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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

1 **SPECIAL MASTER’S REPORT AND RECOMMENDATION**
2 **REGARDING MAGNET SCHOOL BUDGETS**

3 Overview

4 In November, 2019, the Mendoza plaintiffs submitted discovery questions to the District
5 relating to magnet school budgets. The District identified 102 inquiries submitted by the
6 Mendoza plaintiffs and declined to respond to all them naming several that they considered
7 inappropriate. The Special Master reviewed the Mendoza and District questions under the
8 provision of the USP that allows the Special Master to determine whether the questions raised by
9 plaintiffs are excessively burdensome and inappropriate when those questions are objected to by
10 the District. The Special Master identified 10 questions that embodied many of the Mendoza
11 concerns but added some of his own questions. He also invited the District to respond to any of
12 the other questions that it identified as those to which it would respond. On December 11, 2019,
13 the District responded to the Special Master’s questions and to others (the Special Master’s
14 queries are identified in this document). *See* Exhibit A. This Report and Recommendation does
15 not deal with those responses by the District to the Special Master’s questions if the Special
16 Master judges the responses to be satisfactory. The Special Master is guided by the Court’s
17 observation that at this stage of the implementation of the USP, the District should be given
18 discretion. For example, the Mendoza plaintiffs raised the sensible question about why a given
19 program that has been successful is not being implemented more widely. The Special Master
20 believes that such a decision belongs to the District given that it must be weighed against other
21 options for school improvement.

22 Basing Investment Decisions on Evidence of Effectiveness

23 A number of the issues raised by the Mendoza plaintiffs and the Special Master deal with
24 the fact that the District does not cite adequate evidence about the effectiveness of programs and
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1 consultants it proposes to hire. This has been an ongoing issue with respect to the budget and
2 other matters relating to initiatives taken by the District. The Court has repeatedly stressed that
3 the District's action should, whenever practicable, be research-based. There are three reasons
4 why this is important. First, it is likely that activities for which there is no evidence of their
5 effectiveness will waste scarce resources. But even if there is only a small amount of money
6 involved, which is sometimes the case, there are two remaining issues. The most important of
7 these is a fundamental assumption underpinning the USP that the good work the District has
8 implemented thus far is most likely to be sustained when there is evidence that it has made a
9 difference in student outcomes. Thus, there are many elements of the USP and orders of the
10 Court that require the District to engage in evidence-based decision-making. It is essential that a
11 culture and capability to drive actions with data be developed. The technological infrastructure
12 has been developed and the District has undertaken a number of important studies to justify the
13 use of 910 G funds. However, the commitment to evidence-based decision-making at the school
14 level appears to be limited and the District, by supporting proposals not based on evidence of
15 effectiveness, tolerates this indifference. The third reason why the District needs to engage in due
16 diligence about the selection of programs and consultants is that it has the challenge and
17 opportunity to become a leader in the implementation of culturally based pedagogy and
18 disciplinary actions. When teachers and administrators are provided with professional learning
19 that does not incorporate the basic constructs of culturally based instruction and discipline, it
20 conveys to those staff members a lack of commitment throughout the District to cultural
21 responsiveness.¹

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¹ This discussion does not mean that a school should not be able to spend small amounts of money to enrich the learning opportunities of students even when there is no research to support a particular activity. Such decisions should be explained (e.g., whether there are important needs being (Continued...)

1 Examples of proposals by the District that are not supported by evidence of their
2 effectiveness include:

- 3 • The leader in need
- 4 • The use of Mariachi and Folkloric music to strengthen Spanish language
5 development at Roskruge.²
- 6 • Class-size reduction to 27 students per teacher.³
- 7 • Exploring the Sky Islands

8 The District’s justifications for these investments included the intention to conduct a
9 survey (an unreliable assessment of effectiveness that only tells us what respondents like about
10 their experiences); “the principal believes;” positive anecdotal data from students, teachers and
11 principals (an example is given of one student who won a substantial award from the University
12 of Arizona; “anecdotal evidence;” and it fits the theme of a particular magnet school (even though
13 it does not in some cases).

14 In some cases where the District proposes to hire consultants, it has not yet determined
15 who those consultants will be. This means that the plaintiffs and the Special Master will have no
16 opportunity to review the credentials of the persons to be hired. This would not be a problem if
17 the District had a process for determining the consultants’ effectiveness, and particularly their
18 commitment to culturally responsive behaviors.

19
20 Building Capacity

21 Some initiatives proposed for the budget appear to be to support activities that will be
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24 unmet, the cost, whether this is a one-time activity, what the relevance is to the magnet theme, whether
25 this is a reward for improvement, and what the message is that conveyed by the activity).

26 ² Roskruge has serious achievement issues that need addressing in English. Moreover, the
27 District has a widely regarded program (OMA) for using the arts to enhance academic performance.

28 ³ Research on class-size suggests that its effects take place only when the number is particularly
small (e.g., less than 20). Consensus among researchers is that a better strategy than across-the-board
reduction in class-size is the selective reduction in class size in those classes where students are achieving
below average (especially in lower grades).

1 ongoing. The District has indicated that it will use consultants to build internal capacity to foster
2 professional learning with respect to any initiative. This is as it should be, but there does not
3 appear to be a process for developing such capacity and in some cases the District proposes to
4 rehire the initial consultants. In addition, any initiatives that might be ongoing should be
5 evaluated systematically and such assessment is not made explicit in the budget proposals (except
6 for surveys of participants which is not very effective strategy for assessment).
7

8 Spending Caps

9 Members of the Implementation Committee were advised that in formulating their
10 budgets, principals were told to limit their proposals to their expenditures for the previous year.
11 The District says that this was not the case in its response to the Special Master's inquiry and
12 cites three Magnet school budgets that are greater this year than the previous year (one of which
13 is greater by .17 of an FTE). But the larger question here is how the District goes about
14 determining what funds the schools will need. There is nothing inherently wrong with reducing
15 school budgets. But in its response to the Special Master, the District seems to imply that there
16 were across-the-board limitations:
17

18 "In prior years magnet schools asked for many millions of dollars over their
19 expected need. At the end of the year, millions were unspent. In those instances,
20 the parties criticized the District for not spending all of its magnet monies. The
21 District has developed systems to closely monitor magnet spending to ensure that
22 both magnet budgeting and magnet spending match identified needs."

22 This statement from the District implies that rigorous oversight of District rationale for budgeting
23 was uncommon and that it was necessary to control such behavior. The District is to be
24 congratulated for developing a process for monitoring magnet school spending in real time. But
25 that has nothing to do with the formulation of budgets. In any event, the plaintiffs and the Special
26 Master do not receive consistent explanations for increases and decreases in magnet school
27 budgets.
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1 Providing Complete Information

2 The Mendoza plaintiffs express concern about the possibility that last-minute changes
3 were made in the budget after it was submitted to the plaintiffs and the Special Master. It is not
4 uncommon for districts to make such changes as they finalize the budget and see the full picture.
5 But in this case, the USP provides the plaintiffs the opportunity to review the budget before it is
6 approved by the Governing Board.
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8 Investments in Magnet Schools

9 It should be understood that school improvement efforts in magnet schools need not
10 always reflect the theme of the magnet school. At the same time, investments in enhancing the
11 themes of some schools whose theme is shallow at best would almost certainly improve their
12 contributions to desegregation.
13

14 Professional Development

15 It is not always clear whether the professional learning opportunities provided to staff are
16 job embedded or will be dealt with in summer sessions. There is considerable consensus among
17 researchers that job embedded is a superior approach to enhancing staff effectiveness. It should
18 be noted that job embeddedness does not mean providing learning opportunities on Wednesday
19 afternoon or in seventh period days. At its best, job embeddedness means the provision of
20 support as individual or small groups are doing their work.
21

22 **Recommendations**

23 The Superintendent shall designate individuals (e.g., District Assistant Superintendents,
24 the Director of Magnet Schools, etc.) to review and attest to the effectiveness of proposed
25 programs and consultants. The District shall develop a protocol for assessing the extent to which
26 consultants are knowledgeable about and intend to include in their work with the District
27 culturally responsive teaching, discipline and leadership, depending on their task and.
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When the District is hiring consultants to provide professional learning opportunities or counsel on the implementation of new programs, it shall identify how it will prepare its own staff to take over the responsibilities of the consultants going forward.

In presenting the budget, the District shall provide to the plaintiffs and the Special Master with a copy of the directions it has given to principals and other administrators about priorities and spending targets.

If changes are made to the final version of a budget submitted to the plaintiffs and the Special Master prior to its approval by the governing board, such changes should be submitted to the plaintiff and the Special Master for expedited review if they exceed \$50,000 for each change.

Respectfully submitted,

/s/

Willis D. Hawley
Special Master

Dated: January 9, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2020, I electronically submitted the foregoing via the CM/ECF Electronic Notification System and transmittal of a Notice of Electronic Filing provided to all parties that have filed a notice of appearance in the District Court Case.

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master