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11
12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF ARIZONA
14

15 Roy and Josie Fisher, et al.,

16 Plaintiffs,

17 v.

18 United States of America,

19 Plaintiff-Intervenors,

20 v.

21 Anita Lohr, et al.,

22 Defendants,

23 Sidney L. Sutton, et al.,

24 Defendant-Intervenors,
25
26
27
28

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
TO TUSD'S NOTICE OF ADOPTION
OF DESEGREGATION BUDGET**

Case No. CV 74-204 TUC DCB

1 Maria Mendoza, et al.,
2 Plaintiffs,
3 United States of America,
4 Plaintiff-Intervenor,
5 v.
6 Tucson United School District No. One, et al.,
7 Defendants.

8
9 Introduction

10 Mendoza Plaintiffs submit their response to Tucson Unified School District's
11 ("TUSD" or "District") Notice of Adoption of Desegregation Budget ("TUSD
12 Budget Notice"), Docket No. 1469, filed 5/8/13, pursuant to Section X, B, 5 of the
13 Unitary Status Plan ("USP") providing plaintiffs the opportunity to submit
14 objections to the budget within 10 days of the governing board's approval of the
15 budget. USP Section X, B, 5 at 57. As an initial matter, Mendoza Plaintiffs do not
16 oppose the District's request to file a response to Plaintiffs' objections. TUSD
17 Budget Notice at 2:21-23, 3:1-2. However, Mendoza Plaintiffs request that the
18 Special Master be provided the opportunity to respond to the District's response
19 before the Court resolves the objections in accordance with the procedures set forth
20 in the USP. USP Section I, D, 1 at 5.

21
22 This Court has prioritized transparency and public accountability throughout
23 the process of developing the USP and these principles continue to govern the
24 development of the budget. As this Court explicitly stated, the USP is to include a
25 "financial plan that provides for financial integrity and public accountability through
26 specific provisions for transparency which identify all funding sources ... and the
27 amounts flowing to the USP's specific components." Order Appointing Special
28 Master, Docket No. 1350, filed 1/6/12, at 6:1-5. The District's proposed budget for

1 implementing the USP must provide the transparency, financial integrity and public
2 accountability that this Court mandates. In addition, the proposed budget
3 expenditures must directly link to the explicit goals and strategies of the USP and
4 must be adequate to successfully implement it.

5 In reviewing the proposed budget, Mendoza Plaintiffs have carefully
6 considered the Special Master's assertion that "[i]t is meaningless to examine and
7 make recommendations regarding provisions of a budget without dealing with what
8 the proposed expenditure will fund and the demonstrated or likely efficacy of the
9 activity." The USP 2013-14 Budget: Recommendations of the Special Master,
10 dated April 25, 2013 ("SM April 25 Memo"), attached as Exhibit 1 at 2. The USP
11 provides the plaintiffs and the Special Master with the authority to actively influence
12 how the USP is implemented through input and review of "all new or amended
13 plans, policies, procedures or other significant changes" to the USP and requires the
14 District to "solicit the input of the Special Master and the Plaintiffs and submit such
15 items for review before they are put into practice or use." USP Section I, D, 1 at 5.
16 It also states that in preparing the budget, the District "shall work" with the plaintiffs
17 and Special Master "to assess the funding needs" for the USP. USP Section X, B, 4
18 at 56. Further, this Court has recognized that the goal of "identify[ing] the
19 necessary funding levels" for the successful implementation of the USP is "not a
20 task solely within in the discretion of the District." Order, Docket No. 1402, filed
21 10/26/12 at 3:1-3.
22

23 Mendoza Plaintiffs point out below those sections of the proposed budget that
24 lack the transparency required by the Court, that fail to provide a direct link to the
25 requirements of the USP and that are not adequately funded to allow for its
26 successful implementation. Mendoza Plaintiffs also call for the elimination of
27 expenditures that are duplicative and overlapping and that fund programs that are of
28 questionable efficacy. The District must adhere to the requirements of the USP that

1 require it to establish the leadership, planning and goal setting before committing
2 significant resources. Mendoza Plaintiffs have not addressed every deficiency in the
3 proposed budget but have attempted to highlight the priority areas for the Court's
4 attention. Mendoza Plaintiffs reserve the right to raise additional questions and
5 concerns to ensure that the funding provided will be utilized to successfully
6 implement the USP.

7 TUSD does not have a good track record for using desegregation funds in a
8 way that has fundamentally made a difference in improving the educational
9 outcomes for African American and Latino students. It is for this reason that the
10 District continues to be under court supervision. The District cannot conduct
11 business as usual and continue to fund programs solely because it has historically
12 funded them with desegregation monies or simply because they are utilized by
13 significant numbers of African American and Latino students and expect to see
14 changed results. As the Special Master has concluded, "the USP does not ask for
15 modest changes in current activities of the District. Rather, it seeks to shape new
16 directions that require significant changes in the ways the District functions."
17 Special Master's Initial Analysis of the Proposed Budget for Implementing the USP
18 in 2013-14 ("SM's Initial Analysis"), attached as Exhibit 2 at 2.
19

20
21 The District's Failure to Adequately Justify the \$8 Million Transportation Budget
22 Indicates a Lack of Transparency and Accountability
23

24 The District's proposed budget (attached to TUSD Budget Notice as Exhibit
25 A ("USP Budget")) funds transportation with \$8 million from desegregation funds.
26 USP Budget at 4. The \$8 million in desegregation funds is presented as a lump sum
27 expense and includes no line item expenditures. The District's failure to explain
28 how this \$8 million will be spent is a failure to provide the "transparency" and

1 “public accountability” required by the Court. This is particularly troubling because
2 the District has also failed to explain how transportation will be utilized for magnet
3 schools and programs, a “primary integration tool.” TUSD USP Expenditure Plan
4 3.0 (“Expenditure Plan 3.0”), located at
5 [http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-](http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-TUSDFinalBudgetResponse.pdf)
6 [TUSDFinalBudgetResponse.pdf](http://tusd1.org/contents/govboard/packet05-02-13/05-02-13BAI2-Att-TUSDFinalBudgetResponse.pdf) at 7.

7 Transportation services are “a critical component of the integration of
8 [District] schools” and are to be made available “in a manner that promotes the
9 attendance of District students at integrated and magnet schools and programs.”
10 USP Section III, A, 1, 2 at 14-15. Without further explanation by the District,
11 Mendoza Plaintiffs cannot determine whether the transportation funds will be
12 appropriately allocated to meet the needs of students attending magnet schools and
13 programs and of students who promote school integration.

14 In addition, the \$8 million proposed for transportation represents a 4%
15 increase in the transportation funding level from the District’s previous budget draft.
16 Expenditure Plan 3.0 at 3, 7. Mendoza Plaintiffs requested but never received from
17 the District the data to support this increase in the budget. The District has failed to
18 explain how this increase was derived and how it will be spent to meet its
19 obligations for magnet schools and programs and to promote integration under the
20 USP.

21
22
23 TUSD’s Proposed Budget for Magnet Programs Fails to Support a Magnet Plan that
24 Incorporates the Requirements of the USP and is Insufficient Given the Critical Role
25 of Magnets in Promoting Integration

26
27 The District has failed to provide a magnet program budget that specifies how
28 the expenditures directly relate to the USP and whether the expenditures are

1 adequate to successfully implement it. The District’s proposed budget also fails to
2 demonstrate whether it will address the December 2011 Comprehensive Magnet
3 Program Review, which pointed out multiple deficiencies in the District’s magnet
4 schools and programs as well as included numerous findings and recommendations
5 for improving them.

6 The USP requires the District to provide to plaintiffs and the Special Master
7 by April 1, 2013, a magnet school plan that includes the following: 1) takes into
8 account the findings of the 2011 Magnet School Study; 2) focuses on which
9 geographic areas are best suited for new programs to assist the District in meeting its
10 desegregation obligations; 3) considers withdrawal of magnet status for school or
11 programs that are not promoting integration or educational quality; 4) determines if
12 each magnet school or program shall have an attendance boundary; and, 5)
13 determines admissions criteria and a process for review of the criteria, among
14 several other requirements. USP Section 2, E, 3 at 9-10.

15 The District’s Magnet Plan is presented as an outline that lacks detail, omits
16 many of the criteria mentioned above, and fails to provide any analysis of racial and
17 ethnic demographics to further integration goals. TUSD Magnet Plan (“Magnet
18 Plan”) attached as Exhibit 3. For example, the Magnet Plan fails to include the
19 racial and ethnic composition of each magnet school or program, whether each
20 magnet school or program will have an attendance boundary, identification of
21 programs for withdrawal of magnet status, strategies to specifically engage African
22 American and Latino families, and goals to further the integration of each magnet
23 school, among other required elements. Significantly, the District’s Magnet Plan
24 and budget do not appear to incorporate the recommendations and findings from the
25 2011 Comprehensive Magnet Review.
26

27 //

28 //

1 The Magnet Plan does not indicate whether it complies with the USP
2 requirement to expand the District's dual language programs. USP Section V, C at
3 31. While the Magnet Plan mentions expanding dual language programs "to
4 central/east side elementary and middle school" (Magnet Plan at 20) it does not fully
5 commit to doing so, i.e. "**consider** Dietz K-8 School as an International Studies
6 Magnet with Dual Language Strand" (emphasis added); "Catalina High School:
7 Proposed International Business and Economics with a Dual Language Strand"
8 (emphasis in original). Magnet Plan at 21, 20. The only references in the budget to
9 dual language are line item expenses for 1 FTE certified teacher "needed for dual
10 language support" and 2.25 FTE for classified instructional support "needed for dual
11 language support" at Davis. USP Budget at 9. Without these critical elements, the
12 District has not established that its proposed budget will further implementation of
13 the USP.

14 Mendoza Plaintiffs agree with the Special Master that what the District
15 provided is not a plan but "a plan to plan." Memorandum Re Proposed USP Magnet
16 Plan from Bill Hawley to Parties dated May 3, 2013 ("SM May 3 Memo"), attached
17 as Exhibit 4 at 2. No excuse can justify the District's delay in putting forth an
18 incomplete plan. The District has known throughout the development of the USP
19 that magnet schools remain the primary tool to achieve integration. The Court
20 directed the District in its July 13, 2012 Order extending time to complete the USP
21 that nothing in its order "shall be interpreted to cause any delay by the District in the
22 implementation of provisions which all Parties agree will be a component of or
23 required for the implementation of any USP and the work by the District should
24 continue to move forward in such regard." Order, Docket No. 1377, filed 7/13/12, at
25 4:17-20.

26
27 In addition to this direction from the Court, the District has had the benefit of
28 a thorough analysis of its magnet schools and programs since December 2011 when

1 the magnet review was completed.¹ Based on the incomplete Magnet Plan, it does
2 not appear that the District is utilizing the findings and recommendations from the
3 magnet review to address the deficiencies that the study identified. The District
4 should aggressively target additional funds in the budget to the extent it is making
5 significant revisions to the magnets in accordance with the magnet study
6 recommendations. Without a detailed plan, however, Mendoza Plaintiffs cannot
7 determine whether the line item expenditures are supporting revisions to the magnet
8 programs based on the review and whether they are supporting the requirements in
9 the USP.

10 Additionally, the magnets budget must be adequately funded to support the
11 critical role these schools and programs play in promoting integration. In the
12 District’s proposed 2013-14 budget, the District reduced the funds for magnets to
13 \$8.9 million from \$9.5 million² included in the previous budget draft. Expenditure
14 Plan 3.0 at 3, 7. Mendoza Plaintiffs object to this reduction. Instead of reducing the
15 funds for this critical tool in advancing integration, the District should be
16 maximizing them.

17
18 //

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22 //

23 ¹ Mendoza Plaintiffs also assert that the District was on notice of the need for an
24 appropriate magnet schools plan since the PUSP was in effect starting in December
25 2009 when the Court adopted the Post Unitary Status Plan (“PUSP”). The District
26 had several years to align the magnet schools and programs with the goals of the
27 PUSP and failed to do so.

28 ² While the District proposed \$9.5 million in funding for magnets in the previous
version of the budget, it did not provide any line item expenditures specifying how
the funds would be spent and instead provided only a lump sum amount because the
“Magnet Plan had not yet been developed.” Expenditure Plan 3.0 at 3, 7.

1 The District’s Proposed Budget for Achievement Support Includes
2 Expenditures that are Not Attributable to Its Obligations Under the USP, That
3 Indicate a Lack of Coordination and That Appear to be the Continuation of
4 Programs Whose Efficacy is Questionable Resulting in Less Funds for More
5 Effective Programs to Meet the District’s Obligations Under the USP
6
7

8 Project 5, Achievement Support, is the largest single project in the USP at
9 over 21% (\$17.9 million) of the proposed budget (including both desegregation and
10 other funds). USP Budget at 2. Mendoza Plaintiffs understand that substantial
11 resources are required given the broad scope of programs and activities designed to
12 engage Latino and African American students provided in this section of the USP
13 (Academic and Behavioral Supports (USP Section V, E, 2 at 33), Drop-Out
14 Prevention and Retention (USP Section V, E, 2, b, i at 33), African American
15 Student Achievement (USP Section V, E, 7 at 37), and, Latino Student Achievement
16 (USP Section V, E, 8 at 39)). Despite the urgency for programs and services
17 addressing the relatively poor academic performance of the District’s Latino and
18 African American students that are included in this section of the budget, the
19 District’s proposed budget fails to appropriately account for these programs.

20 A number of the proposed expenditures are not properly attributable to the
21 District’s obligations under the USP or its OCR agreements and therefore reduce the
22 amounts that would otherwise be available to address those obligations and to
23 meaningfully address the African American and Latino “achievement gap.” The
24 Project 5 budget includes many programs and activities that appear to be “siloes”
25 from each other and to lack overall coordination, integration, collaboration and
26 direction, likely resulting in an inefficient use of funds that could be more
27 effectively spent to meet the District’s obligations under the USP. A number of
28

1 these programs and activities appear to be continuations of efforts whose efficacy is
2 questionable or at least unclear while lesser sums are being expended on programs
3 that are likely to be more efficacious. In certain instances, the District appears to be
4 making significant changes and committing to new expenditures before it has
5 established the leadership, planning and goal setting mandated by the USP, thereby
6 running the risk of misspending limited resources and having to undo or redo
7 initiatives once assessments and planning has occurred and once the Special Master
8 and the plaintiffs have engaged in the review and comment mandated by the USP.
9

10 *Proposed Expenditures Not Related To Obligations Under the USP Or OCR*
11 *Agreements*
12

13 Mendoza Plaintiffs question why \$1 million for “all sites” for “fine arts” is
14 charged to the desegregation budget.³ USP Budget at 13. While they understand
15 and appreciate the value of the arts in education, the issue remains how specific arts
16 programs in specific schools advance the goals of the USP. To the extent that some
17 portion of the arts budget is supporting multicultural and/or culturally responsive
18 pedagogy or supporting the improvement in the academic performance of African
19 American and Latino students by encouraging participation in after school or
20 summer programs that also include an academic component, those portions of the
21 budget should be broken out and their links with the District’s overall efforts to
22 strengthen its culturally responsive pedagogy and increase the academic
23 achievement of its African American and Latino students via their participation in
24 these programs should be demonstrated.
25

26
27 ³ Fine Arts expenditures are also allocated in Project 6, Inclusive School
28 Environments (\$555,574) and in Project 7, Discipline and Extracurricular (\$82,296).
USP Budget at 15, 16.

1 *Programs, Activities and Expenses Continue to be “Siloed,” Thereby Diminishing*
2 *Overall Efficacy and Potentially Duplicating Costs that, if Addressed, Would Result*
3 *in More Funds Available for Urgently Needed Initiatives to Timely Implement the*
4 *USP*

5
6 The District is committed to spending a very significant amount (over \$2.5
7 million divided among three projects) on Learning Supports Coordinators. USP
8 Budget at 11, 13, 16. The District’s Budget Narrative states that these coordinators
9 are to “support[] improved academic achievement through data-driven instruction
10 and assessments” and that they are to “develop[] and coordinate[] a sustainable
11 comprehensive system of learning supports...” USP Budget Narrative, attached as
12 Exhibit 5, at Tab P4 ALE. However, the proposed budget and other narratives,
13 including the narrative attachments (Attachments to USP Proposed Budget Version
14 2.0 (“Budget Attachments”), attached as Exhibit 6), give no indication of how the
15 Learning Supports Coordinators relate to the “mentor” and other specialists listed
16 under the Mexican American and African American Student Support Services line
17 items of the budget (USP Budget at 12) or the “academic tutors” and “enrichment
18 instructors” listed in the subsection on In-School Credit Recovery Strategy 2 (USP
19 Budget at 14). Nor do the proposed budget and other narratives explain what role
20 the Learning Supports Coordinators have or will play in the Life Skills or CORE
21 Plus⁴ programs, the other credit recovery and the “alternative” (to regular high
22 school) programs all grouped under this project. USP Budget at 14.

23
24
25 ⁴ Mendoza Plaintiffs also have concerns about the consistency of the District’s
26 approach to these programs, and what their stated and measured goals are to be.
27 The attachment to the budget narrative for CORE Plus references the identification
28 of low performing sixth graders to participate in the program (Budget Attachments
at 10) without any reference to discipline, much less possible suspension issues, but
the TUSD website states that CORE Plus is “an alternative to suspension program.”
<http://tusd1.org/contents/depart/studentequity/contacts.asp>.

1 Similarly, there is no indication of how the 14.4 FTEs responsible for “drop
2 out prevention” (USP Budget at 13), relate to the Learning Supports Coordinators
3 even as the narrative notes that the services that the “drop out prevention” team
4 provides has decreased over the years (USP Budget Narrative at Tab P5 ACH,
5 Dropout Prevention) and indicates that the drop out prevention team monitors the
6 same data (attendance, grades and behaviors resulting in disciplinary actions) that
7 the Learning Supports Coordinators presumably will be monitoring. *Id.*

8 While the District asserts that the job descriptions for the Learning Supports
9 Coordinators are being revised “to fit within the mandates of the USP” in response
10 to Mendoza Plaintiffs’ above comments, it is disappointing to say the least that the
11 District did not sufficiently take into account the mandates of the USP when it
12 developed the budgets and the roles of the Learning Supports Coordinators in the
13 first place. USP Expenditure Plan 3.0 at 10.

14
15 *A Number of the Projects and Activities in the Budget Appear to be the Continuation*
16 *of Projects and Activities of Questionable Efficacy, Even as Alternative Programs*
17 *Demonstrated to be More Effective are Being Abandoned or Minimally Funded*
18

19 The proposed budget allocates desegregation funds for 100% of the funding
20 for the Southwest Alternative Program, 50% of the funding for Project MORE and
21 35% of the funding for TAPP (Teenage Alternative Parent Program), all alternative
22 education programs. USP Budget at 14. Presumably, the District justifies this
23 expenditure of desegregation funds because a significant percentage of the students
24 in these programs are African American or Latino. However, nothing in the
25 narrative description of these three programs suggests that the District intends to
26 take any new actions to address the disproportionately poor academic performance
27
28

1 of African American and Latino students in these schools. USP Budget Narrative,
2 Tab P5 ACH, Project MORE, SW Alternative Program, Teenage Parent Program.

3 Significantly, the District points out in the narrative that Project MORE “is a
4 ‘B’ school despite working with a challenging population.” USP Budget Narrative,
5 Tab P5 AHC, Project MORE. A review of the AIMS scores on the TUSD website
6 reveals that Project MORE is considerably more successful with its white students
7 than with those who are Latino. (There are no scores reported for African American
8 students at this school.) *See*,
9 tuststats.tusd1.org/planning/profiles/aimsresults_byeth.asp. In 2011-12, 83% of the
10 white students in all grades at Project MORE met the AIMS standard for reading
11 and 80% met the standards for writing. The comparable numbers for the school’s
12 Latino students were 33% and 26%. Rather than address the discrepancy between
13 the white and Latino students attending Project MORE, as it should in a budget
14 expending desegregation funds, the District merely describes the school and its
15 overall grade and requests funding for three FTE teachers without suggesting that
16 anything will be done to change how these teachers work with their under-achieving
17 Latino students.⁵ USP Budget Narrative, Tab P5 AHC, Project MORE; USP Budget
18 at 14.

19
20 Mexican American Student Services intends to invest significant resources
21 and money on the Linda Mood Bell Program. Budget Attachments P5 8 at 33.
22 However, nothing in the narrative indicates why a program that purports to
23 “strengthen[] ...sensory-cognitive functions” (*Id.*) is the optimal approach to assist

24
25 ⁵ Latino students are significantly underperforming in relation to their white peers
26 at the Southwest Alternative Program. Latino students are doing relatively well at
27 TAPP but their scores remain well below the District’s averages. *See*,
28 tuststats.tusd1.org/planning/profiles/aimsresults_byeth.asp. Nothing in the
desegregation budget reflects an effort to focus on raising the achievement of these
students. Once again, the narrative merely recites the existing and continuing
programs at these schools. USP Budget Narrative Tab P5 ACH, Southwest
Alternative Program, Teenage Parent Program.

1 Latino students who are struggling academically or why an approach designed to
2 assist students with dyslexia, ADHD and other disabilities (according to the Linda
3 Mood Bell Program web site found at www.lindamoodbell.com) should be adopted
4 for use by Latino students who do not have these particular learning challenges or
5 disabilities. Mendoza Plaintiffs are unaware of any research to support the District's
6 decision to embrace this program or that validates use of the program with a Latino
7 population. Moreover, Mendoza Plaintiffs strongly object to the adoption of a
8 program designed for use with children who have disabilities since it runs the risk of
9 inappropriately labeling children to whom the program is made available as
10 somehow "disabled." Unfortunately, the decision by the District's Mexican
11 American Student Services to embrace such a program illustrates the extent to
12 which it has abandoned the largely successful asset model previously followed when
13 the District still had a Mexican American Studies Department and to turn to a far
14 less successful and increasingly discredited deficit model.

15
16 The District's proposed budget funds Mexican American Student Support
17 Services at \$949,643 and the African American Student Support services at
18 \$955,616. Mendoza Plaintiffs question how the District's proposed budget
19 allocations for the two programs will allow the Mexican American Student Support
20 Services to serve a Latino student population that is at least ten times the size of the
21 District's African American student population.

22 The District should increase its funding of pre-kindergarten programs as there
23 is strong evidence of their effectiveness in closing the achievement gaps and
24 improving school performance. In the Budget Attachments the District provided a
25 copy of a study by the Pew Center on the States entitled "Pre-K as a Turnaround
26 Strategy" touting the value of pre-kindergarten programs as more effective than
27 helping children catch up in later grades. Budget Attachments P5 9 at 36, 37.

28

1 The District has allocated only \$225,594 in desegregation funds (plus approximately
2 \$269,026 in Title I funds) for this important strategy to raise student achievement.
3 Mendoza Plaintiffs strongly recommend that the District devote more resources to
4 pre-kindergarten programs targeted to the District’s African American and Latino
5 children and believe the funding to do so will be available if the District eliminates
6 funding in other areas that is inappropriate, overlapping and duplicative.

7 The District’s assertion that the USP does not “require[] spending on early
8 childhood education” because “this is a K-12” case is shortsighted. USP
9 Expenditure Plan 3.0 at 14. The USP is intended to improve the achievement of
10 students in K-12 and early education programs will benefit students who will
11 become class members as soon as they enroll in school. The District proposes to
12 wait to expand the program even while it touts the benefits of early education in the
13 materials it provided. Early education programs can and should be incorporated into
14 an overall approach using the existing programs at TUSD.

15 The District asserts that Mendoza Plaintiffs are inconsistent when they seek
16 additional funds for early education programs while they object to “committing to
17 new expenditures in other areas.” USP Expenditure Plan 3.0 at 14. These positions
18 are not inconsistent but reflect Mendoza Plaintiffs’ recognition of programs with
19 strong evidence of their effectiveness in improving the academic achievement of
20 Latino and African American students as well as their recognition of planning
21 required under the USP.

22
23 *The District Should Not be Making Significant Changes and Committing to New*
24 *Expenditures Before the District as a Whole has Established the Leadership,*
25 *Planning and Goal Setting Mandated by the USP*
26

27 The USP requires a review and assessment of the District’s existing academic
28 and behavioral support programs, resources and practices, including those provided

1 through the District's student services departments. USP Section V, E, 2 at 33. The
2 District proposes to adopt and implement programs, such as the Linda Mood Bell
3 program in Mexican American Student Services before the USP-required
4 assessment is conducted.⁶ Aside from the problems with the Linda Mood Bell
5 program identified above, the adoption of the program would be premature given
6 the lack of the appropriate review and assessment of the District's academic and
7 support programs. Mendoza Plaintiffs' position on this issue is not inconsistent with
8 its other recommendations "for the District to commit *more* money to certain new
9 expenditures" and to "make *more* ... changes in certain areas or with certain
10 strategies" as the District asserts, but reflects their careful consideration of the
11 requirements imposed by the USP and of what is in the best interests of Latino
12 students. USP Expenditure Plan 3.0 at 10.

13 The District must set goals for the multiple programs proposed to be funded
14 out of desegregation funds in Project 5, not in a piecemeal fashion, but as part of an
15 overall strategy to enhance the academic achievement of African American and
16 Latino students. For example, one goal of CORE Plus is that "25% of enrolled
17 racially and ethnically diverse, low performing 6th graders will move up one
18 category in the 6th grade level AIMS test in one or more testing area." Budget
19 Attachments P5 3 at 10. It is not clear from this goal that the focus is on Latino and
20 African American students and there is no time frame to accomplish this goal.
21 Mendoza Plaintiffs have similar concerns with the 21st Century Community
22 Learning Centers and the Lifeskills Programs. Budget Attachments P5 1 at 2; P5 6

24 ⁶ Mendoza Plaintiffs also questioned the District's expenditure of \$60,000 for
25 "Long-term suspension hearing officers" (USP Budget at 16) before the District has
26 "evaluate[d] and revise[d] ... its due process protections for student discipline" as
27 required by the USP. USP Section VI, B, 2, b, at 45. The USP requires the District
28 to consult with experts to conduct this evaluation.

1 at 28. Mendoza Plaintiffs urge the District to establish specific goals that focus
2 expressly on Latino and African American students and that time frames be set by
3 which improvement is to have occurred. These goals are not identified in the budget
4 narratives the District has provided.

5
6 The USP Requires Two Separate Positions for the Director of Multicultural
7 Curriculum and the Director of Culturally Responsive Pedagogy and Instruction
8

9 Mendoza Plaintiffs objected to the District's collapse of two important
10 positions required by the USP – the Director of Multicultural Curriculum and the
11 Director of Culturally Responsive Pedagogy and Instruction (USP Budget at 15) –
12 into one position because the USP designates two separate director positions. USP
13 Section V, E, 4, c, d, at 36. The District's claim that "the USP does not call for two
14 separate positions" is contrary to the language and intent of the USP. USP
15 Expenditure Plan 3.0 at 18. The Special Master has informed the parties that the
16 District will appoint two people to fill these positions.
17

18
19 The Family Engagement Budget is Inadequate for the New and Critical Role it Will
20 Play Under the USP
21

22 The family engagement section of the budget is likely underfunded at \$1.8
23 million. USP Budget at 18. The family engagement section of the USP plays a
24 critical role in sharing information with Latino and African American parents on a
25 wide array of District programs including Advanced Learning Experiences, ELL
26 programs, culturally relevant courses, transportation, student assignment, magnet
27 schools and programs, extracurricular activities, student support, dropout prevention
28 and student discipline, among others. USP Section VII, C, 1 at 50. This provision

1 represents an expanded and enhanced effort from the District's previous efforts to
2 outreach to parents of the plaintiff classes.

3 In response to the Special Master's request that the District "describe how it
4 will begin to implement the plan for Family Centers" including any "new
5 initiatives" that replace or build on current activities, the District summarized
6 current services provided such as those for homeless youth, adult learning and
7 others. Memorandum from Nonie Faras, Teresa Guerrero, to Samuel E. Brown,
8 dated May 3, 2013, attached as Exhibit 7 at 1. The District's response indicates its
9 failure to recognize the new scope of the family engagement centers mandated by
10 the USP. Mendoza Plaintiffs urge the District to re-evaluate its contemplated
11 funding for this project and move money into this project from areas that are
12 inappropriate, duplicative or overlapping.

13 TUSD asserts that Mendoza Plaintiffs request additional funding here "in
14 spite of the lack of any comprehensive plan for family engagement." USP
15 Expenditure Plan 3.0 at 20. Mendoza Plaintiffs have carefully considered the
16 requirements in the USP regarding the family engagement centers and have
17 concluded that additional funding is warranted given the new responsibilities for
18 family outreach required under the USP and the apparent lack of the District's
19 understanding of what the new responsibilities are.
20

21
22 The District's Allocation of \$5 Million for Overhead Costs is Not a Legitimate
23 Desegregation Expense
24

25 Mendoza Plaintiffs object to the District's proposal to allocate \$5 million in
26 overhead costs because the District has failed to itemize its specific expenditures
27 attributable to overhead and has failed to provide the legal basis for this significant
28 expenditure of desegregation funds. USP Budget at 21. Mendoza Plaintiffs

1 objected to the District’s previous budget allocation of \$7 million for the same
2 reasons and joined the Fisher Plaintiffs’ objections to this expenditure by calling on
3 the District to provide a “compelling rationale” for this proposed use of
4 desegregation funds. Fisher Plaintiffs’ Comments on the District’s Budget for
5 Desegregation–Related Expenses for the 2013-2014 School Year, attached as
6 Exhibit 8 at 1. The Special Master has determined that “TUSD has been reducing
7 the funds spent on desegregation for years by assessing the funds set aside for that
8 purpose to indirect/overhead” and that it is “problematic” to charge overhead to
9 desegregation. SM April 25 Memo at 5, 3. Mendoza Plaintiffs agree with this
10 assessment.

11 The District states that overhead accounts for 14% of the current
12 desegregation budget and that the proposed rate for 2013-14 is 7.8%. USP
13 Expenditure Plan 3.0 at 23. The District provides no rational basis for the decrease
14 from 14% to 7.8%. It appears the District could have just as easily reduced the
15 amount to 5% or even 3%. In an attempt to justify this expense, the District cites to
16 “Management Accounting” to explain what an indirect cost is. *Id.* However, it
17 provides no line item costs associated with the proposed expenditure of \$5 million
18 in overhead. The District merely states that risk management, accounting,
19 purchasing, payroll, utilities, benefits, human resources, technology and the
20 Superintendent’s office will incur costs related to desegregation efforts without
21 indicating the cost of each attributable to the desegregation budget, how each
22 expense is tied to desegregation efforts and why the District would not already incur
23 these expenses. *Id.* As an example, the District states that the volume and costs of
24 work done by purchasing and payroll would be “significantly less” if the District did
25 not have between 700 and 1200 “deseg-funded employees.” *Id.* However, it makes
26 no attempt to explain whether these employees would already be on the District
27 payroll regardless of the USP.
28

1 The District also proposes to charge unused contingency funds “back to
2 overhead.” *Id.* Mendoza Plaintiffs object to this proposal without a line item
3 explanation of the overhead costs attributable to desegregation. The District’s
4 proposed allocation of \$5 million to overhead expenses lacks the “transparency” and
5 “public accountability” this Court requires of all expenditures to implement the
6 USP.

7
8 The Proposed Budget for Professional Development Lacks Sufficient Detail to
9 Ensure That All Professional Development Required by the USP is Included
10

11 The USP is explicit in its mandate for professional development in multiple
12 areas. Accordingly, the USP requires professional development in the following
13 areas: student assignment (USP Section II, J, 1 at 13); for first year teachers in low-
14 performing schools (USP Section IV, E, 6 at 20); for underperforming teachers
15 (USP Section IV, I, 2 at 22); for professional learning communities for all principals
16 (USP Section IV, I, 4 at 23); on the USP (USP Section IV, J, 1 at 23); for trainers to
17 provide professional development required in the USP (USP Section IV, J, 2 at 23);
18 on discrimination and culturally relevant pedagogy (USP Section IV, J, 3 at 24); for
19 targeted professional development for those needing improvement (USP Section IV,
20 J, 4 at 24); on hiring and diversity (USP Section IV, J, 5 at 24-25); for teaching
21 socially and culturally relevant curriculum (USP Section V, E, 1, b at 32); on
22 supportive and inclusive learning environments for African American and Latino
23 students (USP Section V, E, 5, a. at 36); on restorative practices and PBIS (USP
24 Section VI, E, 1, 2 at 46); for computers and educational software (USP Section IX,
25 B, 4 at 54); and on the evidence based accountability system (USP Section X, A, 3
26 at 55). The proposed budget for Professional Development references section IV of
27 the USP and “All USP PD” without explicitly providing for each USP requirement
28

1 for professional development. USP Budget at 22. Mendoza Plaintiffs seek
 2 assurance that all professional development required in the USP is accounted for in
 3 this proposed budget.

4 Conclusion

5 The District has not provided the transparency and public accountability
 6 required by the Court to justify numerous of its expenditures under the USP. Before
 7 the District designates significant desegregation funds to these efforts, it must
 8 provide the requisite details to ensure the expenditures are directly linked to the USP
 9 and will provide for its successful implementation.
 10
 11

12 Dated: May 20, 2013

Respectfully submitted,
 PROSKAUER ROSE LLP
 LOIS D. THOMPSON
 JENNIFER L. ROCHE

MEXICAN AMERICAN LEGAL DEFENSE
 AND EDUCATIONAL FUND
 NANCY RAMIREZ

17
 18 By: /s/ Nancy Ramirez
 Nancy Ramirez

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CERTIFICATE OF SERVICE

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I hereby certify that on May 20, 2013, I electronically submitted the foregoing Mendoza Plaintiffs' Response to TUSD's Adoption of Desegregation Budget to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- Heather K. Gaines
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- Nancy Woll
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- Rubin Salter, Jr.
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- Zoe Savitsky
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- Anurima Bhargava
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I further certify that on May 20, 2013, I sent an e-mail copy of the foregoing Mendoza Plaintiffs' Objection to TUSD Request for Approval of School Closures to the following that is not a CM/ECF registrant:

Special Master
Dr. Willis D. Hawley
wdh@umd.edu

Dated: May 20, 2013



IMELDA APARICIO