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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.
Maria Mendoza, et al., Plaintiffs, v. Tucson Unified School District No. 1, et al., Defendants.

4:74-cv-0090-DCB
(Lead Case)

4:74-cv-0204 TUC DCB
(Consolidated Case)

COMBINED RESPONSE TO
FISHER PLAINTIFFS' OBJECTION [ECF 2239]
AND SPECIAL MASTER'S SECOND R&R [ECF 2246]
REGARDING DISTRICT'S SY2019-20 BUDGET

1 The District files this response to the Fisher Plaintiffs' objections (ECF 2239) and
2 the Special Master's second Report and Recommendation (ECF 2246) to the District's
3 2019-20 USP Budget. This response supplements the District's response (ECF 2244) to
4 the Mendoza Plaintiff objections, and the Special Master's initial R&R.

5 On June 25, 2019, the District presented the 2019-20 USP Budget to its
6 Governing Board and the Board approved it (see Exhibit A, Board Action #10.4). Dr.
7 Hawley submitted an R&R the same day (ECF 2231).¹ The District filed the approved
8 budget on July 1, 2019. Mendoza plaintiffs requested, and the parties agreed to, a one-
9 week extension for filing objections by July 16, and responses by July 26. On July 16,
10 Mendoza plaintiffs filed objections (ECF 2237). As the District was finalizing
11 responses to the R&R and to Mendoza objections, Fisher plaintiffs filed late objections
12 on July 22 (ECF 2239). On July 26, the District filed its first response (ECF 2244). On
13 July 30, as the District was finalizing responses to Fisher objections, the Special Master
14 filed a second R&R (ECF 2246). As issues in the Fisher objections and second R&R
15 overlapped, the District developed this response to both filings.

16 As a threshold matter, the Fisher objections refer to "Deseg" and "OCR"
17 schools. Every school in TUSD is subject to the USP. The USP Budget Criteria do not
18 refer to "Deseg" or "OCR" schools (see "CRITERIA FOR USE OF 910G FUNDS,"
19 ECF 1915 at 12), or set standards related to which schools should or should not receive
20 910G funding based on the percentages of enrolled Anglo students. Mendoza Plaintiffs
21 make similar specious arguments as to why eastside schools with high Anglo (and high
22 African American) populations, should not receive 910(G) funding.

23 **1. Completion Plans**

27 ¹ The Budget Development Process required the TUSD Governing Board to
28 approve the budget, plaintiffs to file objections (if any), TUSD to respond to objections
(if any), and for the Special Master to file a request for expedited ruling within 30 days.

1 There are 19 completion plans; the Special Master has identified a single
2 example, the Family Engagement completion plan, of alleged insufficient funding (and,
3 in that case, the District responded by allocating additional non-910(G) funding).

4 The Special Master claims the District believes there is no relationship between
5 programmatic change and program costs. This is not the District's position. The
6 District's first Response states that there may be a relationship, but that there is not
7 always a relationship.² The Response includes examples of programmatic changes that
8 did not result in reallocations. These changes may have led to modifications to the
9 focus of some employees' "activities, emphasizing some things more and others less,"
10 or "may mean certain approaches and methods may be emphasized or practices
11 changed, but that may not affect staffing or change budget items." (ECF 2244 at 5).
12 The District noted that for several completion plans, there was no change to program
13 cost in the SY2019-20 budget because the District had already implemented changes,
14 and incurred additional costs, in the SY2018-19 budget.³

15 More fundamentally, many of the completion plans do not present new sets of
16 severable tasks requiring identifiable, new financial and human resources, though a few
17 of the plans do require additional resources. The plans strengthen existing institutional
18 structures, identify ongoing commitments after unitary status, and explain the
19 interrelationships among departments participating in various aspects of the District's
20 mission for equity and improved academic outcomes. The District understands the
21

22 ² The District stated in its response, "Programmatic change should not be
23 conflated with budgeting change. Obviously, **some (but only some)** programmatic
24 change results in spending funds differently, but even where funds are spent differently
25 to accomplish programmatic change **this may or may not appear [as] changes in the
budget, and often** will not require a new specific budget line item (ECF 2244 at 4,
emphasis added).

26 ³ The Special Master filed recommendations in February 2018 (see ECF 2096),
27 including many steps to be taken by the beginning of the 2018-19 school year – some
28 of which had budget implications like hiring a discipline coordinator and creating the
office of Student Relations.

1 parties' desire to identify budget variances caused by completion plans. However,
2 SY2019-20 budget variances may not reflect changes because many of the changes
3 occurred in SY2018-19, others affected processes, priorities, and functions of existing
4 resources (rather than adding new budget line items), and still others replaced one type
5 of resource with another (resulting in no budget variance). The best and most complete
6 explanation of changes necessitated by completion plans is in the text of the plans or in
7 an identification of new positions and roles necessary to implement the plans.

8 The Special Master asserts that the District "implies that it can develop
9 implementation plans without identifying how many people in what positions will be
10 needed." However, the R&R does not recommend that the District submit a list of
11 people and positions that support every plan, it recommends 19 separate budgets. If the
12 issue is identifying how many additional people and positions is needed for each plan,
13 the Court should order the District to provide such information for any completion plan
14 that requires additional positions – not order it to create 19 separate budgets.

15 **2. Consultants**

16 The Fisher Plaintiffs state that the use of outside consultants should be limited.
17 The District does limit the use of outside consultants by using them only to build
18 capacity or as a temporary staffing measure. For example, the District contracted with
19 KOI to provide initial PBIS training to select District staff who would in turn become
20 trainers themselves. In 2019-20, the District will continue using purchased KOI
21 materials, but will provide PBIS training through its own staff, now that it has built the
22 capacity to do so. As a limited use measure, the District may hire consultants to assist
23 in completing required tasks where the District lacks the full or partial necessary human
24 resource capacity. The Fisher Plaintiffs do not point to a single example of the District
25 hiring consultants as a long-term strategy to replace services that District employees
26 cannot perform.

27 The Special Master has stated, in both budget R&Rs, that the proposed budget
28 allocation for consultants is satisfactory. This is where his *budget recommendation*

1 should end. However, he recommends the District examine the alignment of
2 assessment instruments and review them to ensure coherence and consistency. To
3 support the recommendation, he assumes staff “is likely to be confused” or “almost
4 certainly confused” between district priorities and those of its consultants – but
5 provides no evidence that this is occurring. As his R&R states, his objections “cannot
6 be grounded on preferences and personal experience” (ECF 2246 at 3).

7 There is no evidence that the District’s assessment instruments are inconsistent
8 or that District consultants do not share District priorities; the Special Master bases his
9 recommendation on speculation about staff confusion. Unless there is specific evidence
10 that the instruments are inconsistent, or that the District has a practice or pattern of
11 hiring consultants that do not share its priorities, this recommendation represents a
12 solution in search of a problem and should not be adopted.

13 **3. Out-of-State Travel for Recruitment**

14 The Fisher Plaintiff recommendation – fund training to “articulate to prospective
15 black teachers that Tucson is one of the fastest and most desirable places to work and
16 live in the country” – relies on an opinion that Tucson is one of the most desirable
17 places to work and live in the country. The R&R states that plaintiff objections “cannot
18 be grounded on preferences and personal experience” (ECF 2246 at 3).

19 Fisher Plaintiffs ignore the Special Master’s findings that “Arizona’s funding for
20 public schools and teacher salaries are among the lowest of all the states in the union,”
21 and that the District is competing “with Districts that not only pay more but are more
22 likely to have larger African American populations and the social infrastructure that
23 affects the quality of life of African Americans.” (ECF 2246 at 6). The District agrees
24 with the Special Master that such recruiting should be discretionary.

25 **4. Mentor Teachers**

26 The Special Master recommends that the District “identify the number of mentors
27 serving first-year teachers, second-year teachers, and first-year teachers serving in
28 underperforming schools in accordance with the established or amended formulas”

(ECF 2246 at 7). The proposed 1:15 point ratio system provides “3 points for first-year teachers and 2 points for second-year teachers at ‘underperforming or racially concentrated schools’; 2 points for first-year teachers and 1 point for second-year teachers at performing or nonracially concentrated schools” (ECF 2086 at 5). The Court approved the District’s proposed teacher-mentor 1:15 point ratio for first and second year teachers, “except for first-year teachers teaching at underperforming / underachieving [and, presumably, racially concentrated⁴] schools. There, the Court adopts the Special Master’s recommendation for a 1:10 teacher-mentor ratio.” (Id. at 7-8).

Based on the established formulas described above, the District hereby identifies the numbers of needed mentors for first year teachers at underperforming or racially concentrated (UPRC) schools, second year teachers at UPRC schools, first year teachers at non-UPRC schools, and second year teachers at non-UPRC schools:

	Required Ratio	Estimated # of Teachers	Estimated # of Mentors
First-Year Teachers at UPRC Schools	1:10 teacher-mentor ratio	50	5
First-Year Teachers at non-UPRC Schools	1:15 point ratio <i>2 Points</i>	31 $31 \times 2 = 62$	4 $62 / 15 = 4.1$
Second-Year Teachers at UPRC Schools	1:15 point ratio <i>2 Points</i>	55 $55 \times 2 = 110$	7 $110 / 15 = 7.3$
Second-Year Teachers at non-UPRC Schools	1:15 point ratio <i>1 Point</i>	49 $49 \times 1 = 49$	3 $49 / 15 = 3.3$

⁴ Though unlikely, a school could become racially concentrated with an Anglo population over 70% (in SY2012-13, Fruchthendler ES was 69% Anglo). If so, mandating additional support to all racially concentrated schools would force the District to provide additional resources to a school that might not need it and that enrolls very few African American and Hispanic students.

1 Based on established formulas, the District must employ 19 teacher mentors.
2 The District's allocation for 28 teacher mentors is more than adequate, and provides a
3 cushion against subsequent hiring of additional first/second year teachers later in the
4 school year.

5 **5. Reading Recovery (RR)**

6 The Fisher Plaintiffs mistakenly assert that the District is not implementing RR
7 in schools with large numbers of African American students. The District expanded
8 reading recovery from 12 to 13 schools for SY2019-2020. As it had done in SY2018-
9 2019, the District intentionally placed three programs in schools with African American
10 student populations near, at, or above the District average: Borton (10%); Cavett (9%),
11 and Marshall (11%), and three programs in schools with African American populations
12 that are more than *twice* the District average: Erickson ES (22%); Myers-Ganoung
13 (25%); and Wright (28%). Erickson, Myers-Ganoung, and Wright have the highest
14 numbers of African Students in elementary schools. In SY2018-19, the District
15 provided direct Reading Recovery services to 86 students, 15% of whom were African
16 American (5% higher than the District's African American elementary school
17 population of 10%).

18 As the Special Master has indicated, RR is an expensive program. In SY2018-
19 2019, 12 RR teachers provided direct services to 86 students. This represents an
20 average of seven students served per teacher through direct services. Another 174
21 students received push-in, small-group reading interventions from RR teachers,
22 representing an average of 14 students (some of whom are also identified in the first
23 group of 86). RR is not cost-effective; it serves approximately 20 students per program,
24 on average.

25 The previous agreement that RR *could* be expanded if it proved to be effective
26 was not a future promise that it *would or should* be expanded in the future regardless of
27 cost or other factors. In addition to the price tag, the District continues to face a teacher
28 shortage. Every additional RR teacher hired to serve approximately 20 students in

1 pullout and push-in services for part of the day, is another teacher not hired to fill a
2 vacancy and serve 25 or more students all day, every day.

3 The District has added one additional RR teacher and will agree to add one more
4 for the 2020-2021 school year. However, the Court should not adopt the
5 recommendation to increase the number of RR schools based on an analysis of need
6 with no regard to budget impact, program capacity, or number of students served.

7 **6. Transition Funds for Former Magnet Schools**

8 Fisher plaintiffs assert the funding for former magnet schools “is not sufficient”
9 for the schools to make adequate academic achievement progress or to provide ALE
10 services, without providing a single example, suggestion, or other evidence to show the
11 funding is not sufficient. This objection should be overruled as it is based on a
12 subjective opinion that funding is insufficient without pointing to a specific allocation
13 (or lack of allocation) that the District can act upon.

14 The Special Master recommends the District explain why some of the transition
15 funds are no longer needed in former magnet schools achieving below the District
16 average. However, the District believes funds are still needed in former magnet
17 schools, but no longer labels them “transition funds” because the Court ordered
18 transition funds to be phased out by SY 2018-2019 (see Order on Transition Plans, ECF
19 1996 at 4-5). The District explained in its previous response, “...no transition school
20 has had a net loss in FTEs as a result of removal of transition funds” (ECF 2244 at 11).
21 The District further explained that it had allocated an additional \$953,000 to the
22 budgets of former magnet schools to continue to support academic achievement and
23 integration, and an additional \$677,000 to student assignment funding (Id.). In total,
24 this represents \$1.6 million reallocated to integration and academic achievement.

25 The District has reallocated at least 80% of the \$2 million in transition funding to
26 support academic achievement and integration. *Still*, the Special Master recommends
27 the creation of a \$1 million set-aside, reasoning that it should not be difficult to find the
28 money because the District “proposes to over spend revenue by more than \$1M million

1 because the District knows that it will not come close to spending all the money
2 budgeted...” (ECF 2246 at 9-10). This is incorrect. First, and most importantly, the
3 District is not proposing to overspend: the budget approved by the Governing Board is
4 exactly equal to the maximum statutory amount permitted under § 910G for this
5 district: \$63.7 million dollars.

6 Second, the District believes that it will spend all of the funds currently budgeted
7 under § 910G for SY2019-20. Recent budget history confirms this. The District spent
8 more than its §910G budget in SY17-18 in categories other than transportation, and had
9 to reduce the proportion of transportation expenses charged to the §910G budget at the
10 end of that year below the actual costs attributable to the USP, in order to balance the
11 §910G budget, with the result that the M&O budget had to absorb extra expenses
12 attributable to USP activities at the end of the year.

13 This happened again in SY2018-19: the District spent \$3.8 million more than
14 budgeted under §910G in categories other than transportation, and thus at the end of the
15 year had to charge a much larger portion of the USP magnet and incentive
16 transportation expense to the M&O budget than originally budgeted. If the Court
17 orders the District to create a \$1 million set-aside as suggested by the Special Master, it
18 will have to cut \$1 million from other budget categories mid-year. The District
19 respectfully urges the Court not to force it to make mid-year cuts to create a set-aside
20 that it cannot afford, grounded on misunderstandings about the availability of §910G
21 funds, with no evidence that such set-aside is needed to meet the District’s obligations.

22 **7. Discipline**

23 The Special Master’s *budget recommendation* on discipline does not mention any
24 aspect of, or connection to, the USP budget. Moreover, the Special Master
25 acknowledges that the District already does the type of analysis that he is
26 recommending the Court order the District to undertake (see ECF 2246 at 11). The
27 second part of the recommendation – linking this type of analysis to necessary
28 professional development – simply has nothing to do with the budget. The District is

1 filing its Discipline Professional Learning plan on September 1, 2019, and suggests that
2 the Court evaluate that learning plan, and the positions of the parties, in that context.

3 **8. Teacher Diversity Plan and Grow Your Own Programs**

4 The Special Master's *budget recommendation* on the TDP and GYO programs
5 do not mention any aspect of, or connection to, the USP budget. The Special Master's
6 budget R&R is supposed to resolve plaintiff objections to the budget. Although the
7 R&R refers to what the "Mendoza plaintiffs want,"⁵ neither the Fisher or Mendoza
8 Plaintiffs raised an objection related to the TDP or GYO programs in their budget
9 objections. The District asks the Court not to adopt a purported "recommendation
10 related to the 2019-20 budget" that is not related to the budget or to plaintiffs' budget
11 objections.

12 **9. Student Services Departments**

13 During the entire six-month budget development process, the Fisher plaintiffs did
14 not provide a single substantive objection to the proposed AASSD budget. The Special
15 Master makes no recommendation regarding the proposed budget for the African
16 American Student Services Department (AASSD).

17 Moreover, in formulating the AASSD post-unitary plan filed on December 6,
18 2018, the District met repeatedly with the Fisher Plaintiffs' counsel and others claiming
19 to speak for the class. The District reviewed the proposed plan with them. More
20 importantly, the District reviewed all aspects of the structure and operation of the
21 AASSD with a consultant whom counsel for the Fisher Plaintiffs had specifically urged
22 on the District. The consultant approved the plan, and, as the Court has noted, the
23 Fisher Plaintiffs filed no substantive objections to the plan.

24 Now, after the budget has been developed, and the complex balancing and
25 weighing across departments and tasks inherent in that process has been completed, the
26 Fisher Plaintiffs make a still unspecified, general objection that they do not approve of

27
28 ⁵ "[T]he objections of the plaintiffs and the Special Master cannot be grounded on preferences" (ECF 2246 at 3).

1 the AASSD in its present form, and thus object to approval of any budget for this
2 department. It is neither the time nor the context to address the issue raised by the
3 Fishers, nor would it be possible to assess any specific concern from the filing by the
4 Fisher Plaintiffs, as it is utterly devoid of any cognizable statement of what it is about
5 the AASSD to which they object.⁶

6 The District will be refileing a modified version of the AASSD Operating Plan on
7 September 1, 2019, pursuant to the instructions of the Court in its order on April 10,
8 2019 (ECF 2213). The Fishers may respond as scheduled by the Court, and the Court
9 can then decide.

10 **10. Magnet School Budgets**

11 The Special Master asks the District to explain the basis for its decision not to
12 allocate funding based on differences in the performance of the students in each of the
13 magnet schools. The District **does** allocate funding based on differences in the
14 performances of magnet students (and other factors, including integration and family
15 engagement). In the District's July 26, 2019 response, the District provides a three-
16 page, detailed description explaining its process for allocating funding to magnet
17 schools – including the multiple ways it examines student performance in developing
18 those allocations (see ECF 2244 at 6-8). The District respectfully requests that the
19 Court not adopt this recommendation. The Special Master asks the District to provide
20 an explanation it has already provided, based on a false assumption that the District

21 ⁶ The District vehemently objects to the assertion that it or its attorneys somehow
22 misled the Court or the parties. The Fisher Plaintiffs urged the District to pay to engage
23 Gwendolyn Benson, of TrayBen & Associates, to review the District's support services
24 for African American students. The District responded that it would be willing to go
25 through a public procurement process for a consultant for the District in this area. Ms.
26 Benson participated in that public procurement process and was selected. The District
27 was open and transparent about the process, and fully informed Mr. Salter in advance
28 and during the process. When Ms. Benson and her team came to the District, they also
met with the Fisher Plaintiffs' representatives. The progress of the project was
discussed with the Fisher Plaintiffs' counsel and others in regularly scheduled meetings
with the District Superintendent. When TrayBen issued its final report, the report was
presented publicly to the Board. There was absolutely no misrepresentation whatsoever.

1 decided not to consider student performance in developing magnet budget allocations.
2 The *primary factor* used in developing magnet budgets is student performance, as
3 explained in detail in ECF 2244.

4 The second recommendation – to explain why eliminated positions are no longer
5 needed – comes after the fact, at a point where any utility and effect is limited by
6 circumstance. In each of the drafts of the budget, the District expressly lists the number
7 of FTE funded by each category of expense, and compares the number in the draft
8 budget to the number of FTEs in budgeted in that category for the prior year, enabling
9 easy year to year comparison. Drafts containing this information were provided to the
10 Special Master in early March, 2019, and again in May, 2019. Neither the Special
11 Master nor the plaintiffs asked about the reasons for changes in FTEs until the Special
12 Master’s second R&R. At this stage, the District can explain its rationales for changes
13 through the RFI process, if needed.

14 **11. Alleged Reliance on Outside Vendors for Tutoring**

15 The District’s response to objections related to consultants (see section 2, above)
16 is also responsive to this objection. The District does not rely on outside vendors for
17 tutoring, but where it has a need for tutoring that cannot be met with existing resources,
18 it may collaborate with outside vendors. If or when the District uses 910G funds to pay
19 for tutoring services, it agrees to attempt to hire a company that uses research-based
20 practices and that can provide empirical evidence of the efficacy of its services. Tucson
21 is not a large town and there are limited resources for external tutoring services. If the
22 District has an immediate need for tutoring that it cannot meet with existing resources
23 (like teachers at a school), and an outside organization can help meet the need, the
24 District should have the flexibility to collaborate with the outside organization even if it
25 cannot demonstrate that it uses research-based practices or that there is empirical
26 evidence of the efficacy of its services.

27 As discussed in section 2 above, the District does not rely on outside tutoring –
28 as evidenced by the Special Master’s acknowledgement that at some places, like

1 Cholla, the District employs tutoring practices using internal staff willing to provide
2 that type of support. At schools where enough staff is not willing to provide this type
3 of support, the District engages local stakeholders and companies to meet the need.

4 The District asks that the Court not limit the District's use of outside vendors for
5 tutoring services in a way that makes the perfect the enemy of the good.

6 **12. Family Engagement**

7 In his first R&R, the Special Master asked the Court to, "direct the District to
8 identify the sources of funding for the three new FTE that it says it will be added to
9 support family engagement. **If it plans to fill these positions from existing staff**, the
10 current responsibilities of these particular staff members should be identified. This is
11 important because Plaintiffs have not had the opportunity to weigh in on the effects of
12 strategies to implement the family engagement initiative should this involve a
13 repurposing of existing personnel and, therefore, of existing functions." (ECF 2231 at 7,
14 emphasis added). This recommendation was based on an assumption that the District
15 might seek to fill the new positions from existing staff. In its July 26 response, the
16 District explained that it had **added** two new positions to the existing staff positions.
17 Therefore, there is no need to identify the current responsibilities of existing staff
18 because they are not leaving their positions.

19 The current recommendation asks for an explanation of "what activities currently
20 performed by the persons who will be facilitators of school level family engagement
21 will no longer be provided." The District provided this explanation on July 26: "Over
22 the past two years, in addition to its regular day-to-day operations, the department has
23 spent considerable amounts of time **developing improved tracking systems,**
24 **guidelines for school family engagement activities, and conducting training for**
25 **school staff involved in family engagement activities, which have now been**
26 **accomplished.** As a result, the District has substantially expanded its capacity to track
27 and report on the occurrence and participation in family engagement activities, and
28 reduced time and effort needed to gather this information in the future. **The District**

1 **expects that substantial staff time heretofore devoted to these developmental**
2 **activities can now be directed towards monitoring and supporting school staff in**
3 **implementing the District guidelines, and to other central FACE department**
4 **activities.”** (ECF 2244 at 2-3, emphasis added). The District respectfully submits that
5 this explanation meets the Special Master’s request.

6 **13. Librarians and Seventh Period Days**

7 The Special Master recommends no alteration to the budget for librarians or for
8 seventh period days; the District agrees with this recommendation.

9 **14. EBAS Implementation (Budget Code 81001)**

10 The Mendoza Plaintiffs suggested that the District shift funding for the
11 BrightBytes and School City software licenses from the 910G budget to the District’s
12 principal budget. The Special Master has now apparently concurred.⁷

13 As the District noted in its response to the Mendoza Plaintiffs’ objection [ECF
14 2244], both of these software programs were initially licensed by the District as a direct
15 result and in response to a requirement of the USP: to improve tracking and assessment
16 of students, to better identify struggling students and improve academic outcomes, for
17 African American and Hispanic students. The District brought both programs because
18 the District’s information systems at the time did not have strong capabilities in these
19 areas. It is clear that the rationale for using Section 910(G) funds for these funds is
20 unassailable. But, more importantly, the licensing fees for these programs have been
21 paid 100% from § 910(G) funds from the outset, for several years, without objection.
22 The Special Master and the Mendoza Plaintiffs both point to funding for EBAS
23 Implementation that historically has come from the principal (“M&O”) budget, saying
24 that the proportions should remain the same this year as last.

25
26
27 ⁷ Neither made this suggestion in the course of developing the budget: the first time this
28 suggestion appeared was after the both the §910G and principal budgets had been
proposed and adopted by the District.

1 However, the amounts shown in past budgets for this M&O funding are not for a
2 portion the BrightBytes or School City licensing fees: they are simply an estimate of the
3 cost of the employees in the IT department who in whole or in part support the
4 District’s EBAS Implementation effort, but whose salaries are not charged to §910G
5 funds.. Those same employees are still there in SY19-20, still supporting the EBAS
6 Implementation effort – the District simply (but inadvertently) did not include that
7 M&O estimate of the cost of those employees in the supporting documents for its final
8 desegregation budget this year.

9 The estimate of the SY19-20 M&O contribution to EBAS Implementation is
10 actually \$752,277 (representing 6.75 FTEs). In the course of reviewing these figures,
11 the District also noted that the M&O number for Budget Category 81001 in the SY18-
12 19 budget supporting documents was also in error – it had incorrectly been copied from
13 the budget category immediately above it (Budget Category 80801). The correct
14 number for the M&O contribution to EBAS Implementation for the SY18-19 budget is
15 \$563,893 (7 FTEs). Accordingly, even if one subscribes to the “same proportion”
16 approach (which the District thinks is inappropriate because the two funding sources
17 cover and pay for different items), the M&O contribution to EBAS implementation is
18 higher in the SY19-20 budget than it was in SY18-19. The District respectfully
19 requests that the Court overrule this objection.

20 **15. Transportation**

21 The Special Master recommends the District submit an analysis of transportation
22 expenses that explains the 50/50 delineation. The District has provided this
23 explanation, on several occasions, in response to requests for information from the
24 parties. The explanation follows:

25 For several years, the District has allocated overall school transportation costs
26 between its §910(G) and M&O funding sources on a 50/50 basis. This is based on a
27 comparison of the number students offered USP magnet and incentive transportation to
28 the number of all students eligible for transportation, and a measurement of the average

1 ride length. The District determined that 37% of all students eligible for transportation
2 qualified because of the magnet, incentive or other USP programs, but the average
3 length of the ride for these students more than twice the average length of the ride for
4 neighborhood students eligible for transportation. About 80% of students whose routes
5 go through a transfer point are USP-related, adding extra cost. Certain identifiable
6 expenses, such as USP express shuttles, are entirely attributable to desegregation-
7 related activities. Based on these factors, the District estimated that desegregation-
8 related transportation amounts to about 54% of overall transportation costs. To be
9 conservative with regard to §910(G) requirements, the District rounds that number
10 down to 50%, and has used that number as the maximum amount of transportation costs
11 to allocate to §910(G) funds. In practice, the District has frequently allocated less than
12 50% of transportation costs to §910G funds, because of budget needs in other §910G
13 categories.

14 The District trusts this explanation meets the Special Master’s request.

15 **16. Clarification**

16 The phrase, “as described by the Special Master” refers to the statement in the
17 Special Master Report on Magnet Schools that the underlying purpose of removing
18 magnet status is to redeploy funds used by the school so “resources can be used more
19 effectively in other schools or programs” (ECF 2147 at 10:2-4).

20 In his first R&R, the Special Master assumed there was \$2 million dollars in
21 available funding from transition schools that the District could use to create a \$2
22 million dollar integration contingency fund. The District’s previous response outlines
23 that approximately half of this funding (\$953,000) remained in the former magnet
24 schools to continue to support academic achievement, and that the District allocated
25 other portions of the \$2 million to do what the Special Master described in his magnet
26 school report: redeploy funds to use resources more effectively in other schools and
27 programs.

28 **17. Proposing Corresponding Reductions**

1 Both Fisher and Mendoza Plaintiffs argue it is not their responsibility to make
2 suggestions regarding budget reductions, despite that this Court has ordered the parties
3 to work collaboratively each year to develop the budget. The plaintiffs and Special
4 Master seek to limit how the District allocates, spends, and even audits its funds, create
5 and suggest specific guidelines on allocation development, recommend budget
6 increases, and object to budget reductions. Given this context, it is strange that the
7 parties believe they are empowered to demand budget increases and object to budget
8 reductions, but – within a supposedly collaborative budget development process – bear
9 no responsibility to suggest ideas for budget reductions. Even more puzzling, after
10 arguing they should not suggest ideas for budget reductions, both plaintiffs suggested
11 ideas for budget reductions.

12 The District has responded to the Mendoza suggestions and now responds to the
13 Fisher suggestions.

14 **a. Gridley**

15 Fisher Plaintiffs suggest reducing funding for a seven-period day at Gridley
16 because it is 42% Anglo – echoing the Mendoza argument that African American and
17 Latino students in schools that also have high Anglo populations are not deserving of
18 the benefits of a seven-period day funded from 910G funds. Curiously, neither the
19 Mendoza nor Fisher Plaintiffs object to a seven-period day at Secrist MS, even though
20 Secrist has a very similar percentage of Anglo students, 36%. Moreover, a seven period
21 day at Gridley benefits *twice* as many plaintiff-class students (408 total) than at Secrist
22 (199 total). Seeking to withhold funding for educational benefits from members of
23 their own class simply because a school also has a high Anglo population (even where
24 it has a higher actual number of plaintiff-class students) is shortsighted and
25 unreasonable.

26 Given that many TUSD schools with disproportionately high Anglo populations
27 also have disproportionately high African American populations, this objection would
28 set a dangerous precedent that could create disproportionate harm to African American

1 students. The following schools have disproportionately high African American and
2 Anglo student populations and would not be eligible for 910G funding were the logic of
3 this objection followed: Booth-Fickett K-8, Dietz K-8, Borman K-8, Gridley MS,
4 Secrist MS, Magee MS, Sahuaro HS, and Santa Rita HS.

5 **b. Collier, Fruchthendler, and UHS**

6 The USP requires the District to improve diversity and student support at UHS,
7 which is a 44% Anglo, majority-minority school. The 910G portion of the UHS budget
8 is devoted almost exclusively to recruiting African American and Latino students to
9 UHS, and providing them with academic and other support once enrolled. Fisher
10 plaintiffs do not object to 910G funding for Sabino HS even though its Anglo
11 population is *higher* than UHS at 50%.

12 More than one-third of Collier's 145 students (53 students) are African
13 American and Latino. One-third of Fruchthendler's 356 students (117 students) are
14 plaintiff-class students. Fisher Plaintiffs argue that plaintiff-class students attending
15 (and helping to integrate) schools with high Anglo populations should not benefit from
16 programs funded from 910G funds. On the one hand, Fisher plaintiffs support the
17 development of non-magnet integration plans to use transportation and other strategies
18 to encourage African American and Latino students to attend schools with high Anglo
19 populations in order to integrate those schools; on the other hand, they argue that once
20 at these schools, they should not benefit from 910G funded programs.

21 **c. African American Academic Achievement Task Force (AAAATF)**

22 In their objections to the SY2015-16 USP Budget, Fisher Plaintiffs argued, "that
23 funding for the AAAATF is inadequate" because the bulk of the allocated funding was
24 for the African American Student Services Department (see SM R&R, ECF 1833 at
25 15:18). The District clarified, and this Court accepted, its intent to retain and set aside
26 \$500,000 to implement AAAATF recommendations (see Budget Order, ECF 1879 at
27 6). Having advocated for at least \$500,000 of 910G funding for this activity (beyond
28 AASSD funding), Fisher plaintiffs now argue it should not be funded by 910G at all.

1 **d. Dropout Prevention**

2 The District receives funding from the state for dropout prevention to fund the
3 dropout prevention department; it does not fund the department from 910G funds. The
4 dropout prevention and retention funding of \$2.8M referenced in the objection, funds the
5 District's court-ordered Dropout Prevention and Graduation plan.

6 **e. Professional Learning Communities (PLCs)**

7 The USP provisions for PLCs do not limit them to certain schools that are low or
8 high performing, or those that do not have majority Anglo populations. Indeed, some
9 schools with majority Anglo populations have the highest academic achievement gaps
10 and the highest percentages of African American students. Successful PLCs help to
11 narrow that gap by improving classroom instruction and by providing time during the
12 day for in-class intervention for struggling students.

13 **Conclusion**

14 For the foregoing reasons, the District respectfully request that the Court approve
15 the District's 2019-20 USP budget.

16 Respectfully submitted on August 18, 2019.

17 **TUCSON UNIFIED SCHOOL**
18 **DISTRICT LEGAL DEPARTMENT**

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August 2019, I electronically transmitted the attached foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic filing to all CM/ECF registrants.

/s/ Samuel E. Brown

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