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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF ARIZONA**

13 Roy and Josie Fisher, et al.,
14 Plaintiffs,

15 United States of America.
16 Plaintiff-Intervenors,

17 v.

18 Anita Lohr, et al.,
19 Defendants,

20 Sidney L. Sutton, et al.,
21 Defendant-Intervenors,

22
23 Maria Mendoza, et al.,
24 Plaintiffs,

25 United States of America,
26 Plaintiff-Intervenor,

27 v.
28

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

**FISHER PLAINTIFF'S OBJECTIONS
TO THE TUSD 2019-2020 USP
BUDGET [DOC. 2233]**

Case No. CV 74-204 TUC DCB

1 Tucson Unified School District No. One, et
2 al.,
3 Defendants.
4

Hon. David C. Bury

5 **INTRODUCTION**

6 On July 1, 2019, the Tucson Unified School District, No. 1 (“TUSD” or “the District”) filed its Governing Board-approved 2019-2020 USP Budget with the Court. The Fisher Plaintiffs have several concerns regarding this 2019-2020. As they have stated previously, the Fisher Plaintiffs are concerned with the District’s allocation of 910(G) Funds. The District has taken the approach that any school or department in the District qualifies for these funds, whether or not they are Deseg or OCR Schools and whether or not the services or programs should be funded by the District’s M&O Budget. This philosophy is apparent throughout the budget. The Fisher Plaintiff have a number of objections to the 2019-2020 USP Budget which are detailed below.

14 **ARGUMENT**

15 **A. Inadequately Funding for Completion Plans Mandated by This Court’s**
16 **September 6, 2018 Order**

17 The Fisher Plaintiffs agree with the Mendoza Plaintiffs and the Special Master that the District submit budgets for the implementation of the Completion Plans.

19 **B. Shifting of Transition Funds for Former Magnet Schools**

20 The former magnet schools were allotted funds for two years; however, each of these schools (Catalina, Cholla, Pueblo and Pueblo) are Deseg/OCR Schools with large numbers of African American and Hispanic Students who are not making adequate academic achievement progress. The funding in the 2019-2020 budget is not sufficient for them to address academic performance and provide ALE services for these students.

25 **C. Response to TUSD Assertion that Parties Asserting Budget Inadequacies**
26 **Should Propose “Corresponding Reductions”.**

27 Just as the Mendoza Plaintiffs stated, it is not the responsibility of the parties to make these suggestions, but we do submit the following suggestions to help alleviate over budgeting and to
28

1 provide increased funding for Deseg/OCR Schools that are not adequately funded.

- 2
- 3 1. The Fishers agree with the Mendoza's that the allocations of \$272,000 for a seven (7)
- 4 period day at Gridley is not justified in the 910(G) budget. The school is majority
- 5 Anglo (42%), so this cost should be covered by the District's M&O Budget.
- 6 2. That same explanation should be applied to 910(G) Funds at Collier, Fruchtendler and
- 7 University High. The total recouped from these schools would be approximately
- 8 \$270,000.
- 9 These are all majority Anglo schools and are also high performing schools, so they
- 10 should be totally funded by the District's M&O Budget.
- 11 3. Also, \$520,000 has been allocated for the AAAATF. Although the Task Force is no
- 12 longer functioning, the justification for these funds is that they pay for Task Force
- 13 Recommendations made in the 2014/2015 budget. Some of the line items are an
- 14 administrative assistant, a Parent Conference, benefits, culture and Climate PD,
- 15 Honorariums, Marketing, Mileage, Programs for Reading and Math support, New
- 16 Program Liaisons and Black Culture Club Advisors. Based on this list, the District is
- 17 using the defunct Task Force to fund programs that should be funded by the M&O
- 18 Budget and as a slush fund account. The District cannot explain how much and to
- 19 which programs specific amounts of funds that are allocated to comes from Task Force.
- 20 The District cannot explain who authorized the expenditures of Task Force funds if the
- 21 Task Force is nonexistent.
- 22 4. The budget for the African American Student Services includes some activities that are
- 23 covered by other departments or by schools. These include the College and Career
- 24 Readiness liaison, the Family, Parent and Community Engagement and Outreach
- 25 Liaison, the ALE/AVID and CRC/CRPT liaisons.
- 26 5. Dropout Prevention and Retention is funded for \$2,892,117 from 910(G) funds. The
- 27 District receives funding from the State for Dropout Prevention, so the Department
- 28 should not be solely funded with 910(G) funds.
6. Finally, it appears that the PLC Training is completely funded with 910(G) funds. Again, fund it at high performing and/or majority Anglo schools is inappropriate and/or supplanting.

23 **D. Magnet School Budgets**

24 The District lists Magnet Transportation and Magnet incentive both for \$4,382,647. This

25 appears to be an error.

26 **E. Reading Recovery**

27 The Fisher Plaintiffs question the adequacy of this funding. The Overview states that "The

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1 goal is to serve the literacy needs of the lowest achieving and most struggling literacy learners who
2 are African American and Latino/Hispanic students in the first grade”. Although African
3 American students are performing lower than other groups, the schools where Reading Recovery
4 is being implemented are not schools with large number of African American students. The
5 District touts the success of the program but is not using it to assist its lowest performing students,
6 nor is not funding it to assist its neediest students.

7 **F. EBAS Implementation**

8 The Fisher Plaintiffs agree with the Mendoza Plaintiffs that \$669,000 of the EBAS
9 expenditure should be moved to the M&O Budget. As noted Brightbytes and School City would
10 be used whether the District was under Court Order or not.

11 **G. Consultants**

12 The Fisher Plaintiffs once again question the use outside consultants for services that could
13 be performed by District employees and agree with the Mendoza Plaintiffs that the use of outside
14 vendors be limited.

15 **H. RECRUITMENT**

16 According to the Special Master’s draft comments of the District’s proposed 2019-2020
17 Budget, he indicates as follows:

18 “The USP specifies that the District should make efforts to recruit African American and
19 Latino professional staff from throughout the country and especially in historically black colleges
20 and universities. These efforts cost over \$1 million each year and they have been unproductive.
21 This is not surprising. Arizona funding for public schools and teacher salaries are among the lowest
22 of all the states in the union. This means that TUSD is competing for teachers and administrators,
23 especially African-American professionals, with districts that not only pay more but are more
24 likely to have larger African-American populations in the social infrastructure that affects the
25 quality of life of African-Americans.”

26 In response to RFI #2325, attached as Exhibit 1, the District acknowledges that the total
27 amounts spent in 2018-19 will be reflected in the fourth quarter spending report which will be
28 provided to the parties on or about October 31, 2019. The amounts currently proposed for FY19-

1 20 are set out in the FY20 Budget Draft 3 for SY2019-20 budget.

2 We don't know how much was spent in 2018-19 budget for recruitment of black or brown
3 teachers, but we do know that a total of 11 (in state/out of state) recruitment trips were undertaken.
4 Although the District recruited African-American teachers at these events, the District was not
5 able to identify any actual hires of African-American teachers.

6 The Fisher Plaintiffs object to the spending and getting no actual results. This is just
7 flushing valuable desegregation funds down the proverbial "drain". The results can no longer allow
8 the District to hide behind justifications that black teachers are hard to find and besides that
9 Arizona is not competitive in its payment of teachers. The true fact is the
10 District's failures should be laid at the feet of TUSD human resources department in that they have
11 outdated recruitment tools, recruiters that lack experience in effective social media communication
12 with black prospective millennial teachers, and they fail to recruit at small, traditional black
13 colleges located in rural areas of the country.

14 The Fisher Plaintiffs' recommendations that any budget for SY2020-21 factor in sufficient
15 funds to adequately train HR recruiters to capture and articulate to prospective black teachers that
16 Tucson is one of the fastest and most desirable places to work and live in the country.

17 **I. TRANSPORTATION**

18 The District's transportation department clearly does not utilize the most cost-effective
19 means of providing needed transportation as mandated by the USP. As an example, the District
20 allocated \$2,000,000 for private transportation. As of the 100th day, the District had 704 students
21 on contracted service, which is approximately \$2,841 per student. As another example of the poor
22 use of deseg funds; when asked how many students were riding the bus from Pueblo to Sabino,
23 the District acknowledged that 3 students were bused at a cost of \$60,000. The ethnicity of the
24 students is 2 Hispanic, 1 Native American and **NO** black students. This cost of \$20,000 per student
25 is outrageous. Uber or Lyft could clearly provide this service at a fraction of the cost. Attached as
26 Exhibit 2, RFI #2330.

27 The Fisher Plaintiffs have consistently and repeatedly objected to the African American
28 Student Services Department ("AASSD") in its present format. The District deliberately misled

1 the Court in implying that the Fisher Plaintiffs had signed off on the revised AASSD plan as filed
2 with the Court. The true facts were the Fisher Plaintiffs believed and were negotiating with the
3 District in good faith as to a final revision and determination of the future of an AASSD.
4 Superintendent Trujillo, desegregation director Martha Taylor and staff attorney Sam Brown all
5 knew that at the time of the District's filing with the Court by outside counsel, that the Fisher
6 Plaintiffs were **not** on board with the revised plan that was submitted to the Court. The District is
7 now seeking funds in the upcoming budget for this revised AASSD plan that was never agreed
8 upon by the Fisher Plaintiffs. The true fact was that the director of AASSD Jimmy Hart, was
9 consulting with the Fisher Plaintiffs' expert to seek advice and help in reorganizing the AASSD.
10 This lack of good faith was brought to the attention of Mr. Brown that the District's outside lawyers
11 had made misrepresentations to the Court. However, the District did nothing to correct this very
12 serious misrepresentation. This was lack of good faith at its worse. The Fisher Plaintiffs, like the
13 Special Master, cannot in good conscience recommend any future funding for the AASSD.
14 Attached as Exhibit 3, email from Rubin Salter, Jr. to Sam Brown.

15 **J. ACCOUNTABILITY AND TRANSPARENCY**

16 Under Section (X)(B)(7) of the USP, the District shall provide the Plaintiff and the Special
17 Master with an *audit* report of each year's USP Budget. The *audit* report shall indicate whether
18 the funds allocated in the USP Budget were spent in accordance with that budget and such other
19 information as may be necessary to provide the Plaintiffs, the Special Master and the public with
20 full disclosure concerning how funds allocated to the USP Budget were spent. The *audit* shall be
21 conducted by an outside accounting firm and shall be posted on the USP Web Page as required by
22 Section (X)(D)(1). Attached as Exhibit 4, Section (X)(B)(7) of the USP.

23 Since SY2014-2015, the District has failed to provide an annual audit by an outside and
24 independent accounting firm. The "so called" audit was not done by an outside, independent
25 accounting firm, rather it was done by the same accounting firm that performed the District's
26 accounting for years. Finally, for SY2018-2019, the District retained the services of
27 CliftonLarsonAllen to perform an examination of desegregation expenditures.
28 CliftonLarsonAllen's accountants' report reads, that "Our examination does not provide a legal

1 determination on the District's compliance with specified requirements." Clearly
2 CliftonLarsonAllen in their engagement, was not asked to do an audit pursuant to Section
3 (X)(B)(7). A copy of CliftonLarsonAllens' accountant's report is attached as Exhibit 5 and is
4 clearly denoted as a schedule of desegregation expenditures-budget and actual. Simply stated,
5 CliftonLarsonAllen examined a budget prepared by TUSD. No independent audit, as required by
6 the USP was done by this accounting firm.

7 The District has used deseg funds pursuant to 15-910(G) and OCR funds in the
8 approximate amount of \$2.3 billion without an independent audit as mandated by the USP. The
9 Fisher Plaintiffs see this as a very important validation or lack of validation of proper accounting
10 of deseg funds. Neither the Fisher Plaintiffs nor the Court or anyone else can know with any degree
11 of certainty that the funds were used to implement activities that were required or permitted by the
12 USP or a Consent Decree. It should be noted that during this seven-year period, the U. S.
13 Department of Education had penalized and prohibited the District for applying for new
14 funds/grants because of irregularities in accounting of federal funds. Only in the last 3 years was
15 the District permitted again to start applying for certain federal grants or funds.

16 The Fisher Plaintiffs recommends the Court order the District to comply with the
17 requirements of Section (X)(B)(7) and produce an audit by an independent, outside accounting
18 firm of any future A.R.S. Section 15-910(G) budgets.

19 **CONCLUSION**

20 The Fisher Plaintiffs respectfully request that the Court sustain their objections to the
21 TUSD 2019-2020 USP Budget.

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Dated: July 22, 2019.

/s/ Rubin Salter, Jr.
RUBIN SALTER, JR.
Attorney for Fisher Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2019, I electronically submitted the foregoing **FISHER PLAINTIFF’S 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/ECT registrants:

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/s/ Kristian Salter

Dated: July 22, 2019.