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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 ROY and JOSIE FISHER, et al.,)
9 Plaintiffs,)
10 UNITED STATES OF AMERICA,)
11 Plaintiff-Intervenor,)
12 vs.)
13 ANITA LOHR, et al.,)
14 Defendants,)
15 and)
16 SIDNEY L. SUTTON, et al.,)
17 Defendants-Intervenors.)
18 _____)
19 MARIA MENDOZA, et al.,)
20 Plaintiffs,)
21 UNITED STATES OF AMERICA,)
22 Plaintiff-Intervenor,)
23 vs.)
24 TUCSON UNIFIED SCHOOL)
25 DISTRICT NO. ONE, et al.,)
Defendants.)
_____)

CIVIL ACTION
NO.: 74-90 TUC DCB
(consolidated case)

THE UNITED STATES'
OBJECTIONS TO THE TUCSON
UNIFIED SCHOOL DISTRICT NO.
1'S PROPOSED BUDGET AND TO
THE SPECIAL MASTER'S BUDGET
RECOMMENDATIONS

1 **I. Introduction**

2 The United States submits the following objection to the Tucson Unified School
3 District No. 1’s (“TUSD” or the “District”) Proposed School Year 2013-2014 Budget
4 (“Proposed Budget”), and to the April 25, 2013 “USP 2013-14 Budget: Recommendations
5 of the Special Master” (“Recommendations”) as filed with this Court on May 7, 2013.

6 This filing first sets forth specific objections to and comments on the District’s Proposed
7 Budget, and then delineates certain limited objections to the Special Master’s
8 Recommendations.
9

10 **II. Objections and Comments to the District’s Proposed 2013-2014 Budget**

11 This section sets forth the United States’ objections to and comments on individual
12 line items¹ in the District’s Proposed Budget, set forth by budget area. Note that in
13 referring to an expenditure below as “appropriate,” the United States is not endorsing the
14 specific monetary allocation made by the District, nor is the United States making any
15 statement, at this point, endorsing how the funds are later spent by the District. Rather,
16 “appropriate” indicates that the expenditure is one contemplated as part of the USP, and is
17 related and proportionate to the task for which funding is being provided. In addition, the
18 Proposed Budget covers all funding for the USP, and so the objections and comments in
19 this section touch on all aspects of that funding. However, these objections and comments
20 are limited to the budget itself, and not to related plans developed by the District, for which
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23 ¹ The objections and comments below do not address every one of the USP’s requirements, nor every line item in the
24 Proposed Budget. Instead, this section focuses on: (1) whether certain items are required by the USP; (2) line items
25 which may be appropriate with additional clarification or changes; and (3) identifying items which are not ripe for
26 comment or objection at this time.

1 there will be separate review and comment procedures. *See also* Section (III) of this filing
2 *infra*.

3 A. Transportation

4 USP § (III)(A)(3) requires the District to provide free transportation to students in
5 magnet programs and to integrative transfers. The District has chosen to pay for 37
6 percent of its transportation costs using A.R.S. § 15-910G² (“910G,” or “desegregation”)
7 funds. According to the District’s calculations, although only 33 percent of free
8 transportation users will be utilizing transportation under § (III)(A)(3), these riders average
9 more than double the transportation miles of non-section (III)(A)(3) users, costing \$8
10 million, rather than the \$7 million that would be expected if they were non-§ (III)(A)(3)
11 users. Therefore, as the District could pay more out of 910G funds for these users than it
12 has chosen to do, the funding allocation is appropriate, and the United States therefore
13 does not object to this line item.
14

15 B. Administrators and Certificated Staff (i.e., “Personnel, Hiring, and
16 Recruitment”)³

17 USP § (IV)(B)(2) requires the District to hire or designate a USP recruitment
18 director. Although there are three people in the USP budget designated as “HR
19 Coordinator, Sr.,” it is unclear which of these people is legally responsible for the duties
20 assigned to the recruitment director, or whether these duties have been split between the

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22 ² A.R.S. § 15-910G reads, in relevant part, “The governing board may budget for expenses of complying with or
continuing to implement activities which were required or permitted by a court order of desegregation . . . which are
specifically exempt in whole or in part from the revenue control limit and the capital outlay revenue limit. This
exemption applies only to expenses incurred for activities which are begun before the termination of the court order.”

23 ³ Section (IV) of the USP is entitled “Administrators and Certificated Staff”; however, this Section of the Proposed
24 Budget is entitled “Personnel, Hiring, and Recruitment.” The titles are used interchangeable herein. Because the
District has created a separate budget section for all professional development contemplated pursuant to the USP,
those funding choices are addressed separately.

1 three individuals. The comments in the Proposed Budget indicate that one Coordinator is
2 responsible for “USP related reports and information for analysis,” and another is
3 responsible for “hiring, transfer, and separation analysis,” but this does not clarify whether
4 one of these people is the employee contemplated by the USP. Given that the District has
5 already set aside funds for and designated several people for these duties, the United States
6 suggests either delegating the remaining duties to one or more of the HR Coordinators and
7 providing them with appropriate training to carry out those functions, or hiring or
8 designating another individual to work in conjunction with these Coordinators to carry out
9 the USP’s remaining recruitment director tasks. The United States does not have an
10 independent objection to multiple employees fulfilling the recruitment director’s tasks as
11 long as steps are taken to ensure that personnel are in place to cover all of these duties as
12 enumerated in the USP.

14 C. Quality of Education

15 USP § (V), quality of education, requires the District to hire or designate certain
16 District- and site-level positions, conduct specific assessments, improve access to and
17 quality of certain programs, and create and implement certain new plans and policies.
18 What follows are comments on specific line items proposed pursuant to those obligations,
19 divided by USP subsection.

20 1. *Advanced Learning Experiences (“ALEs”)*

21 USP § (V)(A)(2)(d) requires the District to develop and implement an ALE access
22 and recruitment plan. As one part of fulfilling that requirement, the District has
23 appropriately budgeted for, *inter alia*, recruitment mileage, materials, and other items to be
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1 used as part of this plan. Per the requirements of the USP, the District will separately
2 submit its § (V)(A)(2)(d) plan for the Plaintiffs' and the Special Master's review and
3 comment under § (I)(D)(1). The United States will therefore review and comment on the
4 substance of the ALE access and recruitment plan once the plan is completed and
5 submitted for review. At that time, the review will focus on whether the plan meets the
6 requirements of § (V)(A)(2)(d), and then whether that plan is actually practicable based on
7 the approximately \$5 million allocated in the SY13-14 budget for ALEs.
8

9 In addition, USP §§ (V)(A)(3)-(4) require the District to improve access to and
10 quality of GATE programs and Advanced Academic Opportunities ("AACs") (e.g., AP,
11 honors, International Baccalaureate). The District has appropriately budgeted for a variety
12 of additional GATE and AAC services and personnel, including, *inter alia*, GATE
13 mentors, additional materials, summer AP programs, and AP teachers for low-threshold
14 offerings. Per the requirements of the USP, the District will use the ALE assessment (§
15 (V)(A)(2)(b)) to direct these resources to the school sites with the most need in an effort to
16 provide equitable access to these programs. The United States will therefore review and
17 comment on the District's plans to direct these ALE resources to particular locations or
18 student populations once the ALE assessment is completed.
19

20 2. *Academic Equity and Intervention*

21 First, USP § (V)(E)(2)(b) requires the District to conduct an academic and behavior
22 supports assessment to determine where the District's academic and behavior supports
23 resources are presently located, who is participating in them, and whether there are gaps in
24 access or barriers to enrollment in these programs. Per the requirements of the USP, the
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1 District will use the results of this assessment to direct these resources to the school sites
2 with the most need in an effort to provide equitable access to these programs. The United
3 States will therefore review and comment on the District's plans to direct these resources
4 to particular locations or student populations once the academic and behavior supports
5 assessment is completed.

6 Second, the District has budgeted around \$1.3 million for a variety of programs it
7 has termed "alternative education strategies." From the Budget Response prepared by the
8 District, the United States understands these items to be part of the continuum of strategies
9 required by the USP to support and engage African American and Latino students as
10 contemplated in § (V)(E). Specifically, the District has stated that "each of these programs
11 will be included as strategies in the Dropout/Retention Plan to be developed under the USP
12 and also will play a role in fulfilling other requirements of the USP." Budget Response at
13 11. Thus these programs fall within that category of strategies that will be included in the
14 dropout and retention plan, which the District will separately create under § (V)(E)(2)(b)
15 and submit for the Plaintiffs' and the Special Master's review and comment under §
16 (I)(D)(1). As such, the United States will review and comment on the substance of the
17 dropout and retention plan once that plan is completed and submitted for review. At that
18 time, the review will focus on whether the plan meets the requirements of § (V)(E)(2)(b),
19 and then whether that plan is actually practicable based on the funds allocated in the SY13-
20 14 budget for dropout and retention programs.

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22
23 Third, the District has budgeted \$3.3 million for 57 full-time learning supports
24 coordinators to take on a variety of USP-related tasks, including assisting with ALEs,

1 academic and behavior supports, and discipline. As with the above, the United States will
2 review and comment on whether the District's plans to direct these support personnel to
3 particular locations or student populations fulfill the requirements of the USP when the
4 various assessments discussed above are completed.

5
6 *3. Learning Supports; Student Support Services*

7 USP § (V)(E) in general, and §§ (V)(E)(7)-(8) specifically, require the District to
8 fund support services for African American and Latino students, including specific support
9 services departments. The District has budgeted over \$2 million for these purposes,
10 including allocations for various academic specialists, behavior specialists, mentors, and
11 curriculum specialists, each of which is required by the USP. The United States will
12 review and comment on whether the District's plans to provide support services through
13 these two services departments fulfill the requirements of the USP when the District
14 provides its first annual report, which will describe how the District is using the funds
15 allocated in the SY13-14 budget for these departments to provide the services required by
16 the USP.

17 *4. Native American and Asian Pacific Islander and Refugee Services*

18 The District has budgeted around \$339,000 for Native American and Asian Pacific-
19 Islander and Refugee support services. The District has previously explained that
20 approximately 8 percent of all students who are coded as "Latino" (2400 students) are in
21 fact Native American, and that therefore Native American Student Services also serves
22 members of one of the Plaintiff classes. Similarly, the District has explained that the Asian
23 Pacific-Islander and Refugee support services department provides some services to
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1 students who would otherwise fall into one of the Plaintiff classes. Inasmuch as 910G
2 funds are directed at serving the students in the Plaintiff classes or are directed to comply
3 with some other aspect of this Court's orders, these funds are appropriately allocated under
4 the USP. The United States appreciates that the District has moved a significant amount of
5 the funding for these two departments out of 910G funds and into management and
6 operations ("M&O") funds. The United States will review and comment on whether the
7 District's provision of support services through these two departments help fulfill the
8 requirements of the USP when the District provides its first annual report, which will
9 describe how the District is using the funds allocated in the SY13-14 budget for these
10 departments to provide the services required by the USP.
11

12 5. *Fine Arts*

13 The District has budgeted around \$2 million for fine arts programs across all school
14 sites, including funding for over a dozen teachers, various teaching artists, supplies, and
15 other materials. This allocation represents an over 50 percent reduction in 910G spending
16 on fine arts between the 2012-2013 and 2013-2014 budgets. Nevertheless, the United
17 States objects to these expenditures. A fine arts education is certainly an important and
18 enriching part of student development; however, the issue here is whether fine arts
19 programs are appropriately funded by 910G monies, which are directed toward the
20 implementation of court orders and other federal government agreements.
21

22 The District has explained that: (a) the funding for fine arts will be targeted toward
23 racially concentrated schools; (b) fine arts are a major attractor for student assignment
24 purposes (*i.e.*, campuses with fine arts help keep students in the district); and (c) fine arts
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1 support and engage African American and Latino students, particularly as many fine arts
2 programs are multicultural in nature. However, there is no provision in the USP that
3 provides for large-scale expenditures on fine arts programs (*see*, by comparison, the kinds
4 of expenditures noted above as part of the dropout and retention plan that the District will
5 develop pursuant to § (V)(E)(2)(b)). The USP includes numerous projects that explicitly
6 require District support and funding, and monies should be allocated accordingly.

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8 Given the lack of any provision providing for fine arts education in the USP and the
9 District's existing obligations under the USP, the United States requests that, if the District
10 wishes to continue funding fine arts from 910G money, it propose an amendment to the
11 USP to indicate where such funding fits into the continuum of programs contemplated
12 therein, including explaining how funding for fine arts will compliment and not divert
13 funds from existing programs.

14 6. *Exceptional Education*⁴

15 USP § (V)(D) requires the District to review its identification, evaluation, and
16 placement practices to ensure that African American and Latino students are not being
17 inappropriately referred to exceptional education services. The District has budgeted
18 around \$400,000 for this project, including "piloting strategies to strengthen inclusive
19 environments," Proposed Budget at 14, and additional speech and language pathologists
20 and psychologists. According to the February 6, 2013 Order ("February 6 Order"), the
21 provisions for exceptional education services are included in the USP to address the
22 potential segregative effect of inappropriate referrals, and the quality of education that
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24 ⁴ Arizona state law refers to education for students with disabilities as "exceptional education."

1 African American and Latino students receive. February 6 Order at 32-33. Inasmuch as
2 the use of 910G funds for exceptional education has been approved as part of the February
3 6 Order, such expenditures are appropriate. The United States will review and comment
4 on whether the 901G funds for exceptional education have been used for their intended
5 desegregative purpose when the District provides its first annual report.

6 D. Discipline

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8 USP § (VI)(C)(1) requires the District to hire or designate a restorative and positive
9 practices coordinator to assist all school sites with the implementation of the behavior
10 management programs contemplated in the USP, including Positive Behavior Interventions
11 and Supports (“PBIS”) and restorative practices, and with evaluating behavior and
12 discipline data. USP § (VI)(C)(2) requires the District to hire or designate site-level
13 restorative and positive practices coordinators for all schools to assist with school-level
14 implementation of these provisions. The District has appropriately budgeted for several
15 dozen learning supports coordinators to serve in the site level role. However, the District
16 has not fully budgeted for or assigned the District-level duties contemplated in USP §
17 (VI)(C)(1). The budget includes a full-time discipline compliance liaison to monitor and
18 evaluate discipline data, which is a positive step. But the duties of the restorative and
19 positive practices coordinator, as delineated in the USP, also include developing models
20 and assisting sites in implementing the new behavior management systems. Given that the
21 District has already set aside funds for and designated a compliance liaison for the data-
22 related aspects of these duties, the United States suggests either delegating the remaining
23 coordinator duties to this liaison and providing her appropriate training to carry out those
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1 functions, or hiring or designating another individual to work in conjunction with the
2 liaison to carry out those tasks. The United States does not have an independent objection
3 to the liaison as long as steps are taken to ensure that personnel are in place to cover all of
4 the District-level duties enumerated in the USP.

5 E. Family and Community Engagement

6 USP § (VII)(C)(1)(a)-(b) requires the District to review and assess its existing
7 family engagement and support services to determine where the District's family
8 engagement and supports resources are presently located, who is participating in them, and
9 whether there are gaps in access to these services. Per the requirements of the USP, the
10 District will use the results of this assessment to direct these resources to the sites with the
11 most need in an effort to provide equitable access to these programs. The United States
12 will therefore review and comment on the District's plans to direct these family
13 engagement and supports resources to particular locations or student populations once the
14 family engagement and support services assessment is completed.

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16 In addition, per the requirements of the USP, the District will separately submit its §
17 (VII)(C)(1)(a) plan for the Plaintiffs' and the Special Master's review and comment under
18 § (I)(D)(1). The United States will therefore review and comment on the substance of the
19 family engagement plan once the plan is completed and submitted for review. At that
20 time, the review will focus on whether the plan meets the requirements of § (VII)(C)(1)(a),
21 and then whether that plan is actually practicable based on the approximately \$612,000
22 allocated in the SY13-14 budget for these purposes.
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1 Separately, USP § (VII)(D) requires the District to provide and budget for
2 translation and interpretation services to fulfill certain USP obligations. The District has
3 appropriately budgeted over \$200,000 for these purposes. The District has also separately
4 budgeted for translation, interpretation, and other language access services in the context
5 of its agreements with the United States Department of Education's Office for Civil Rights
6 ("OCR"). Because complying with OCR agreements is a permissible use of 910G funds
7 under state law, and because compliance with those agreements is outside the scope of this
8 process, the United States will neither comment on the budget allocated for those
9 agreements nor expect to see additional information on the District's language access
10 services or plans beyond what is accounted for within the USP.
11

12 F. Facilities and Technology

13 USP § (IX) requires the District to evaluate its facilities and technology services for
14 equitable access, and to develop a multi-year plan to make repairs and improvements
15 responsive to that assessment. The District has appropriately budgeted over \$1.18 million
16 for personnel to conduct these assessments and create these plans, and for the first round of
17 repairs and maintenance. The United States will therefore review and comment on the
18 District's assessment instruments when the District provides its first annual report. In
19 addition, per the requirements of the USP, the District will separately submit its §
20 (IX)(A)(3) and § (IX)(B)(3) facilities and technology plans for the Plaintiffs' and the
21 Special Master's review and comment under § (I)(D)(1). The United States will therefore
22 review and comment on the substance of these plans once they are completed and
23 submitted for review. At that time, the review will focus on whether the plans meet the
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1 requirements of § (IX)(A)(1)-(2) and § (IX)(B)(1)-(2), and then whether those plans are
2 actually practicable based on the approximately \$1.18 million allocated in the SY13-14
3 budget.

4 G. Professional Development

5 The USP requires the District to provide professional development to thousands of
6 administrators and certificated staff members on a variety of topics, ranging from
7 culturally responsive pedagogy and instruction to the development of professional learning
8 communities to the implementation of the District's revised disciplinary procedures. The
9 District is also required under USP § (IV)(I) to provide intensive professional development
10 supports to new and struggling teachers. The District has budgeted around \$1.7 million for
11 these efforts (in addition to having allocated approximately \$200,000 of its M&O funds
12 and over \$2 million of its Title I funds for these projects). These allocations include funds
13 for coordination and review of professional development and support by District
14 leadership and staff, assistants and analysts to develop and implement these efforts, and at
15 least 46 mentors and trainers (of which 11 will be funded using 910G funds). Per the
16 requirements of the USP, the District will separately submit its professional development
17 plans for the Plaintiffs' and the Special Master's review and comment under § (I)(D)(1).
18 The United States will therefore review and comment on the substance of the professional
19 development plans once the plans are completed and submitted for review. At that time,
20 the review will focus on whether the plans meet the requirements of the USP, and then
21 whether those plans are actually practicable based on the approximately \$3.9 million
22 allocated in the SY13-14 budget for these purposes.
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2 H. Other Expenses

3 1. *Mitigating Transition Costs*

4 The District has budgeted \$514,965 to mitigate the negative effects of school
5 closures and student transition. Because these mitigation efforts are required by this
6 court's February 15, 2013 Order, the United States will not object to these expenditures.

7 2. *Desegregation Implementation*

8 The District has budgeted \$463,000 for salaries, materials, and other needs for the
9 desegregation department that is responsible for within-district implementation and
10 oversight of this court order. This amount includes six full-time employees and two part-
11 time employees. Because the USP is extensive and contains a multitude of requirements
12 for appropriate implementation, the United States does not object to these expenditures.

13 The District has also budgeted \$945,000 for the Special Master's and his
14 consultants' fees, private plaintiffs' fees, and legal consultants' fees. This amount is more
15 than twice what the District has budgeted to pay all eight employees who are conducting
16 the day-to-day implementation of the USP. Given longstanding concerns regarding the use
17 of 910G funds for expenses which do not directly serve to eliminate the vestiges of
18 segregation in Tucson schools and/or are not related to provisions of the USP and the
19 District's current efforts to close a \$17 million budget shortfall, the United States objects
20 to the allocation of the District's limited financial resources in this manner. The United
21 States recognizes that the District cannot refuse to pay the Special Master, his consultants,
22 or private plaintiffs' fees as directed by this Court. Therefore, the United States
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1 respectfully requests that this Court takes appropriate steps, including considering limits on
2 the amount designated for such fees, to help the District ensure that its limited funds are
3 directed primarily at the implementation of this Court's orders and the desegregation of its
4 schools.

5 **III. Objections to the Special Master's Budget Recommendations**

6 The United States submits the following limited objections to the Special Master's
7 budget Recommendations. Provisions of the Recommendations would infringe upon the
8 District's ability to develop and implement programs and procedures as provided by, and
9 consistent with, the USP. In addition, provisions of the Recommendations presume a role
10 for the Special Master and the Plaintiffs which goes beyond what the USP and the Court's
11 orders in this case provide.

13 *A. Provisions of the Recommendations Infringe upon District Compliance with 14 the USP and This Court's Orders*

15 Rather than guiding the District to narrowly tailor its proposed budget to fund the
16 policies, plans, and programs required by the USP, the Recommendations suggest that the
17 District should instead fund programs outside the scope of the relief negotiated by the
18 Parties and approved by this Court on February 6, 2013, or fund/defund items contrary to
19 the requirements of the USP. Indeed, the Recommendations as a whole focus more on
20 general measures to improve the District's schools than on whether the District has funded
21 the myriad programs and activities required by this Court's orders.

1 Certain parts of the Recommendations suggest that the District should disregard the
2 Court's orders in this case.⁵ For instance, the Recommendations question why the District
3 plans to use 910G funds for repairs and maintenance of facilities. Recommendations at 8.
4 The USP requires the District to assess its facilities for inequities in building, resource, and
5 technology access, and implement a multi-year strategy to perform the repairs and
6 improvements identified in the assessment. USP § (IX). Funding for facilities
7 improvements provided for in the USP should not be limited or eliminated.
8

9 Provisions of the Recommendations also state that the District should not use 910G
10 funds for programs such as exceptional education. However, the USP and other court
11 orders in this case include requirements related to the provision of exceptional education,
12 some of which were included over the District's objections at the urging of some of the
13 Plaintiffs and/or the Special Master. *See* February 6, 2013 Order at 32-33; February 15,
14 2013 Order at 8-9. The Court's orders require the District to offer certain kinds of support
15 for students with disabilities, specifically to improve its processes for identification and
16 placement of students with disabilities to prevent any inappropriate over-identification of
17 African American or Latino students as students with disabilities. Thus, the District must
18 fund these efforts, and may appropriately do so using 910G funds.
19

20 Other parts of the Recommendations state that certain projects, though included in
21 the USP, should not receive 910G funds because these activities "would likely be funded
22 in the absence of the USP." Recommendations at 5. As one example, the
23 Recommendations propose that 910G funds should not be used to pay for travel to recruit

24 ⁵ This includes both the USP and the Court's other orders in *Fisher & Mendoza v. Tucson Unified Sch. Dist. No. 1*.

1 new administrators and certificated staff because “the district has no effective way of
2 differentiating the actual costs of recruitment for USP from the overall cost of its
3 recruitment efforts.” *Id.* at 6. However, USP § (IV)(C)(3) requires the District to create a
4 recruitment plan to bring more African American and Latino employees to the District.
5 Per the USP, this plan includes new expenditures such as implementing nationwide
6 recruitment strategies, ranging from efforts targeting specific kinds of colleges and
7 universities to attending local and statewide job and diversity fairs. Given that targeted
8 recruitment is part of the District’s court-ordered desegregation activities, the District can,
9 and should, use 910G funds to ensure that these activities are appropriately carried out.
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11 Lastly, provisions of the Recommendations suggest funding projects that are not
12 included in the USP, and are therefore not eligible for 910G funds. For instance, the
13 Recommendations propose that the District explore the feasibility of expanding access to
14 early childhood education programs. Recommendations at 18. The United States
15 recognizes that early childhood education is a critically important and evidence-based
16 educational strategy; the USP does not, however, provide for early childhood education
17 programs. Instead, except in places where the USP requires the District to choose
18 programs to fulfill the USP’s requirements (*see* (III)(B) *infra*), the District must use 910G
19 funding to implement the requirements of the USP and other federal government
20 agreements. The District can work with the Parties and the Special Master to propose an
21 amendment to the requirements of the Order to include programs such as early childhood
22 education within the ambit of the USP, which would therefore qualify for 910G funding.
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1 And the District can certainly explore the feasibility of expanding access to early
2 childhood education programs using other, non-910G funding sources.

3 *B. The USP Provides the District with Latitude to Propose and Implement*
4 *Programs to Eliminate the Vestiges of Segregation*

5 As this Court has stated, the “USP sets out steps to convert the TUSD to a unitary
6 system in which racial discrimination will be eliminated root and branch to the extent
7 practicable.” February 6 Order at 7. Under the USP, the District is obligated to develop
8 and implement numerous policies, programs, and procedures to desegregate its schools.
9 Some provisions of the USP unambiguously delineate the specific program that the District
10 must implement (*e.g.*, the requirement to implement PBIS, USP § (VI)(B)-(C)). Should
11 the District fail to implement this type of specifically referenced program, the District
12 would be out of compliance with the USP. However, other provisions of the USP do not
13 explicitly set forth the program or activity that the District must put in place. Instead,
14 those provisions set forth a framework – or, in places, a baseline – for the kinds of
15 programs or activities that the District must choose and execute to fulfill those
16 requirements (*e.g.*, the requirement to create a dropout prevention plan, USP §
17 (V)(E)(2)(B)(i)). To comply with these kinds of provisions, the District must propose and
18 effectuate plans which aim to effectively satisfy their obligations under the USP.
19

20 The Parties intended and carefully negotiated that the USP explicitly and
21 specifically require some specific programs and permit the District to choose others. The
22 District has latitude, then, pursuant to the USP, to make some program choices, except
23 where there is evidence that the programs they are choosing do not “promise . . .
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1 realistically to work,” or that other, “more promising course of action” are just as readily
2 available and have been ignored. *Green v. County Sch. Bd. of New Kent Cty.*, 391 U.S.
3 430, 439-440 (1968). As programs are implemented, the Plaintiffs and the Special Master
4 have the power and duty to monitor and evaluate whether the District’s plans are indeed
5 effective in fulfilling the requirements of the USP and eliminating the vestiges of
6 segregation.⁶

7
8 Provisions of the Recommendations question the District’s ability to select, and the
9 methodology for selecting, programs and activities to fulfill the requirements of the USP
10 where no particular program is specified. These provisions direct the District to consider:
11 (a) evaluating the efficacy of every one of its programs before making funding decisions,
12 and (b) funding or defunding programs based on whether those are the “best”
13 programmatic choices. Recommendations at 10-12, 12-16. However, such an evaluation
14 as a predicate to program choice is not provided for in the USP.

15 Rather, the Recommendations should focus on whether the proposed budget, or any
16 proposal provided to the Plaintiffs and the Special Master in this process, materially
17 furthers the District’s ability to comply with its desegregation obligations. Aside from
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21 ⁶ For example, USP §§ (V)(E)(2)(a)-(b) require the District to assess its “existing academic and behavioral support
22 programs, resources, and practices, including, but not limited to, those currently provided through the District’s
23 student services departments,” and then use that assessment to develop a plan to “ensure equitable access to such
24 programs” and “concentrate resources on school site(s) and in areas where student and school data indicate there is the
25 greatest need.” The assessment should focus on and specifically indicate where there are inequitable gaps in the
26 services and supports offered to the District’s African American and Latino students. The consequent plan should be
designed to fill those gaps to ensure that the vestiges of segregation are addressed and that the students in the plaintiff
classes are not denied the educational opportunities available to their peers. This programmatic assessment and
resultant plan are separate from the particularized programs and activities described in the USP which are specifically
designed to support historically marginalized and/or struggling members of the plaintiff classes.

1 other specific powers delegated to the Special Master by the Court,⁷ the role of the
2 Plaintiffs and the Special Master in this matter is to evaluate whether the District is
3 complying in good faith with the relief negotiated in the USP. And the question of
4 whether the District has complied in good faith with the USP is – in large part – not yet
5 ripe, given that implementation of many of the USP provisions has just recently begun.

6 **IV. Conclusion**

7 The United States respectfully requests that this Court take account of the
8 objections raised herein and direct the District to ensure that the funding provided under
9 910G is allocated to provisions of the USP and to the orders of this Court.

11 Respectfully Submitted,

14 Dated: May 20, 2013

13 /s/ Zoe M. Savitsky
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23 _____
24 ⁷ The USP sets forth the process by which the District proposes a budget, and allows for review and comment by the
25 Special Master and the Plaintiffs. The other powers of the Special Master are delineated in the January 6, 2012 Order
26 and the February 6, 2013 Order of this Court.

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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