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

24 Roy and Josie Fisher, et al., 25 Plaintiffs, 26 v. 27 Tucson Unified School District No. 1, et 28 al., 29 Defendants.
30 Maria Mendoza, et al., 31 Plaintiffs, 32 v. 33 Tucson Unified School District No. 1, et 34 al., 35 Defendants.

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

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

36 **TUSD REPLY TO MENDOZA PLAINTIFFS’ OBJECTION [ECF 2331] TO**
37 **TUSD CROSSOVER BENEFITS PROGRAM REPORT (“CROSSOVER**
38 **RATIOS”) [ECF 2297-2]**

1 The District replies to the Mendoza objections as follows.

2 **1. The Crossover Ratios Represent Theoretical Maximums, not District Intentions.**

3 The District ratios for crossover programs represent the theoretical maximum
4 funding amount that corresponds to the proportion of African American and Latino
5 students who benefit from the program. The objection presumes that a theoretical
6 maximum ratio indicates the District's *intent*, for example, to fund 100% of facilities
7 maintenance or discipline strategies from 910G funds [*see* ECF 2331 at 10]. The
8 District's intent regarding funding is expressed in its spending and budgets over the past
9 few years.

10
11 The District does not intend to fund EBAS 100% from 910G funds. As the
12 District has already explained in its response to the Mendoza Plaintiffs' original budget
13 objection The District inadvertently omitted non-910G funding for EBAS in Form 1-A
14 of its final budget [ECF 2233-2 at 1-2]. As a result, Mendoza Plaintiffs incorrectly
15 asserted (and continue to imply) that the District intends to fund EBAS 100% from
16 910G funds. Despite the omission on Form 1-A, Form 4 clearly reflects the District's
17 intention to split fund EBAS costs by listing several split-funded positions and listing
18 several activities funded only "25% Deseg" like Computer Usage Tracking Software,
19 Tyler Infinite Visions Consulting, Tyler Infinite Visions Renewal, and
20 Edupoint/Synergy. (See Form 4, EBAS detail, ECF 2233-2 at 155).

21
22 As it has in the past, the District intends to fund EBAS costs approximately
23 50/50 between 910G and non-910G funds. In SY2018-19, the ratio was 44% 910G and
24 56% non-910G. The District does not intend, now or in the future, to fund EBAS 100%
25 from 910G funds. Mendoza Plaintiffs continued suggestions that the District intends to
26 fund EBAS 100% from 910G, and attempt to connect such false intent to "historical
27 misuse" from decades ago, wholly ignore facts and evidence that clearly demonstrate
28 the District's intentions.

1 **2. The Theoretical Maximum Ratio of 910G Funding for Each Program Was**
2 **Carefully Developed and Rationally Based.**

3 USP programs in the District's report fall into three groups: student assignment
4 programs, crossover benefit programs, and non-crossover benefit programs. Each is
5 treated differently based on their specific link to the USP, and the level of benefits to
6 particular students.

7 Student Assignment programs, although technically crossover benefit programs,
8 should have no theoretical limit based on their specific link and importance within the
9 USP. Here, the District did not take a generalized approach; it carved out a specific
10 exception for four student assignment programs that it explained, "are clearly programs
11 which provide cross-over benefits, because all students derive a benefit from increased
12 integration and diversity, but the District nonetheless believes that for this group of
13 programs, at the core of the USP, 910G funding should not be limited to a percentage of
14 these program costs." [ECF 2297-2 at 2]. Thus, using the Court's funding rule, the
15 theoretical maximum 910G funding ratio for these programs is 100%

16 Programs which are not crossover benefit programs do not provide benefits to
17 students other than African American or Latino students, and thus, under the Court's
18 funding rule, §910G funds may theoretically pay the entire cost of these programs (i.e.,
19 the theoretical maximum funding ratio §910G funds, for these programs, is 100%).

20 Crossover benefit programs: the District reviewed each crossover benefit
21 programs to develop a theoretical maximum §910G funding ratio based on the nature of
22 each program. For 13 of these programs, the District suggested a 70% theoretical
23 maximum §901G funding ratio, because the benefit from these programs is spread
24 across all students, 70% of whom are African American or Latino.

25 For the 7-period day, the District suggested a theoretical maximum §910G
26 funding ratio based on the population of the schools receiving the funds: assuming the
27 7-period day program inures to the benefit of all students at the schools in question,
28

1 76% of the students at those schools are either African American or Latino, the District
2 suggested that §910G funding for the 7-period day be limited to 76% of program costs,
3 to comply with the Court’s rule.¹

4 For transportation, as the District has noted in prior filings, the District has
5 actually measured the proportion of total transportation cost associated with providing
6 USP mandated transportation (to support magnets and diversity-enhancing enrollments)
7 and 54% of the District’s overall transportation costs are attributable to this USP
8 transportation, and thus the District suggested that the theoretical maximum ration for
9 §910G funding for transportation, using the Court’s funding rule, was 54%.

11 This reflects a pragmatic, differentiated approach rather than a generalized
12 approach. That some of the ratios applied to more than one program does not mean the
13 District took a “generalized” approach. These program and USP-section-specific ratios
14 based on benefits to African American and Latino students, are not akin to historical
15 rationales that may have led to non-specific spending in the 1980s and 1990s that was
16 untethered to the 1978 consent decree of 910G funding.² The proposed ratios are tied
17 directly to specific USP sections and activity codes. For some crossover programs, the
18 ratios balance the proportion of 910G funding for a crossover program with the
19 proportion of African American and Latino students benefitting from the program. The
20

21 ¹ The Court asked if the 7-Period Day program is being located at schools with the largest
22 Black student populations. The answer is yes it is, now that the District has added
23 Gridley. The three middle schools with the largest Black student populations are Doolen,
24 Gridley, and Mansfeld. Mendoza Plaintiffs also misunderstand the application of the ratio
25 to seven-period days. The ratio would not cover 76% of the costs at Gridley (the TUSD
26 middle school with the second-highest African-American population). The ratio links the
27 specific percentage of African American and Latino students benefitting from the 7-
28 period day and the 910G portion of the cost of the program – a criterion directly related
to the benefit to students of the plaintiff class.

² The Special Master took out of context the District’s response to the Mendoza
suggestion that a school with a relatively high white population should never receive
910G funding, **even if the African American population was also relatively high** [*see*
ECF 2244 at 15-16].

1 ratios do not rest on a rationale that because TUSD is a majority-minority district, it
2 should be allowed to spend 100% of its 910G funds in anyway it deems fit, as may have
3 occurred historically.

4 Again, the ratios represent theoretical maximums rather than the District's *intent*,
5 as there is a finite amount of dollars. Only six of the sixteen identified crossover
6 programs came close to the maximum ratio amount in 2018-19, the other ten were not
7 remotely close to the maximum. The alleged "concern" that the District may misuse
8 these ratios ignores the fact that there is a finite amount of dollars and it would be
9 impossible to pay 70 percent of costs from §910G funding for more than a few of the 16
10 identified programs. In the majority of cases, ten here to be exact, the District is
11 funding programs at ratios far lower than the proposed maximum.³

12 The District tried to follow the court's directive to assess who received the
13 benefits of a USP program, and if the benefits "crossed over" to students who are not
14 the subject of the USP, to develop a rationale for identifying the proportion of the
15 benefits received by the target race/ethnicities under the USP.⁴

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20 ³ The \$5,400 in funding for discipline training in SY2018-19 is **clearly** not the full level
21 of all discipline training in the District. The District is not suggesting that all discipline
22 training in the District be paid for 100% by 910G funds, only this relatively small amount
23 included in this particular code that relates specifically to site training to reduce
24 disparities in discipline for African American students because it relates to a program
25 designed to benefit African American students.

26 ⁴ Mendoza Plaintiffs incorrectly contend that the District was to provide explanations
27 demonstrating a 'link between individual crossover benefits programs and the goals of
28 the USP,' citing to the Budget Order at 14:28. However, the order in fact gave specific
guidance on how 910G funding could be used to fund EBAS costs, partially or fully. The
District considered this guidance in developing the ratios for all programs. The Court
indicated that *if* the District intended to use more than 50 percent of 910G funding for
EBAS, *then* "EBAS expenditures become an issue and the District must establish a link
to the USP" [ECF 2272 at 15]. As described above, the District does not intend to use
more than 50 percent of 910G funding for EBAS.

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Respectfully submitted,

/s/Samuel E. Brown

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District No. 1

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 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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