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School District No. 1*

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

Roy and Josie Fisher, et al.,

Plaintiffs

v.

Tucson Unified School District No. 1, et al.,

Defendants,

CV 74-90 TUC DCB  
(Lead Case)

Maria Mendoza, et al.

Plaintiffs,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB  
(Consolidated Case)

**TUSD RESPONSE AND LIMITED OBJECTION TO  
SPECIAL MASTER'S REPORT AND RECOMMENDATION  
RELATING TO THE TUSD USP BUDGET FOR 2015-17 (ECF 1954)**

1 The District responds to the Special Master's Report and Recommendation Relating  
2 to the TUSD USP Budget for 2016-17 (ECF 1954), and respectfully objects to certain  
3 limited aspects of that report, as follows.

4 **1. First Recommendation.**

5 "The Court should confirm the importance of the District's timely  
6 implementation of the budget process and the need to respond to reasonable  
7 requests for information and to provide information as fully and promptly as  
8 possible." (ECF 1954, p. 4.)

8 **District Response:**

9 The District has no objection to this recommendation, though the District does not  
10 believe it is necessary. The District does object to the failure of the Special Master's report  
11 to recognize that the District followed the USP budget process as laid out in the agreed  
12 process documents in good faith, and substantially complied with that process – including  
13 timely implementation and the provision of information as fully and promptly as possible.  
14 The District spent a very significant amount of time and scarce resources formatting data in  
15 the particular method requested by the parties and the Special Master (which does not  
16 match the formatting used by the District to follow state and federal budgeting  
17 requirements) and responding to requests for information. The District estimates that  
18 compliance with the USP budgeting process and requests made by the Special Master and  
19 plaintiffs consumed more than 2,000 hours of staff time, many by mission-critical District  
20 personnel with substantive roles with the District other than budgeting.

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

1 TUSD staff considered the comments it received to Draft 1 and provided Draft 2 to  
2 the plaintiffs and the Special Master on April 8, 2016. The materials provided were again  
3 in a series of forms and formats as requested by Dr. Balentine. At the request of the  
4 plaintiffs and the Special Master, a team of seven District employees spent two days  
5 meeting with the plaintiffs and the Special Master to discuss the USP budget on April 20-  
6 21, 2016.

7 Again, TUSD staff worked diligently to consider and incorporate comments and  
8 suggestions on Draft 2 into Draft 3, which it submitted to the plaintiffs and the Special  
9 Master on May 6, 2016. Again, the materials were presented in a detailed set of forms and  
10 formats as requested by Dr. Balentine. On May 10, 2016, the District submitted a  
11 supplement to Draft 3 that included a detailed, narrative description of the major programs  
12 funded, a comparison of budgeted amounts to actual spending in prior years, and a detailed  
13 narrative outlining the District's discipline-related allocations. The District also submitted  
14 all 19 magnet plans, including budgets.

15 After consideration of all remaining comments and recommendations, District staff  
16 prepared the Final Proposed Budget and submitted it to the Special Master and the plaintiffs  
17 on June 29, 2016. Dedicated staff members from multiple departments worked extremely  
18 hard, including after hours and on weekends, to make the process informative and  
19 meaningful to all participants. A complete copy of the materials which the District did  
20 provide during the budget process is attached as Exhibit A to this response.

21 The one specific complaint set forth in the Special Master's report was that Draft 3  
22 of the budget did not compare the proposed expenditures to the prior year budget.  
23 However, (a) this comparison was provided in earlier drafts, and it would have taken but a 5  
24 minute "cut and paste" from either earlier draft to add it to Draft 3, so this was not a serious  
25 deficiency, easily remedied if requested, and (b) a very detailed comparison of proposed  
26 spending for 16-17 with actual spending for two prior years was provided along with Draft  
27 3 of the budget, again in response to a request from plaintiffs.

1 The District is already working with the Special Master to finalize the process for the  
 2 budget for the 17-18 school year. The District has submitted a proposed timeline and  
 3 process for the development of that budget, and the Special Master has responded with a  
 4 revised draft of the proposal developed by himself and Dr. Balentine. The District is  
 5 scheduled to meet with Dr. Hawley in person at the end of September to discuss the draft  
 6 proposal, and to meet with all of the parties in person in November to work collaboratively  
 7 to finalize the draft proposal.

8 **2. Second Recommendation.**

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

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

14 “The District should consider providing increased support for the  
 administration of magnet programs.” (ECF 1954, p. 7.)

15 **District Response**

16 With regard to the first paragraph of this recommendation, the District has already  
 17 revised its magnet school plans to eliminate funding for noncertified personnel who were to  
 18 be teaching struggling students at the only magnet school which had included this element  
 19 in its magnet plan. The District has clarified that in all other instances where non-certified  
 20 staff provide support to struggling students it does not involve such staff teaching struggling  
 21 students. [See Exhibit B attached hereto.] The District has already revised its magnet plans  
 22 to account for the technology purchases late last school year as a result of reallocation of  
 23 funds. [Id.]

24 With regard to the second paragraph, the District has already complied with this  
 25 paragraph, setting goals for all magnets at least as high as most recently achieved. [Id.]

26 Finally, with regard to the third paragraph, the District has considered increased  
 27 support for its magnet administrative office, and has initiated budget modifications to  
 28

1 increase the funding as described herein. However, the District's FY16-17 magnet program  
2 budget actually reflects a \$2,200,000 budget increase above what was actually spent in the  
3 FY15-16 year (from an estimated \$10.8 million spent in FY15-16 to a budgeted \$13 million  
4 for FY16-17). Most of these funds are budgeted directly to individual school magnet  
5 programs, rather than through the magnet administrative office. The individual school  
6 magnet program budgets have increased by far more than any decrease in the budget for the  
7 magnet administrative office.

8 The limited reductions to the budget for the magnet administrative office are  
9 perfectly reasonable and reflect sound budget practice. The magnet administrative office  
10 spent approximately \$494,000 in FY15-16. The District has budgeted approximately  
11 \$221,000 for the magnet administrative office in FY16-17, reflecting a difference of  
12 approximately \$273,000 (this includes an increase of \$75,000 to the magnet administrative  
13 office budget for a magnet consultant).

14 In the Final USP Budget, the "administrator salary" line item of the magnet  
15 administrative office budget was reduced by one-half FTE from last year, reflecting the  
16 District's plan for a single person to serve as Magnet Director and ALE Coordinator. The  
17 District received an objection to this plan and has agreed to separate these two positions  
18 into two full-time FTEs. As a result, the District is seeking to increase the budget for the  
19 magnet administrative office through a budget modification by salary and benefits for one-  
20 half FTE – an increase of approximately \$65,000. Thus, the difference between years will  
21 be further reduced from \$273,000 to \$209,000.

22 Most of the remaining difference in administrative magnet costs stem from the  
23 following four items:

24 1. Last year, the District included approximately \$84,000 in the magnet  
25 administrative office budget for advertising. In practice, these funds were administered by  
26 the communications department (with direction and coordination from the magnet  
27 department). This year, magnet advertising funds were moved to a separate line item in the  
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1 communications department budget (properly reflecting that department's administration of  
2 these funds), and were increased to \$100,000. Thus, there is no reduction in magnet  
3 advertising (actually, a 20% increase) and no change in the way these funds are managed.  
4 Moreover, this was explained to the Mendoza plaintiffs by memorandum in May, 2016.  
5 This transfer to the communications department represents approximately \$84,000 of the  
6 \$209,000 difference in amounts budgeted for the magnet administrative office between  
7 years.

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

14         3.       A review of supplies, equipment, and technology on hand during the last  
15 school year demonstrated that the magnet administrative office had sufficient stock to meet  
16 most of its needs through the FY16-17. The magnet administrative office budget for  
17 department supplies, equipment, and technology for the FY15-16 was thus reduced from  
18 \$111,642 for FY15-16 to \$6,500 for the FY16-17. There is simply no present need to  
19 purchase significant additional supplies, equipment, or technology. This needs-based  
20 reduction represents approximately \$105,142 of the \$209,000 difference in amounts  
21 budgeted for the magnet administrative office. Ordering the District to spend \$111,000 on  
22 supplies and technology solely because it spent that amount last year is illogical and would  
23 not represent sound budgeting practice.

24         4.       The District reduced magnet administrative office travel expenses from  
25 \$47,227 for the FY 15-16 to \$4,000 for the FY 16-17, reflecting the District's business  
26 judgment that management of the magnet programs could be accomplished efficiently with  
27 much less travel expenses than occurred in FY 15-16. This needs-based reduction  
28

1 represents about \$43,000 of the \$209,000 difference in amounts budgeted for the magnet  
2 administrative office. The Special Master complains that the magnet department should  
3 travel to meetings to learn about best practices. Given that meeting materials can be  
4 obtained without travel, and telephones exist for conference calls with other districts, the  
5 Special Master's comments are a bit puzzling. But more fundamentally, it does not seem  
6 productive or appropriate to enmesh this Court in disputes about \$25,000 budget items for  
7 out of state travel to conferences, out of a total budget of \$13 million for the District's  
8 magnet program.

9 Together, these four items represent approximately \$266,000 in reductions. When  
10 combined with the \$75,000 increase for the magnet consultant, these four items represent  
11 approximately \$191,000 of the \$209,000 difference between this year's magnet  
12 administrative office budget and last year's budget. None of these items is inappropriate;  
13 none represent some sort of failure of commitment to the magnet program, and all represent  
14 sound management judgment and stewardship of public funds. In fact, the first two items  
15 represent reductions to the magnet administrative office but also represent corresponding  
16 increases totaling more than \$100,000 to the total magnet budget.

17 Thus, the District has already complied with this recommendation; no order is  
18 needed.

19 **3. Third Recommendation**

20 "The District should identify the number of mentors for each of the two  
21 programs supporting beginning teachers, provide the rationale for these  
provisions, and allocate the funds needed." (ECF 1954, p. 9.)

22 **District Response:**

23 The District has already complied with this recommendation. [See Exhibit C hereto,  
24 forwarded to the Special Master and the plaintiffs on September 1, 2016.] No order is  
25 required.

26 **4. Fourth Recommendation**

27 "The District should develop a viable plan for identifying and sharing  
28 effective disciplinary practices and finance that plan. This is not a particularly



high-cost endeavor and it is hard to understand why the District would not want to adequately implement the relevant provision of the USP.” (ECF 1954, p. 10.)

**District Response:**

The District agreed to comply with this recommendation before the Special Master filed his report. The District has already complied with this recommendation. [See Exhibit D hereto, forwarded to the Special Master and the plaintiffs on September 1, 2016.] No order is required.

**5. Fifth Recommendation**

“The District should 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 September 1, 2016. The Court required the District to undertake a similar activity in previous budget years. The District has agreed to provide this information but this recommendation makes clear that the information provided shall be reviewed and commented upon by the Special Master and the plaintiffs.” (ECF1954, p. 10.)

**District Response:**

As noted by the Special Master, the District agreed to comply with this recommendation before the Special Master filed his report. The District has already complied with this recommendation (see Exhibit E hereto, forwarded to the Special Master and the plaintiffs on September 1, 2016). No order is required.

**6. Sixth Recommendation**

“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 do more of, what it is doing less of, 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. The District has agreed to provide this information but this recommendation makes clear that the information provided shall be reviewed and commented upon by the Special Master and the plaintiffs.” (ECF 1954, p. 12)

**District Response:**

As noted by the Special Master, the District agreed with this recommendation before the Special Master filed his report. The District has already complied with this



1 recommendation. [See Exhibit F hereto, forwarded to the Special Master and the plaintiffs  
2 on September 1, 2016.] No order is required.

3 **7. Seventh Recommendation**

4 “The District should be required to provide the plaintiffs and the Special  
5 Master with specific expenditures needed to effectively implement the five  
6 sets of activities identified above.” (ECF 1954, p. 13.)

6 **District Response**

7 This recommendation refers to five items for which the Special Master asserts that  
8 the District has “deferred funding.” In fact, these are merely candidates for receipt of  
9 unspent funds if and when they become available, not “deferred funding.”<sup>1</sup> Thus, the  
10 District objects to this recommendation to the extent that it suggests that the District has  
11 “deferred funding” for culturally relevant courses, advanced learning experiences, dual  
12 language programs and staff outreach, recruitment and retention (“ORR”) programs. These  
13 are all major programs with significant budget components already in the approved 2016-17  
14 budget. In particular, culturally relevant courses will receive \$1.2 million in funding under  
15 the approved budget; the advanced learning experience is already funded to the tune of \$4.9  
16 million in the existing budget; dual language programs receive over \$3.1 million in the  
17 existing budget, and the ORR efforts are funded with nearly half a million dollars under the  
18 existing budget. This in no way amounts to “deferring funding” for these programs.

19 The fact that the District has identified these programs as candidates to receive  
20 additional reallocations if and when budgeted amounts become available for reallocation  
21 during the year does not mean that the amounts already budgeted are in any way  
22 “insufficient” or “inadequate” or that the District has “deferred” funding. It merely means  
23 that if and when there is reallocation money available, these programs would be good  
24 candidates. The development of a plan for extra funds does not mean that the plan for the  
25 already budgeted funds is somehow lacking.

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26 <sup>1</sup> One item (the smallest - repairs to Utterback Auditorium) was in fact deferred, but only  
27 because certain of the plaintiffs had objected to the use of §910(G) funds for this purpose  
28 when funds became available during the course of the 2015-16 school year.

1 Indeed, it is somewhat ironic that this whole approach of identifying candidate  
2 programs for reallocation funds, in advance of those funds actually being available, was an  
3 idea proposed by Dr. Balentine herself, undertaken by the District at the specific request of  
4 the Mendoza plaintiffs, and endorsed by the Special Master, and the District is now being  
5 criticized for accommodating them. Nonetheless, the District will provide the Special  
6 Master with additional detail on proposed use of reallocated funds within these program  
7 areas. No further order is needed.

8 **Conclusion**

9 For the reasons set forth above, the District respectfully submits that no further  
10 orders are needed or advisable in the circumstances.

11 Respectfully submitted this 21<sup>st</sup> day of September, 2016.

12 **STEPTOE & JOHNSON LLP**

13  
14 By /s/ P. Bruce Converse  
P. Bruce Converse  
Paul K. Charlton

15  
16 **TUCSON UNIFIED SCHOOL DISTRICT  
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**CERTIFICATE OF SERVICE**

The foregoing document was filed with the Court electronically through the CM/ECF system this 21<sup>st</sup> day of September, 2016, causing all parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing.

/s/ Diane Linn

Employee of Steptoe & Johnson LLP