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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 BUDGET OBJECTIONS FROM THE MENDOZA
PLAINTIFFS [2493] AND FISHER PLAINTIFFS [ECF2496]**

1 The District hereby responds to the Mendoza Plaintiffs' budget objections filed
2 by the July 6, 2020 deadline [ECF 2493], and to the Fisher Plaintiffs' budget objections,
3 filed two days later on July 8, 2020 [ECF 2496].

4 **I. Mendoza Objections**

5 **A. Requests Related to COVID-19**

6 The country is in crisis and the District still does not know for certain what the
7 2020-21 school year will look like related to start date, on-campus vs. online learning,
8 student and staff safety, state per-pupil funding, Title I, professional learning delivery
9 modes, staffing levels, student enrollment levels, transportation, food services, academic
10 interventions, behavior and discipline processes, curriculum and instruction, interactions
11 with consultants, and a myriad of other aspects of school operations. In early July,
12 Arizona had the highest infection rate per capita than any other state in the country.
13 TUSD – and all Arizona school districts – must have the ability to be flexible in
14 responding to the crisis without additional oversight by the plaintiffs.

15 Still, Mendoza Plaintiffs request an order directing the District to provide the
16 Special Master and plaintiffs with all magnet school plans (MSPs), revised to account
17 for COVID, and an opportunity to comment on those plans. If adopted as requested, the
18 District would have to revise all MSPs regardless of whether such was necessary. The
19 District cannot suspend any necessary MSP revision amid an ever-changing public crisis
20 so the Special Master and plaintiffs can first review, comment, object, and potentially
21 enter into protracted litigation until said actions meet with the parties' satisfaction.
22 There is no constitutional basis for such oversight by the plaintiffs and Special Master,
23 particularly in a time of crisis. The parties may certainly critique a District action, but
24 they should not be empowered to delay or stop the delivery of educational services to
25 students, or of professional learning to staff, during this time.

26 The District objects to the Mendoza request to add another process of review for
27 COVID-related revisions to MSPs that can operate to slow, or stop, the delivery of
28 educational services to students, professional learning to staff, or other needed revisions.

1 Regarding MSP budget revisions, the parties utilize a budget reallocation process:
2 any qualified magnet budget reallocations are subject to that process, already. Mendoza
3 Plaintiffs also request that all changes made to the final budget, even after Board
4 approval, should be submitted to the plaintiffs and Special Master for expedited review
5 if they exceed \$50,000 for each change. This merely reiterates the existing reallocation
6 process: changes over \$50,000 must be submitted to the plaintiffs and Special Master
7 for expedited (five day) review.

8 To provide more, not less, flexibility to the District so that it can respond with
9 agility to the constant challenges posed by the crisis, the District respectfully requests
10 that the Court adopt a modification to the existing reallocation process: for COVID-
11 related budget changes in excess of \$50,000, the District shall notify the plaintiffs and
12 Special Master; for COVID-related budget changes in excess of \$250,000, the District
13 shall follow the existing reallocation process for non-COVID-related changes in excess
14 of \$50,000. The District cannot be hamstrung from modifying budgets and delivering
15 services to students during a time of crisis with the possibility of weeks-long review,
16 comment, and a special master approval process every time it needs to make a COVID-
17 related change over \$50,000. This modification, if adopted, will provide needed
18 flexibility to the District, retain accountability (by permitting the parties to object to
19 changes reported in the quarterly expenditure report), and mitigate the risk that the
20 budget reallocation approval processes drains valuable and limited resources from
21 District staff during a time of crises. The plaintiffs and Special Master could still object
22 to a COVID-related change between \$50,000 and \$250,000 after reviewing those
23 changes in the quarterly expenditure report, but not prior to the District acting.

24 **B. Other Requests**

25 The District has no objection to the request that if it revises magnet plans (i.e. to
26 align with a targeted integration or academic plan, for schools identified as needing
27 such plans), it will include revised budgets with those plans (where revised budgets are
28 necessary). The District expects that if or when it submits the PD Assessment, the

1 plaintiffs and Special Master will have an opportunity to review and, if necessary, file
2 objections. The District therefore has no objection to this request.

3 **C. Seven-Period Day (SPD)**

4 The District requests that the Court deny the approach proposed by the Mendoza
5 Plaintiffs, whereby the District would remove the SPD from schools where it is working
6 and force it on schools where it is not working. The Seven-Period Day (SPD) is an
7 expensive strategy that works well in some schools and not others, depending largely on
8 staff engagement and leadership. The District evaluated SPD schools to determine
9 which schools used it effectively, and where it made sense to develop alternative PLC
10 strategies. At Palo Verde, the SPD strategy was not working, so the District developed
11 an alternative plan that will retain the benefits of regular PLC meetings.

12 The District is currently outlining a Targeted Academic Improvement Plan for
13 Palo Verde. The outline includes an alternative strategy for implementing PLCs with
14 weekly PLC-cycle meetings. Palo Verde's leadership team, supported by both the
15 Magnet department and the Curriculum and Instruction department, will form a Guiding
16 Coalition that will lead the PLC-CTT (Collaborative Teacher Team) process to both
17 recognize positive results and to identify and resolve implementation challenges. The
18 Guiding Coalition will meet every other week outside of the school day for added duty
19 compensation. Teachers will meet in PLC-CTTs every week during extended
20 professional development time on Wednesdays for at least ninety minutes, as suggested
21 by PLC research. ELA and Math teachers will meet monthly for half-day professional
22 learning sessions for formative data analysis, planning re-teaching for missed concepts
23 and enrichment, and for in-depth learning for curriculum and instruction.¹

24
25 ¹ Mendoza Plaintiffs mis-characterize this professional learning as “troubling from
26 the perspective of delivering quality education to students,” presumably because students
27 will have a substitute teacher once a month. This grossly overstates any relative impact
28 to the quality of learning. Teachers, like all professionals, are entitled to vacation and
sick days and students may have substitute teachers from time to time. There is
absolutely no evidence that utilizing a substitute teacher for one day a month, so the
teacher can attend professional learning, will have any discernible impact on the quality

1 This plan will ensure that Palo Verde teachers retain the primary benefits of the
2 SPD strategy to improve classroom instruction: frequent and meaningful PLC time for
3 teachers to engage in the PLC cycle, and intense professional learning time to further
4 develop data analysis, curriculum knowledge, and pedagogical skill. The District will
5 learn from this alternative approach and, if successful, may replicate it at other schools
6 that either do not have the SPD, where the SPD is not working effectively.

7 **D. Magnet School Budgets**

8 The District also objects to the Mendoza plaintiffs' new proposal for magnet
9 school funding: if a school or program is doing well, reduce its funding and give the
10 funding to a school that is struggling. This approach is built on a fundamental
11 misunderstanding of how school improvement works and is premised on the idea that
12 simply adding more money is the solution to improving achievement. This is far too
13 simplistic a view of schools. From an equity lens, the District evaluates the financial
14 and non-financial resources that a magnet school needs to be successful and then plans
15 accordingly. This does not always mean more money. For example, the Holladay
16 magnet school budget was approximately the same in SY2017-18 (the year it earned an
17 "D" letter grade) as it was in SY2018-19 (the year it earned a "B" letter grade).

18 As the District has stated previously, "[p]rogrammatic change should not be
19 conflated with budgeting change. Obviously, some (but only some) programmatic
20 change results in spending funds differently, but even where funds are spent differently
21 to accomplish programmatic change this may or may not appear [as] changes in the
22 budget, and often will not require a new specific budget line item." (TUSD Response to
23 R&R and Objections, ECF 2244 at 4).

24 The evidence here has shown that more money is rarely the solution to improving
25 challenged magnet schools. In SY2019-20, Booth-Fickett enrolled 638 students and
26

27 of education for Palo Verde students. In fact, the opposite is true: those teachers will in
28 most cases deliver better, more meaningful classroom instruction during the other 160-
170+ days of the school year.

1 had a magnet budget of approximately \$800,000 or \$1,250 per student. Dodge magnet
2 school – a “B” school – enrolled 425 students with a magnet budget of approximately
3 \$285,000, or about \$670 per student. There is no correlation between the amount of
4 resources a magnet receives and its level of academic achievement. Still, the Mendoza
5 Plaintiffs would reduce funding at Dodge (\$670/student) and to increase funding at
6 Booth-Fickett (\$1,250/student). The District objects to the Mendoza suggestion as
7 unsupported by the evidence and leading to an inefficient waste of scarce resources.

8 **E. Consultants**

9 The District requests that the Court deny the Mendoza Plaintiff request to direct
10 the District – at the end of the budget process and at the start of the school year – to
11 implement the as-yet developed budget protocol for consultants and programs. As
12 though the current situation for the District and its students is not uncertain enough due
13 to the global pandemic, the Mendoza Plaintiffs would have the Court require the
14 District to apply a protocol that does not yet exist to the existing budget. The District
15 will of course comply with the Court’s ruling to develop a magnet budget protocol and
16 will apply it to the budget development process for SY2021-22. It is unreasonable to
17 mandate that the District apply such rules in the future, after the budget is complete and
18 the school year has already started.

19 20 **II. FISHER OBJECTIONS**

21 The Fisher Plaintiffs submit objections to the final budget that mirror the requests
22 for information submitted on June 22, 2020 for the draft 3 budget. See Exhibit #, Fisher
23 Draft 3 RFIs. The final draft included responses to each of these requests for
24 information in Attachment 2. See 2487-3 at 176-178. For the most part, the Fisher
25 objection repeats these same questions that have already been answered. The District
26 focuses here on stated objections as it is not clear whether the Fisher Plaintiffs intend
27 their comments to be treated as objections or merely as comments.

1 **A. Dual- Language (80504)**

2 As stated in Draft 3, “there are myriad services provided for non-English
3 speaking African students, including an entire department (Refugee Services) devoted
4 to services specific to those students. In addition, the AASSD also serves all African
5 and African-American students. Finally, non-English speaking African students are
6 also supported by the Language Acquisition Department as they qualify for English
7 Language Development (ELD) services.” (Response to RFI #2816, ECF 2487-3 at
8 177).

9 **B. AAAATF Recommendations (80514)**

10 As stated in Draft 3, Form 2, “the funding for AAAATF recommendations has
11 increased from \$520,738 in 2019-20 to \$525,742 in 2020-21.” (Response to RFI
12 #2817, ECF 2487-3 at 177). Fisher Plaintiffs complain incorrectly that this amount has
13 been reduced. Fisher Plaintiffs had multiple opportunities throughout the six-month
14 budget development process to seek specific information on this activity code. Instead,
15 they waited in June 24 to ask for the items funded under code 80514, the District
16 responded in Draft 3 to that request. Then, on July 8, they objected to a “lack of
17 specificity.” The half-year budget development process is designed for the plaintiffs to
18 have multiple opportunities to ask questions, submit requests for information, and speak
19 to the District directly. Plaintiffs should not be permitted to remain silent on an issue
20 until late June and then complain about a “lack of specificity” one week before the
21 budget is set to be approved. Likewise, Fisher Plaintiffs had months to request code
22 80514 programs, but did not. Now, a week before the budget is due to be approved,
23 they raise this issue in an objection after they clearly did not read the District’s response
24 in Draft 3, indicating that the referenced funding was “from last year.”

25 **C. Site Coordinators (Rincon and Sahuaro) (80104)**

26 Fisher Plaintiffs ask about the role of these site coordinators. As stated in Draft 3,
27 “these are ELD site coordinators that support English Language students.” Response to
28 RFI #2823, Id. at 178.

1 **D. Transition Plans (80106)**

2 Fisher Plaintiffs claim there is no mention of what academic programs are being
3 cut because of alleged reductions in transition funding. As stated in Draft 3, there were
4 no funds in this activity in 2019-20, so no academic programs are being cut.

5 **E. Sky School (80202)**

6 Sky School is not funded from 910(G) funds in FY21. It appears in the budget in
7 the FY2020 column in a few places to indicated funding that was allocated in FY20.

8 **F. College and Career Readiness Coordinators (Sabino and UHS) (80501)**

9 As stated in Draft 3, “Sabino has higher African American enrollment than Santa
10 Rita and Pueblo, and similar African American enrollment to Cholla. UHS also has
11 higher African American enrollment than Pueblo. Additionally, College/Career
12 Readiness Coordinators also target assistance to Latinx students. There are more than
13 300 Latinx students at Sabino, and close to 400 at UHS. Thus the District’s rationale is
14 to support the close to 400 African American and Latinx students at Sabino, and to
15 support the close to 450 African American and Latinx students at UHS.” Response to
16 RFI #2827, Id. at 178.

17 **Conclusion**

18
19 Respectfully submitted on July 16, 2020.

20
21 **Tucson Unified School District
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22 *s/ Samuel E. Brown*

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July 2020, 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