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11 Attorneys for Mendoza Plaintiffs

12
 13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,
 16 Plaintiffs,
 17 v.
 18 United States of America,
 19 Plaintiff-Intervenors,
 20 v.
 21 Anita Lohr, et al.,
 22 Defendants,
 23 Sidney L. Sutton, et al.,
 24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' OBJECTIONS
 TO THE TUSD 2019-2020 USP BUDGET
 [DOC. 2233]**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.

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10 **INTRODUCTION**

11 On July 1, 2019, the Tucson Unified School District, No. 1 (“TUSD” or “the
12 District”) filed its Governing Board-approved 2019-2020 USP Budget with the Court.
13 (Doc. 2233.) As reflected in the District’s final budget materials (*see, e.g.*, attachments 1-3
14 to the TUSD Final Cover Letter, 2019-20 USP Budget (“TUSD Cover Letter”) (Doc.
15 2233-1)), prior to the finalization of the budget both the Mendoza Plaintiffs and the Special
16 Master raised concerns that the District is inadequately allocating funds to implement the
17 USP Completion Plans mandated by this Court in its September 6, 2018 Order (Doc.
18 2123). Specifically, as detailed below, the District failed to allocate *any* additional funds
19 for certain Completion Plan implementation and, instead, asserts that all related tasks will
20 be performed by “existing staff” or using existing resources (without providing sufficient
21 and timely details that would allow the Plaintiffs and Special Master to assess the
22 adequacy of this approach).

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26 Moreover, as they have argued in past years, Mendoza Plaintiffs remain gravely
27 concerned with the District’s approach to magnet school funding, that is, the rote
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1 assignment of the prior year’s budget number to each magnet school, without any
2 meaningful assessment of how each school is performing and where resources might be
3 decreased, increased, or modified to maximize the magnet schools’ success.

4 In addition, Mendoza Plaintiffs have a number of other objections to the filed 2019-
5 20 USP Budget which they detail below.

6
7 **ARGUMENT**

8 **Inadequate Funding for Completion Plans Mandated by This Court’s**
9 **September 6, 2018 Order**

10 Mendoza Plaintiffs fully agree with the Special Master that the District’s general
11 approach of “assigning the responsibilities for implementing completion plans to existing
12 staff” results in “the Plaintiffs and the Special Master [being unable to] assess the
13 adequacy of the District’s budget proposals for the coming year.” (Special Master’s
14 Report and Recommendation Related to the 2019-2020 Budget, (“Special Master’s
15 R&R”), Doc. 2231, at 2:19-24).

16
17 Accordingly, Mendoza Plaintiffs agree with the Special Master’s recommendation
18 that this “Court should require the District to submit budgets for the implementation of the
19 completion plans that remain uncompleted.”¹ (Special Master’s R&R at 3:7-8.)
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23 ¹ Mendoza Plaintiffs note that they find themselves confused by the District’s response to
24 this recommendation in which it justifies assignment of completion plan implementation to
25 “existing staff” in part because “[c]ompletion plans do not create a new set of tasks that
26 negatively affect existing functions...” (TUSD Response to Special Master
27 Recommendations, Doc. 2233-1, at 28) as it seemingly downplays the effort and progress
28 the District must make to implement the portions of the USP covered by the completion
plans (particularly when the District argued [incorrectly] within the context of the Special
Master’s unitary status recommendations that the then-proposed completion plans
“essentially amount to a whole new desegregation decree”) (Doc. 2099 at 39:9-12). While
Mendoza Plaintiffs strongly disagree with each of these TUSD positions, what is of
concern for purposes of the budget is the District’s shifting and seemingly conflicting
position and its failure to create a budget that explicitly allocates adequate funding for
completion plan work

1 Notwithstanding that no completion plan budgets have been provided by the
2 District, the general budget information that has been provided is sufficient to raise
3 concerns that the planned completion plan funding is indeed inadequate. Mendoza
4 Plaintiffs discuss below those areas where the general budget information has raised
5 concern. Their silence with respect to other completion plans should not be understood to
6 suggest that they believe funding for those other plans is adequate. Rather, it reflects the
7 fact that there is insufficient information to permit even “high level” review and comment.
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11 *Family Engagement Completion Plan*

12 The District says that it has adopted the Special Master’s recommendation that an
13 additional three FTEs be allocated to individuals charged with supporting school level
14 teams with the implementation of completion plan family engagement guidelines (*see*
15 Court’s September 6, 2018 Order (Doc. 2123) at 136) by spreading the duties of the
16 equivalent of three FTEs among existing staff. (*See* TUSD Cover Letter, attachment 1,
17 response to RFI #2423; TUSD Cover Letter, attachment 2, page 2, Doc. 2233-1.) The
18 Mendoza Plaintiffs agree with the Special Master’s recommendation that the District
19 identify sources of funding for the three new FTEs that are to support implementation of
20 the site-level family engagement guidelines under the September 6, 2018 Order, and that
21 the responsibilities of any existing staff charged with providing that support be identified
22 “because Plaintiffs have not had the opportunity to weigh in on the effects of strategies to
23 implement family engagement initiative should this involve a repurposing of existing
24 personnel and, therefore, of existing functions.” (Special Master R&R at 7:4-10.)
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1 The District asserts that it need not identify tasks “existing staff” charged with
2 supporting completion plan implementation would no longer be able to perform because
3 the additional duties do not “negatively affect existing functions” (attachment 2 to TUSD
4 Cover Letter at 1; Doc 2233-1) as TUSD simply would “adjust the priorities of family
5 engagement staff away from building the [family engagement] centers and developing
6 guidelines” to supporting completion plans (*id.* at 2). TUSD’s rationale, however, makes
7 little sense since it seems to be saying that it will effectively stop or significantly curtail
8 USP-mandated work relating to the family engagement centers and the oversight of family
9 engagement efforts District wide. Yet, at the same time, in its response to the Special
10 Master’s recommendation, it underscores the challenge faced by the three FTE equivalents
11 given the number of persons whose family engagement efforts must be supported at the
12 site level, to wit, in addition to principals, teachers and other certificated staff, “dozens of
13 family liaisons at sites.” (*Id.*; emphasis in original.)

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17 *Discipline: Restorative Practices and PBIS Completion Plan*

18 Mendoza Plaintiffs object to what appears to be the District’s failure to adequately
19 allocate funding to implement this Court’s completion plan mandate under its September
20 6, 2018 Order that TUSD develop a “process to regularly assess that teachers have an
21 understanding of District disciplinary practices, the GSRR, PBIS and restorative
22 practices.” (Doc. 2233 at 131:22-24.) The District asserts that “existing resources” are
23 sufficient to implement the process this Court mandates (*see* Response to RFI #2288,
24 attached as Exhibit A), but TUSD seems to misunderstand this Court’s order. This Court
25 expressly noted that the discipline completion plan was “concern[ed with] the *effective use*
26 of EBAS and the USP disciplinary strategies designed to reduce the negative effects” of
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1 disproportionality in discipline (Doc. 2123 at 132:10-14; emphasis added). In its response
2 to the RFI and approach to the completion plan, the District seemingly conflates the court-
3 mandated assessment of how well teachers understand **and use** their discipline training
4 with the District’s delivery of such training (*see* response to RFI # 2422, Exhibit B
5 (describing in general terms the delivery of professional development as the process to be
6 implemented under this Court’s order)).
7

8 While TUSD does assert that an online quiz is given after online professional
9 development training, that quiz is used to determine whether an individual teacher should
10 “receive professional development credit.” (*id.*) It is not and in fact could not be used to
11 determine if a teacher has made progress in the “effective use” of disciplinary strategies
12 (by, for example, using information learned to modify and improve in-class performance
13 when a possible disciplinary issue arises) as contemplated by this Court. Accordingly,
14 Mendoza Plaintiffs agree with the Special Master’s recommendation that this Court
15 expressly make systematic analysis of discipline data a specific requirement and “link it”
16 to discipline training. (Special Master’s R&R at 9:2-8.) Mendoza Plaintiffs further
17 respectfully request that this Court make express what is implicit in its September 6, Order
18 (and the Special Master’s recommendation), that is, that information learned through
19 discipline data and assessments concerning teacher use of disciplinary practices, the
20 GSRR, PBIS and restorative practices be used to modify and improve TUSD’s discipline
21 training, and that allocations necessary to make such changes be included in the budget as
22 appropriate.
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Magnet School Budgets

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2 As this Court well knows, the Mendoza Plaintiffs have long been concerned with
3 the adequacy of magnet school plan budgets to implement strategies directed at improving
4 magnet schools' academic performance and closing achievement gaps. Indeed, last year,
5 Mendoza Plaintiffs observed that magnet schools' budgets for the 2018-19 magnet plans
6 were largely identical to their 2017-18 school year budgets, and that many magnet schools'
7 underfunding from prior years therefore had been carried forward. (*See* Doc. 2118 at 2:15-
8 22.) Now, it appears that *every single magnet school* is expected to have the same budget
9 it had last year. The District's rote assignment of the same budgets as last year (and the
10 preceding year) suggests the absence of any meaningful TUSD assessments or evaluations
11 of how each school has been performing with respect to integration and academic
12 achievement goals (including analysis of where more, fewer, or modified resources need to
13 be expended to achieve those goals).
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17 There can be no mistake that the very purpose of magnet school improvement plans
18 and their annual updating is to provide magnet schools with a road map of measures and
19 strategies (along with budgets) for them to become "true" magnets with respect to
20 academic achievement and integration. (*See, e.g.* Order dated January 16, 2015 (Doc.
21 1753), at 17:7-10.) However, that the District has for the 2019-2020 school year largely
22 copied and pasted all magnet school budgets from the 2018-19 school year (as it similarly
23 did in 2017-18) demonstrates that the District has repeatedly failed to devote to magnet
24 schools the attention and care this Court has contemplated (including when it ordered
25 development of the magnet plans and in its repeated reminders that magnet schools are the
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1 primary vehicle for integration).² Notably, while the District says that it evaluates magnet
2 school performance and resources, it also asserts that “the dollar amount allocated [to each
3 magnet school] does not correlate to how the school is performing.” (TUSD Cover Letter,
4 attachment 3 at 2 under “Magnet School Budgets: No Changes in Budgets from This
5 Year”.) The apparent assertion that magnet school performance is not relevant to the
6 budget is wrong and in conflict with TUSD’s past representations to this Court. (*See* Doc.
7 2086 at 18:8-15.)
8

9 Mendoza Plaintiffs therefore agree with the Special Master that the “District should
10 be required to explain the basis for its decision not to reallocate funding based on
11 differences in the performance of the students in each of the magnet schools.” (Doc. 2231
12 at 9:20-21.) To this they would add that particular attention should be paid to the relative
13 performance of the school’s Anglo students as compared to its Latino and African
14 American students. They further respectfully request that TUSD expressly be directed that
15 moving forward it must propose magnet school budget allocations that reflect that it has
16 conducted assessments of the effectiveness of its magnet school plan initiatives and
17 analysis of where more or fewer resources might be expended to maximize performance of
18 the magnet schools.
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23 ² Indeed, as this Court will remember, in its November 8, 2017 Order (concerning the
24 2018-2019 budget), it noted that TUSD agreed with the Special Master’s recommendation
25 that it should “evaluate progress toward reaching [magnet school achievement] goals on a
26 regular basis, including determining what each school needs to do to reach their goals...
27 The District advises that when the AZMerit scores are released, the District will submit
28 revised budgets for schools no later than September 30, 2017...” (Doc. 2086 at 18:8-15.)
As reported by the Special Master, the “District [subsequently] made no changes in magnet
budgets after review of the state test scores despite the fact that students at two of the
magnets previously thought of as highly effective academically... performed below the
District average in the growth of student performance.” (Special Master’s Annual Report
(Doc. 2096) at 11:8-11)

1 Mendoza Plaintiffs hasten to add that they believe that some magnet schools
2 continue to be inadequately funded particularly given the work they must do to raise
3 student achievement. Indeed, last year the Special Master noted that some magnet school
4 principals “felt they needed additional support” beyond what their magnet school was
5 budgeted. (Special Master’s Report and Recommendation on 2018 Budget 8/31, Doc.
6 2070, at 10, n.3.) By effectively freezing magnet budgets, the District would cause the
7 inadequate support these schools experienced in prior years to be carried forward into the
8 2019-2020 school year.³

9
10 Compounding the inadequacy of the budget is the fact that some schools appear to
11 have had to eliminate activities that were in their 2017-18 budgets in order to have funds to
12 allocate for UA Sky School in the 2018-19 school year, which for the most part is being
13 carried over to the 2019-2020 school year. (See, for example, Palo Verde’s magnet school
14 plan, which has the same 2019-2020 \$411,514 budget that it had in 2018-19 and that has a
15 UA Sky School allocation, attached as Exhibit C.) Yet, there has been no showing that the
16 UA Sky School allocation is a more effective way to increase achievement and close
17 achievement gaps than the activities that were eliminated to pay for UA Sky School
18 attendance.⁴ Further, the 2019-2020 budgets do not contemplate increases in salary or
19 benefits for budgeted positions from 2018-19 carried forward to 2019-2020 (see screenshot
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24 ³ In this regard, Mendoza Plaintiffs note that they have repeatedly pointed out the
25 relatively low budget allocation for Palo Verde. (See, e.g., Mendoza Plaintiffs’ Objections
26 to the Tucson Unified School District’s USP Budget for 2018-19, Doc. 2118, at 3:13-4:6.)
With Palo Verde’s magnet school budget set at the same level for the third year in a row,
this issue remains unaddressed.

27 ⁴ In making this observation, Mendoza Plaintiffs do not intend to suggest that attendance at
28 UA Sky School has no value. They are, however, mindful of the District’s oft repeated
statement that priorities must be set and that the District’s budget is not infinite.

1 of TUSD webpage describing Governing Board approval of teacher salary increase for
 2 2019-2020, attached as Exhibit D).⁵ Thus, magnet schools are experiencing **decreases** in
 3 the resources provided by their budgets even if their 2019-2020 budget amounts are
 4 identical to their 2018-2019 amounts. Plainly this highlights a further reason TUSD
 5 should be directed to revise its magnet school budgets based on meaningful assessments of
 6 the effectiveness of its current magnet school plan initiatives.⁶

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 10 **Reduction in the Number of Mentors Serving Beginning Teachers in**
 11 **Underperforming Schools**

12 At the time the District first proposed a reduction in FTEs for teacher mentors
 13 below the established formula for 2019-2020⁷, it asserted that the reduction was based on

14
 15 ⁵ Mendoza Plaintiffs note the salary increases to occur in 2019-2020 follow salary
 16 increases in 2018-2019 that also appear not to have been contemplated in last year's
 budget. (*See* Doc. 2118 at 3.)

17 ⁶ The District tries to argue that it is in fact planning to spend more on its magnet schools
 18 this year than it did last year by offering a comparison between the \$7.4 million allocated
 19 to those schools in total last year and the \$7.1 million it claims it will actually have spent.
 20 (*See* TUSD Cover Letter at 3, Doc. 2233-1.) Significantly, it offers no explanation for the
 21 difference between the amount allocated and the amount actually spent. Based on prior
 22 years' experience, however, Mendoza Plaintiffs believe that most if not all of the
 23 difference is attributable to the District's inability to fill all budgeted positions in the
 magnet schools or late hiring in the school year. If that is indeed the case, such inability
 to fill budgeted (and presumably needed) positions is hardly a basis on which to justify a
 further budget reduction. Yet, that is what the District admits it is doing with its further
 statement that the total it plans to allocate to its magnet schools in 2019-20 is \$7.3 million
 as compared to the \$7.4 million allocated for 2018-19. (*Id.*) [Further, as noted above, the
 District in its submission fails to address the fact that the salaries of its magnet school
 teachers will be higher in 2019-20 than they were in 2018-19.]

24 ⁷ Mendoza Plaintiffs admit confusion as to the number of reduced FTEs for teacher
 25 mentors reflected in TUSD's final approved budget. While the District's Budget Draft 3
 26 Cover Letter notes a "-6.00" change in FTEs for this activity (activity code 80412) from
 27 the last school year, it contradictorily describes a reduction of 8FTEs ("from 36 to 28")
 28 under "Rationale" on the same page (*see* 2019-2020 Budget Draft #3 Cover Letter ("Draft
 #3 Cover Letter") at 2, attached as Exhibit E). Further, the Special Master understands the
 reduction to be of 6FTE below what is required by District formula (Special Master's R&R
 at 5:17-20), however, actual raw final budget data suggests that reduction is actually of 10
 FTEs (from 39 to 29 FTEs) (Doc. 2233-2, Form 2, under Activity 80412.).

1 its plan to “utilize CSPs [Curriculum Service Providers] for add’l support for new teachers
2 at underperforming sites.” (Draft 3 Cover Letter at 2.) In response to the Special Master’s
3 R&R comments, with which Mendoza Plaintiffs agree, that adding mentoring tasks to
4 these positions (already charged with an extensive list of duties) likely would have
5 negative consequences (Special Master’s R&R at 5:13-17), the District asserts it “will not
6 assign CSPs to undertake these responsibilities” (TUSD Cover Letter, attachment 2 at 1).
7 Thus, Mendoza Plaintiffs understand that the District’s final budget maintains the reduced
8 number of teacher mentors below established teacher-mentor ratios without basis or any
9 intent that the responsibilities represented by the at least 6 FTE reduction be performed at
10 all.
11

12
13 Mendoza Plaintiffs accordingly object to the proposed reduction, and agree with,
14 and respectfully ask this Court to adopt, the Special Master’s recommendation that the
15 District be required to “identify the number of mentors... in accordance with established
16 formulas... [and that it be] required to fill those positions.” (Special Master’s R&R at
17 5:22-24.)
18

20 **Mexican American Student Services Department**

21
22 Notwithstanding that the District adopted its revised MASSD organization and
23 operating plan (Doc. 2151-2) (“MASSD Plan”)⁸, it is planning to reduce funding for the
24 Department by about \$100,000 in 2019-20. This appears to include a reduction in staff of
25

26 ⁸ This Court ordered that the MASSD Plan be revised in conjunction with the District’s
27 preparation of an “Executive Summary” and to, among other things, better “reflect the
28 interconnectivity and interrelatedness of the USP’s various units.” (Order dated April 10,
2019 (Doc. 2213) at 15:1-6.)

1 1.67 FTEs in Activity Code 511 (targeted interventions and support), a major reduction in
2 the important activities related to collaborating with local colleges and universities (from
3 about \$54,000 to about \$14,000) in Activity Code 513, and a comparable reduction in the
4 amounts associated with conducting quarterly information and other outreach, engagement
5 and training events (from about \$56,000 to about \$16,000) in Activity Code 512. (*See Doc*
6 *2233-2, Form 4, at 64-65, 70-71.*) Mendoza Plaintiffs object to these reductions because
7 they impede the District's ability to implement the MASSD reorganization plan and the
8 essential outreach and support contemplated by the plan.
9

10 Further, the individual line item entries for Activity Codes 511-513 described above
11 suggest that the bulk of these significant reductions involve the elimination of *all* 5 FTE
12 "CRC Tutors" allocations that existed for those activities in the 2018-2019 school year
13 (*see id.*), notwithstanding that the MASSD Plan calls for an "increase in available qualified
14 CRC tutors" to a total of "CRC Tutors 10 Part-Time Positions (NEW POSITIONS)".
15 (MASSD Plan at 2, 7, 19.) Thus, it appears that the District's allocations relating to the
16 MASS Department, on their face, conflict with the very language of its adopted MASSD
17 Plan. Mendoza Plaintiffs specifically object to any reductions in "CRC Tutors" and
18 respectfully request that this Court require the District to allocate funds for the 10 part-time
19 CRC tutors that are called for in its MASSD Plan as they concern essential support
20 components of the plan.
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24 **Response to TUSD Assertion that Parties Asserting Budget Inadequacies**
25 **Should Propose "Corresponding Reductions"**
26

27 In its Budget Cover Letter, TUSD states that any party who asserts that the 910(G)
28 budget is inadequate should propose a "corresponding reduction." (TUSD Cover Letter at

1 3, Doc. 2233-1.) Mendoza Plaintiffs do not agree that such a burden exists or should be
2 placed on any party who demonstrates that the 910(G) budget fails to adequately provide
3 for a mandated USP activity and note that no such requirement has been imposed in the
4 past. However, in the spirit of moving the budget process along and because they object to
5 a \$272, 000 **addition** that the District made to the 910(G) budget between Draft # 3 that
6 was reviewed by the Special Master and the Plaintiffs and the final version as filed with
7 the Court, they do so here.

9 In the final budget, the District added an allocation of \$272,000 to cover the costs of
10 creating a seven-period day at Gridley. While there may be sound reasons for creating
11 such a schedule at Gridley, Mendoza Plaintiffs object to the use of funds from the
12 desegregation budget to cover the full expense of creating such a schedule given that that
13 school is disproportionately Anglo. According to the enrollment statistics on the TUSD
14 website, in 2018-19, the school was 42% Anglo/white, and only 38% Hispanic/Latino (as
15 well as 11% African American). Based on those enrollment numbers, it would appear that
16 a significant portion, if not all, of the costs of creating a seven-period day at Gridley
17 should be charged to the District's M&O budget rather than its 910(G) budget.

18 Having reviewed the final budget in light of the District's assertion, Mendoza
19 Plaintiffs offer the following suggestions for reductions:
20

21 Included in the budget is \$585,000 for the multi-year facilities plan (Activity
22 Code 80901). However, no school and certainly no racially concentrated school is
23 identified as in need of attention (and no portions of that total amount are allocated to any
24 specific school or any particular repair or upkeep project). Rather, the sum is allocated to
25 two construction project managers, supplies, and the general heading of
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1 “CARE/UPKEEP”. It therefore appears that the District is planning to fund some of its
2 general undertaking to maintain its schools in good repair through the 910(G) budget. In
3 any event, given that no specific projects to address deficient conditions in a racially
4 concentrated school have been identified, Mendoza Plaintiffs offer this reduction to
5 counter areas in which they have suggested that additional sums must be spent to
6 implement the USP.
7

8 Similarly, last year, the District divided an admittedly larger total budget amount for
9 EBAS implementation between the 910(G) budget and the M&O budget, with about 55%
10 of the projected expense allocated to the M&O budget. (*See*, Doc. 2233 at 4.) This year,
11 the total EBAS implementation cost has been allocated to the 910(G) budget. (*Id.* at 2.)
12 Based on the approach taken last year, Mendoza Plaintiffs suggest that \$660,000 of the
13 EBAS expenditure should be moved to the M&O budget. (In looking at the budget detail,
14 they note that programs that are used for data assessment and to track individual student
15 work like Brightbytes (\$167,000) and School City (\$265,000) presumably would be used
16 by the District regardless of whether there were a USP. Therefore, it appears appropriate
17 to allocate these and similar costs to the M&O budget rather than the 910(G) budget.
18
19

20 Finally, Mendoza Plaintiffs note that numbers of their budget comments and
21 objections have related to expenditures that they have questioned, and that had their
22 objections and comments been adopted by the District, further 910(G) funds would have
23 been available for expenditures that they contend are essential to implement the USP. For
24 example, as noted by the Special Master in his R&R, both the Mendoza Plaintiffs and the
25 Fisher Plaintiffs have raised questions about the hiring of outside consultants to perform
26 activities that could be undertaken less expensively by District personnel. While the
27
28

1 Special Master has determined that the amount invested in consultants by the District is
2 “not unusual” (Special Master R&R at 3:16), the Mendoza Plaintiffs continue to question
3 the use of outside vendors, particularly to provide tutoring services. (See Doc. 2231-2 at
4 3.) (See also, Mendoza Plaintiffs’ above discussion of expenses for attendance at UA Sky
5 School.)
6

7 **CONCLUSION**

8 For the reasons set forth above, Mendoza Plaintiffs respectfully request the Court to
9 sustain their objections to the TUSD 2019-20 USP Budget.
10

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13 Dated: July 16, 2019
14

15 MALDEF
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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' OBJECTIONS TO THE TUSD 2019-2020 USP BUDGET [DOC. 2233]** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: July 16, 2019