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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 **RELATED TO THE 2020-21 TUSD BUDGET**

3 Overview

4 The Mendoza plaintiffs objected to the Districts 2020-21 budget on July 6, 2020
5 (ECF 2493) in the Fisher plaintiffs objection followed on July 8, 2020 (ECF 2496).

6 The challenges of responding to the COVID 19 pandemic are overwhelming.¹ Arizona is
7 one of the so-called hotspots for infections and the District argues that the demands of the Fisher
8 and Mendoza plaintiffs with respect to COVID would undermine its efforts to address the needs
9 of its students, the most hard-hit of whom are the focus of the USP. The Special Master agrees
10 that the uncertainties and difficulties of implementing response to the pandemic place enormous
11 burdens on the District that must be taken into account in responding to objections to the budget
12 by the Fisher and Mendoza plaintiffs, as well as the objections previously stated by the Special
13 Master.
14

15 Fisher Objections

16 Many of the Fisher objections are framed as questions, though it seems that these
17 represent criticisms. In July 16, 2020 (ECF 2498) the District responded to some of these
18 questions, essentially arguing the assumptions on which most are based are incorrect or that the
19 question has already been answered. The Special Master can add little to the District’s response
20 to the questions and the assertions of the District. However, there appear to be three Fisher
21 objections that are not addressed or that could be more extensively discussed.
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23 First, the Fisher plaintiffs complain that there are no dual language programs in the
24 language of African students. African students come from many countries and different
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26 ¹ The Special Master serves on the board of a national organization that provides support to
27 districts in responding to the pandemic. The challenges confronted by TUSD are similar to those in
28 virtually every large school district in the country and so far there is no consensus about how best to
address the challenges involved.

1 languages are spoken in different countries. By far the most common language spoken by
2 African students in their homelands is Swahili. The Fisher plaintiffs present no evidence that
3 parents of African students want their students to attend a dual language program in Swahili (or
4 any other African language). Such a program would almost certainly be racially concentrated and
5 it is hard to imagine that certified teachers fluent in Swahili could be found to teach in such a
6 program. There are between 40 and 50 African students who come from countries where French
7 is spoken. One could imagine enough interest in French literacy among non-African students in
8 TUSD at the Special Master knows of no American university that offers certification in bilingual
9 French instruction.
10

11 The second concern of the Fisher plaintiffs is that the District has ignored the
12 recommendations of the TrayBen Report (TR) which was conducted at the request of the Fisher
13 plaintiffs by a team of scholars from Georgia State University. The TR addresses the quality of
14 the education in TUSD experienced by African American students. (The TR does not deal with
15 the education of African students). The TR makes numerous recommendations.² Almost all of
16 these, urge the District to do better what it is already doing. The shortcomings upon which the
17 TR bases its conclusions are not documented. No new teaching methods or curricula are
18 proposed.
19

20 Third, the Fisher plaintiffs argue that the effects of COVID on African American students
21 are so profound that the Court should stay any further action that would result in providing the
22 District with unitary status. The Special Master concludes that unless the District's response to
23 the pandemic discriminates against students of color, denial of unitary status would have to be
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25 ² In one place, the District identifies 68 recommendations and in another it identifies 74. The
26 District says that it is already implementing 19 of the 74 TR recommendations and indicates its intent to
27 implement an additional 29. One cannot readily determine which of the TR recommendations. The
28 District does not intend to adopt because the District in the TR use different numbers and described
recommendations in different ways.

1 based on other concerns than the impact, however horrible, of the pandemic.

2 Mendoza Objections

3 The Special Master first addresses four central concerns of the Mendoza plaintiffs:

- 4 1. The need to revise magnet school budgets.
- 5 2. The processes to be used for reallocating budgeted funds throughout the year.
- 6 3. Protocols for hiring consultants and for developing and administering the budget.
- 7 4. The adequacy of magnet school funding

8 *Magnet school budgets*

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10 Both the Special Master and the Mendoza plaintiffs objected to the magnet school budgets
11 on the grounds that they provided insufficient rationale for the expenditures. This concern is
12 similar to that that the Special Master expressed in his objections to the three year plus PIP plan.
13 The Court responded to his objections regarding the magnet school plans and ordered the District
14 to, among other things, develop action oriented plans for magnet schools rated C and D by the
15 state. The District is now at work with a nationally recognized consultant responding to this
16 Court order. It appears that that work is progressing well and that it will not only yield revised
17 plans and budgets that link expenditures to data-based analyses of school needs, but will in the
18 process create a protocol for budget development.

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21 Given that specific direction from the Court relating to budget protocols was issued July 1,
22 2020, after the magnet budgets had been developed, it seems that the assurance that the Court
23 should desire is evidence that the District has the capability to develop and implement a budget
24 protocol. The District can provide such evidence by submitting to the plaintiffs and the Special
25 Master the improvement plans and budgets required by the Court's June 22, 2020 and order. The
26 Court can determine whether the decision about the adequacy of these budgets and their related
27 improvement plans can be determined by the Special Master or whether they need to be approved
28

1 by the Court. As noted, the District is already at work on these plans and budgets which are due to
2 be submitted to the Court by September 1, 2020,

3 *Budget reallocations*

4 The Mendoza plaintiffs and the Special Master recognize that there will be an unusual
5 amount of budget reallocation because of the pandemic related uncertainties that exists in the
6 District and in Arizona. These uncertainties will dictate policies and practices to create safe and
7 productive learning environments for the District's students. The District is rightly concerned
8 that if it was required to present every change of over \$50,000 for review by the plaintiffs in the
9 Special Master, it would be unable to act in a nimble and effective way. The District proposes
10 that the distinction be made between COVID 19 related expenditures and all others. COVID 19
11 expenditures of greater than 250,000 would be subject to review by the plaintiffs and the Special
12 Master and that all other expenditures be subject to the policies relating to reallocation as in the
13 past (e.g., reallocations of 50,000 would be reviewed by the plaintiffs on the Special Master).
14 The Special Master believes that this proposal is reasonable and finds it hard to imagine that the
15 plaintiffs and the Special Master would deny the District the opportunity to reallocate funds of
16 any magnitude that resulted from the need to respond to the challenges derived from the
17 pandemic.
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20 *Protocols for hiring consultants and for budget development*

21 The District has in place a protocol for hiring consultants that now requires potential
22 consultants to specify how their services are aligned with the District's commitments to culturally
23 responsive pedagogy and discipline and, more broadly, equity. There seems no reason why this
24 protocol should not be used in hiring consultants not already under contract. Since the Court has
25 previously ordered such a consultant contract, there is no reason why the District should not have
26 used it in its identification of any consultants for the coming year. This protocol for consultants
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1 should be evaluated with respect to its alignment and adequacy in regard to the District's
2 commitments and revised as necessary.

3 *Magnet school funding*

4 The Mendoza plaintiffs argue that the District should be shifting funds from schools that
5 are very effective to those that require important improvements and replicate programs found to
6 be effective in one school in others. These suggestions make sense on their face but there are too
7 many variables involved in determining what will work in what contexts to establish a rule or
8 rules of this sort. Moreover, the fact that there is a program in a successful school does not mean
9 that that program is the reason for the school success. Consider the following example raised by
10 the Mendoza plaintiffs. Holladay elementary school went within one year from a D to a B school
11 as determined by the state. During that time, it adopted a program called *The Leader in Me*
12 (TLM). It does not follow that TLM should be adopted in other schools. First, there is no
13 research that shows that this program has any effect on student learning.³ Second, there are other
14 characteristics of Holladay that are much more likely explanations for the school's recent success
15 – it has very small class size, it is a small school, it had three master teachers whose job it was to
16 provide coaching to teachers, and it had a new and aggressive leader who focused attention on
17 higher performance on state tests.⁴

18 It does appear that the District, when it reduces funding in low performing schools, as it
19 has in Palo Verde high school, that it describe research-based strategies it will use in lieu of the
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25 ³ There are a number of case studies, but so far as one can tell there are no published or peer-
26 reviewed papers or articles. The What Works Clearinghouse is the best evidence of encyclopedia
27 identifying a large numbers of promising strategies. T11 is not included in any of these inventories of
28 effective practice.

⁴ In contrast to TL M – which is rooted in Christian theology, these research-based strategies have
been shown to be effective in a number of sources identifying good practices.

1 programs supported by the expenditures that were reduced or eliminated.⁵

2 **Recommendations**

3 The District shall be directed to demonstrate its capacity to develop and implement a
4 protocol for strategic magnet school plans and related budgets by preparing magnet school
5 budgets for those schools identified by the state as having a grade of C or D.

6
7 Reallocations of funds within the budget filed with the Court should be governed by the
8 policies and practices specified in the budget process for 2019-20 except that reallocations
9 necessary to implement practices and policies related to the COVID pandemic would only be
10 reviewed by the plaintiff and the Special Master when they exceeded \$250,000. These COVID-
11 related reallocations in excess of \$250,000 should be reviewed by the plaintiffs and the Special
12 Master. As with current policy, the plaintiffs and the Special Master may review all expenditures
13 in excess of \$50,000 when they are reported by the District in quarterly reports.

14
15 A protocol exists for the vetting consultants and it shall be used in all such transactions.
16 A protocol for budget development is now being prepared by the District and shall be used in the
17 formulation of all budgets from the date of this order. This budget protocol should be reviewed
18 by the plaintiffs and the Special Master in an expedited way.

19 When the District reduces funding of more than \$50,000 for magnet schools that are not
20 rated A or B by the state or the TUSD MagnetMerit rating, the District shall describe the
21 research-based strategies it proposes to use for school improvement in those C and D schools.
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27 ⁵ This proposal is similar to one ordered by the Court in the case of inclusive and civil school
28 environments. In that instance, the Court required the District to identify at least one alternative strategy
that it might implement if the array of strategies that had been working cease to do so.

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Respectfully submitted,

/s/
Willis D. Hawley
Special Master

Dated: July 24, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 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