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12
13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 Roy and Josie Fisher, et al., Plaintiffs, 16 v. 17 Tucson Unified School District No. 1, 18 et al., Defendants.	4:74-cv-00090-DCB (Lead Case)
19 Maria Mendoza, et al. Plaintiffs, 20 v. 21 Tucson Unified School District No. 1, 22 et al., 23 Defendants.	CV 74-204 TUC DCB (Consolidated Case)

24 **TUSD RESPONSE**
25 **TO**
26 **PLAINTIFFS' BUDGET OBJECTIONS**
27 **[ECF 2032 and 2038]**
28

Introduction

1
2 The District's final budget for funds afforded by Arizona Revised Statutes §15-910G
3 for SY 2017-18 was the result of huge effort, stretching well over six months, to comply
4 with the incredibly detailed and iterative budget process. The process began in October of
5 last year, followed by a two day meeting with the plaintiffs and Special Master in
6 November, and proceeded through four major drafts of the budget (in January, March, May
7 and June), each containing hundreds of pages of information specially provided in formats
8 specified by and unique to the Special Master and plaintiffs, and each resulting in
9 comments, objections and demands from the Special Master and plaintiffs, along with
10 hundreds of individual requests for information answered by the District, and an additional
11 two-day meeting in April of this year. The written record of this process shows constant
12 and careful consideration by the District of a myriad of demands and issues raised by the
13 Special Master and plaintiffs (whose feedback conflicted on several major funding issues).¹
14 Indeed, the District adopted 8 out of 10 recommendations from the Special Master's Report
15 and Recommendation regarding this year's proposed budget.²

16 The resulting budget allocates every penny of the \$63.7 million maximum allowed
17 by state statute. Indeed, the Special Master and plaintiffs have repeatedly asserted that they
18 would contend that the District is not acting in good faith to comply with the Unitary Status
19 Plan if the District fails to allocate the maximum each year. As a result, for each year that
20 the USP has been in effect, the District's budget has allocated that same maximum amount.
21 However, during that period, the District's enrollment has fallen from approximately 51,000
22 to 44,000 – a drop of nearly 14%. Accordingly, on a per-pupil basis, the §15-910G funds
23 allocated by the District's budget have increased by 16% since the USP was entered. Even
24
25

26 ¹ A portion of the written record is set out in the District's Notice of Filing of the
27 budget [ECF 2028]. That filing does not include the written responses to requests for
28 information made by the Special Master and the plaintiffs.

² See ECF 2020.

1 more significantly, the amount of §15-910G funds allocated by the District to its magnet
2 programs has increased from \$8.6 million in SY13-14³ to \$11.4 million for SY 17-18.

3 Evaluated in this context, and as discussed below in greater detail, the plaintiffs’
4 objections to the SY 17-18 budget are not well taken, and should be overruled. The
5 District’s budget for funds afforded by §15-910G represents a complex set of decisions
6 made in good faith by the District in an effort to weigh and balance many competing
7 concerns, based on the research, knowledge and consultation of its education professionals.
8 Additionally, many of the statements, comments, observations and questions in the
9 Plaintiffs’ submissions are not specific budget objections that lend themselves to a response
10 in this format, and are better addressed through continuing correspondence between the
11 parties and the Special Master.⁴

12 The focus of this Response is on budget objections requesting specific, identified
13 changes in amounts allocated to particular provisions of the §15-910G budget for SY17-
14 18.⁵ In particular, this Response addresses (a) two broad issues (magnets and teacher-
15 mentor ratios), and (b) multiple limited issues (including Wheeler’s GATE program,
16 funding summer programs, Dual Language at Bloom, the Itinerant-Teacher ratio, Student
17 Success Specialists and Departments, and the Higher Ground program).⁶

19
20 ³ This \$8.6 Million number could be as high as \$9.6 Million, if including school community
service and communications funding.

21 ⁴ For example, although the Fisher Plaintiffs’ submission is entitled “objections and
22 observations to the 2017-2018 USP budget” [ECF 2032], this submission is predominantly a list of
questions better addressed by the parties and Special Master outside of this briefing format.

23 ⁵ Pursuant to the Third Amended Budget Development Process Timeline, the District “may
24 file a response to the Plaintiffs’ objections (which may include commitments to reallocate funds in
response to objections) [ECF 2029-1 at 4].

25 ⁶ The Mendoza Plaintiffs also conditionally object to proposed CARE/UPKEEP allocations,
26 “only insofar as the District intends to use ‘CARE/UPKEEP’ funds for maintenance at schools not
a priority under USP Section IX(A)(3), or that would not raise student health or safety concerns if
27 gone unaddressed.” The District verifies that it does not intend to use these funds for facilities
28 maintenance at schools that are not a priority under USP Section IX(A)(3), or that would not raise
student health or safety concerns if gone unaddressed. Additionally, taking this concern into
account, as noted below, the District will reduce the allocation for facilities maintenance from
\$540,000 to \$340,000.

Detailed Analysis

1. The Court Should Overrule Objections to The District's Magnet Budget.

The Mendoza Plaintiffs broadly raise two magnet-related issues: (a) an alleged combined decrease of \$1.5 million in the total amount of dollars budgeted for all magnet schools and transitioning schools in the District, and (b) an alleged failure to “adequately address” family engagement in the budget for magnet schools.⁷ They also take issue with multiple budgetary items at several individual schools.

A. Change in total magnet and transition school budgets.

According to the Mendoza Plaintiffs' calculations, the District has reduced its overall magnet and transition plan budgets by “approximately \$1,500,000.”⁸ They argue that an overall reduction in funds budgeted for these magnet and transition schools necessarily indicates that the District has budgeted insufficient funds, and that the District should provide at least the same amount of dollars in each magnet budget in SY17-18 as were budgeted for SY16-17. However, this argument misunderstands the budget process.

When budgeting for magnet and transitioning schools, the District does not first identify a dollar amount and then manufacture ways to use those funds. Rather, the District prepares detailed plans based on academic and integration goals and calculates the necessary funding amount based on the plans. In other words, the dollar amount does not dictate the plans; the plans dictate the dollar amount necessary to achieve the goals of the plans. Moreover, there are multiple variables in each plan that cause the budget to fluctuate year over year (and sometimes month over month or week over week). An increase or decrease in required funding does not necessarily equate to improved or downgraded schools or programs.

For example, although the Mendoza Plaintiffs acknowledge that some of the District's magnet schools actually “have final budgets that are higher than those of last

⁷ The Mendoza Plaintiffs also raise multiple instances of alleged supplanting. The District disagrees that these specific budget items constitute supplanting, and points out that this issue does not address the merits of the proposed spending.

⁸ The Mendoza Plaintiffs combine dollar amounts from changes to magnet plans and changes to transition plans. The District disagrees with this approach.

1 year,” they take issue with the §15-910G budget for Booth-Fickett based on what they
2 describe as a reduction of approximately \$100,000 to that budget. Contrary to the Mendoza
3 Plaintiffs’ position and argument, funding to support Booth-Fickett’s magnet program
4 actually *increased* from SY16-17 to SY17-18, though those funds may come from a
5 different source (Title I) or be designated for a different budget category (Deseg Codes 501
6 and 511 instead of Magnet-Deseg Code 202).⁹ Specifically, as part of the budget changes at
7 Booth-Fickett, there was a \$97,000 reduction within Magnet-Deseg Code 202, which
8 reflects a \$333,000 decrease for the number of needed magnet teachers and a \$230,000
9 *increase* to fund two additional certified positions (Instructional Data and Intervention
10 Specialist and a second Math Interventionist), additional consultants and training to
11 improve instruction, and to implement an afterschool tutoring program coordinated by
12 certified teachers (all within Magnet-Deseg Code 202).

13 Relatedly, the District also added \$149,000 in *non-magnet* funding into its SY17-18
14 budget at Booth-Fickett to support and improve its magnet program. This included \$39,000
15 for a Restorative and Positive Practices Facilitator from non-magnet funding and \$110,000
16 from Title I funds for two Reading Interventionists. In addition to this \$149,000 increase,
17 Booth-Fickett’s overall budget includes \$55,000 for an MTSS Facilitator, \$55,000 for a
18 Curriculum Service Provider, and \$55,000 for an Avid Teacher/Coordinator, which all fall
19 within Deseg Codes 501 and 511, and thus are not reflected in Magnet-Deseg Code 502.
20 Accordingly, a closer look at the budget for Booth-Fickett shows that the District did not
21 reduce the amount of funding going to support its magnet program, it increased that
22 funding. Although this increase does not appear as “magnet funding” within Magnet-Deseg
23 Code 202 in the budget, the positions are clearly designated “to support Achievement Goals
24 and Site Specific Goals” from the Booth-Fickett Magnet Site Plan.

25 As a broader example, some of the District’s magnet schools paid for one-time costs
26 or fees in SY16-17 that they will not have to fund in SY17-18 (such as specific training,
27

28 ⁹ The same is true of the other TUSD magnet budgets, all affecting the overall budgeted amount.

1 certifications or supplies), which will reflect a budget decrease in at least some those
2 schools. Still, the District anticipates that the quality of teaching and learning in those
3 schools will improve based on the training those teachers received and the supplies the
4 school received the prior year. Thus, the District believes it is appropriate to calculate each
5 school's budget based on the needs and goals of each plan rather than based on the prior
6 year's budget, as argued by the Mendoza Plaintiffs. Ultimately, the core aim of the budget
7 development process is to ensure that the District has budgeted adequately to meet each
8 school's magnet site plan, which is developed based on the academic and integration needs
9 and goals of that school.

10 For these reasons, the Court should overrule objections to the overall funding
11 allocated to magnet programs in the District's SY17-18 budget for §15-910(G) funds.

12 **B. Family engagement in magnet plans.**

13 The Mendoza Plaintiffs argue that the District's magnet plans do not adequately
14 address the District's Family Engagement and Community Engagement ("FACE") efforts
15 under Section VII of the USP. [ECF 2038, pp. 9-11.] As an initial matter, this argument
16 falters based on its underlying, incorrect assumption that the District's magnet plans must
17 spell out all of the District's FACE-related efforts. However, the USP imposes only two
18 FACE requirements in connection with the District's magnet programs: (1) the District
19 must provide access at its Family Resource Centers to computers for families to complete
20 open enrollment/magnet applications, [ECF 1713, p. 52]; and (2) the District must
21 disseminate open enrollment/magnet applications, in all Major Languages, on its website
22 and through other locations and media, as appropriate, (*id.*) The District fully complies
23 with both requirements. [AR 15-16, ECF 1958-1, pp. 353-54]

24 In fact, the District has gone above and beyond Section VII's magnet-related
25 requirements by helping families obtain information about school choice and magnet/open
26 enrollment applications at Family Resource Centers, including by offering open enrollment
27 workshops and informational sessions about Two-Way Dual Language and GATE
28

1 programs, and publishing magnet/open enrollment information on the FRC Facebook page
2 and via monthly calendars and ParentLink emails. Indeed, the District's FACE efforts
3 support its magnet programs beyond the extent required by the USP.

4 In any event, the Mendoza Plaintiffs' essential complaint, that the District's FACE
5 efforts are not adequately funded, is meritless. Plaintiffs ignore that much of the District's
6 FACE efforts (particularly those for magnet and transition schools) are funded via an
7 entirely separate funding mechanism, in addition to §15-910(G) funding: federal Title I
8 funding. Each of the District's 19 magnet and transition schools has adopted a continuous
9 improvement model that aligns with the District's Title I initiative for continuous school
10 improvement. The Magnet Department works collaboratively with the Title I staff
11 members to support schools in developing annual Title I Continuous Improvement Plans
12 ("CIPs"). Each school's CIP describes with specificity the school's FACE activities and
13 strategies: the FACE activities (and funding) outlined in each Magnet Site Plan *supplements*
14 the extensive FACE activities already included in each school's CIP.

15 Accordingly, the Court should overrule objections regarding the magnet budgets
16 related to family and community engagement.

17 **2. Teacher Mentors.**

18 In December 2016, the Court ordered the District to "develop a meaningful mentor-
19 teacher ratio for first and second year teachers and a meaningful mentor-teacher ratio for
20 beginning teachers who teach in racially concentrated schools and schools where student
21 performance is below the District average." [ECF 1981 at 10-11.] As described in detail in
22 TUSD's Notice of Filing of the 2017-18 USP Budget and Exhibit D thereto [ECF 2028 at 3-
23 4; ECF 2028-4], the District did in fact develop meaningful mentor-teacher ratios, through a
24 comprehensive consultative process with the Special Master and Plaintiffs. Ultimately, this
25 process resulted in the District creating a point-based approach, which is designed to
26 provide needs-based mentoring based on whether a teacher (1) has one or two years of
27 teaching experience; (2) teaches at a racially-concentrated school; and/or (3) teaches at a
28

1 school that is underperforming.¹⁰ The District utilized these ratios to propose the allocation
2 of 38 teacher-mentors in the Final Budget.

3 The Mendoza Plaintiffs argue that 38 mentors *may* “fall short of what is needed,”
4 and that it would be better to have too many than too few mentors available. The Fisher
5 Plaintiffs believe that the number of allocated teacher mentors is too high.¹¹ Based on the
6 Special Master’s June 11, 2017 memo to the parties, his position is that 38 teacher mentors
7 “may be excessive,” particularly because, from his perspective, beginning teachers in
8 racially concentrated schools do not require more mentors than beginning teachers in
9 integrated schools.¹² Based on an analysis of these positions and its own internal
10 assessments, the District proposes a reallocation of funds to reduce the number of Teacher
11 Mentors from 38 to 35, saving budget funding for three teacher mentors, while also
12 retaining sufficient funding for current and anticipated needs. Additionally, if the need for
13 teacher mentors increases during the year, the District can allocate additional funds during
14 the year to meet those unanticipated needs. Accordingly, given the good faith basis for the
15

17 ¹⁰ The needs-based points system allocates: three points worth of training to first-
18 year teachers at underperforming or racially concentrated schools (essentially, 1/5 of the
19 mentor’s time), two points’ worth of training to first year teachers at performing or non-
20 racially concentrated schools; two points’ worth of training to second year teachers at
21 underperforming or racially concentrated schools; and one point worth of training to second
22 year teachers at performing or non-racially concentrated schools). Based on this system,
23 the per-person caseload could range from one mentor to five teachers (five first year
24 teachers at underperforming or racially concentrated sites; 5 teachers x 3 points = 15) to one
25 mentor to fifteen teachers (fifteen second year teachers at performing or non-racially
26 concentrated sites; 15 teachers x 1 point = 15), each mentor accounting for a maximum of
27 15 points.

28 ¹¹ The Fisher Plaintiffs suggest that rather than funding new teacher-mentor
positions, the District should assign more people to focus on increasing African-American
academic achievement.

¹² Dr. Hawley indicated that the point system for determining mentor-teacher ratios
should not assign extra points to beginning teachers simply because they teach in racially
concentrated schools, stating “first year teachers who teach in racially concentrated schools
do not face exceptional challenges.”

1 District's budget decisions on amounts allocated for teacher mentors, the Court should
2 overrule the plaintiffs' objections in this area.

3 **3. CRC Master Teachers (aka CRC Mentors or CRC Itinerant Teachers).**

4 In April 2016, the Special Master determined that the District's allocation of six
5 CRC Master Teachers¹³ to provide mentoring services to 60 CRC teachers, which was
6 based on a 1:10 ratio that is generally recommended and utilized in successful mentoring
7 programs, was adequate to meet the District's needs: "Given that enrollment of students is
8 what it is, it appears that a cadre of six itinerant teachers is adequate. However, this will not
9 be the case in the future when the District staff estimates that the number of students
10 enrolled in these courses could double" [Special Master Report re CRC Implementation,
11 ECF 1925]. As anticipated by the District and the Special Master, the 1:10 ratio of CRC
12 Master Teachers to teachers was adequate to provide the mentoring and assistance needed
13 to successfully implement and expand the District's CRC offerings.

14 In SY16-17, the District successfully expanded CRC offerings and, accordingly,
15 increased the allocation of CRC Master Teachers from six to eight pursuant to the 1:10 ratio
16 (as the number of teachers requiring CRC mentoring grew from 60 to 80 teachers). Based
17 on the successful implementation of mentoring at the 1:10 ratio over the last two years, the
18 District has increased the allocation of CRC Master Teachers from eight in 2016-17 to
19 eleven in 2017-18 (as the number of teachers requiring CRC mentoring grew from 80 to
20 110). As the District's CRC offerings continue to grow, the District will allocate sufficient
21 funds accordingly to provide the mentoring needed to ensure continued success.

22 The CRC Intervention Plan lists several purposes and functions for CRC Master
23 Teachers, and the District has successfully fulfilled these functions with the staff resources
24 as allocated for the past two years using the 1:10 ratio. The Mendoza Plaintiffs' request to
25 fund more CRC Master Teachers is a solution in search of a problem. The best evidence of

26 ¹³ The parties have used multiple terms to describe the individuals serving in this
27 capacity, such as CRC mentors and CRC itinerant teachers. Based on the Special Master's
28 recommendation, the District agrees to refer to this position and these individuals as CRC
Master Teachers on a going forward basis.

1 whether the District's staff allocation is adequate comes from an assessment of past
2 effectiveness, and the District's allocation of CRC Master Teachers has been effective in
3 meeting the requirements of the CRC Intervention Plan [ECF 1761] and in moving the
4 program forward successfully. *See Ex. 1, Declaration of Lorenzo Lopez.*

5 While the District *acts* to increase access to CRCs, to support CRC teachers, and to
6 enhance CRC experiences for students, Mendoza Plaintiffs seek more analysis and study to
7 address a problem that does not exist. The Court should overrule the objection and permit
8 the District to continue promoting the success of the CRC program by providing support
9 through its existing allocation of 11 CRC Master Teachers.

10 **4. Student Services Department.**

11 The Mendoza Plaintiffs object to the funding for the Student Services Departments
12 because they argue that the departments lack visibility (including due to their physical
13 location) and that the District should ensure that department staff are appropriately trained
14 in CRC practices and have the resources they need. First, the District disagrees with the
15 Mendoza Plaintiffs' assessment of these departments' visibility. The departments are
16 located at the District's Family Resource Centers, which have seen huge increases in
17 popularity in their few years of existence: Family Resource Center usage increased from
18 nearly 6,800 visits in SY15-16 to more than 16,000 during SY16-17. The District is not
19 sure where the departments could realistically be located to achieve more visibility.

20 The District also confirms that the departments and their staff have the resources and
21 training needed to continue successfully supporting the District's African American and
22 Mexican American students. In his final recommendations, the Special Master did not
23 object to the District's proposed allocations for Student Success Specialists. [ECF 2020, p.
24 2.] Accordingly, the Court should overrule the plaintiffs' objections regarding the Student
25 Success Departments.

26 **5. Dual-Language at Bloom Elementary.**

27 The Mendoza Plaintiffs' objection regarding Dual Language at Bloom appears to be
28 based on a misunderstanding. As anticipated, the District has budgeted for, and hired, *four*

1 dual-language teachers at Bloom. In fact, these four dual-language teachers have already
 2 begun their training for the upcoming school year. This misunderstanding likely comes
 3 from the source of the funding: Although the USP budget only allocates funds for two dual-
 4 language teachers at Bloom, the District will fund two additional dual-language teachers
 5 under the school's general staffing formula. Thus, the District respectfully submits that the
 6 Plaintiffs' objection regarding Dual Language at Bloom is without foundation and should
 7 be overruled.

8 **6. Self-Contained GATE at Wheeler Elementary.**

9 The Mendoza Plaintiffs object to the cost associated with further expansion of GATE
 10 opportunities at Wheeler Elementary school. But the Mendoza Plaintiffs' objection ignores
 11 the success of the Wheeler GATE program. In fact, after only one year of the program's
 12 implementation in just *one* grade level (2nd grade), the initiative has helped Wheeler cross
 13 the threshold to become an integrated school. Still, the Mendoza Plaintiffs "question the
 14 overall integrative impact" of the Wheeler initiative. But again, in only its first year (and in
 15 only one classroom) the Wheeler initiative has:

- 16 • Contributed to Wheeler becoming an integrated school;
- 17 • Increased the numbers of African American and Hispanic students in GATE; and
- 18 • Proven that attractive, highly desired ALE/GATE programs can be utilized
 19 successfully to improve integration (14 of the 19 students in the first year class were
 from outside of the Wheeler neighborhood).¹⁴

20 In order to build on this tremendously successful effort, the District proposes to
 21 expand to three additional classrooms in SY17-18. Remarkably, rather than encouraging
 22 the District to double down on its success, the Mendoza Plaintiffs ask the Court to halt the
 23 program's progress and order further analysis. Indeed, while the District is *acting* to
 24 improve integration, the Mendoza Plaintiffs seek to cut off the District with more analysis
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28 ¹⁴ As the Mendoza Plaintiffs acknowledge, the Special Master supports the GATE Program at Wheeler.

1 and study.¹⁵ The District believes this action would be contrary to the core purposes of the
2 USP desegregation budget, and thus that the Court should overrule this objection.

3 **7. Summer Programs.**

4 The District remains committed to utilizing summer programs to support students
5 and improve student achievement. The District's Final Budget contains a plan to fund its
6 summer programs the same way it has done (successfully) in previous years, which is not to
7 designate budget funds at the beginning of the budget process, but instead to utilize funds
8 that inevitably go unspent throughout the school year in other areas due to the many
9 variables that determine what funds are necessary and expedient for usage during the school
10 year.

11 The Mendoza Plaintiffs argue the District should not depend on using such funds,
12 but instead should budget for summer programs at the beginning of the year. Although the
13 District believes the overall budget would benefit by continuing to budget for summer
14 programs from the funds that have always been available at the end of each school year and
15 could otherwise go unused or be subject to last-minute planning, it is willing to reinstate the
16 previously-funded amount, approximately \$200,000, into the SY17-18 budget for use for
17 the summer programs. Because the final budget is already balanced, and based on the
18 Mendoza Plaintiffs' conditional objection to the District's budget for CARE/UPKEEP, the
19 District will reallocate \$200,000 in funding from the CARE/UPKEEP budget for the
20 maintenance of facilities for SY17-18, reducing that budget from \$540,000 to \$340,000. In
21 addition, in recognition of the success of the ten-day "Jump Start" summer program for
22 incoming 6th graders at Dodge and Doolen middle schools, the District will consider how to
23 utilize the "Jump Start" program at other school sites in the District.

24
25 ¹⁵ Similarly, the District expanded self-contained GATE at Roberts-Naylor in SY 16-
26 17 (and, likewise, the District noted that the changes were small in its first year of GATE
27 expansion). The District has proposed funding for further GATE expansions at both sites.
28 The Mendoza Plaintiffs oppose the funding at Wheeler (an integrated school making
progress and which the Special Master supports) but do not oppose funding for the same
expansion at Roberts-Naylor (a non-integrated school).

1 **8. Social-Emotional Learning (Higher Ground).**

2 The Mendoza Plaintiffs object to the District contracting with Higher Ground
3 because the programs they use “have been found to be effective with, and specifically
4 target, youth and adults who have been involved in the criminal justice system.” They offer
5 no rationale as to why a program that is successful in one arena cannot be successful in
6 another. Indeed, juvenile justice courts nationwide are embracing, and finding success, in
7 utilizing restorative practices – but this fact is certainly not a rationale for discontinuing the
8 use of restorative practices in TUSD.

9 Mendoza Plaintiffs, without submitting a request for information or otherwise
10 seeking to further understand Higher Ground’s work within the District, leap to a
11 conclusion that the services provided “are inappropriate and may result in stigmatizing
12 DAEP students.” DAEP is working. Students are participating in a positive alternative to
13 lengthy stays at home under long-term suspensions. Students are receiving Social and
14 Emotional Learning (SEL) services while in DAEP by trained professionals. That these
15 trained professionals might also be successful in providing similar services to incarcerated
16 youth has no bearing on the “appropriateness” of the services provided to TUSD students.

17 **Conclusion**

18 For the foregoing reasons, the District respectfully requests that the Court overrule
19 the plaintiffs’ objections to the budget for §15-910G funds for SY17-18.

20 Respectfully submitted on July 31, 2017.

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CERTIFICATE OF SERVICE

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

s/ Diane Linn
Employee of Steptoe & Johnson LLP