the District to avoid making a commitment to dealing with issues the Special Master and/or the plaintiffs consider important. In short, the strategy that the District proposes is highly problematic and should not be common practice moving forward.

Each year, despite the best of intentions, the USP budget process ends with issues unresolved in a sense of unease about whether voices have been heard and adequately responded to. One may then weigh what the costs of an ongoing challenge to the budget would be to public confidence in the District and the morale school-level staff against the loss of opportunity on the part of the plaintiffs and the Special Master to gain desired changes in proposed expenditures. The Special Master has decided that the “goodwill” cost to the District outweighs the good that

could come from continuing struggle over the budget, especially if a greater effort is made on an ongoing basis to assess progress being made.