

# **EXHIBIT 8**

FISHER PLAINTIFFS' COMMENTS ON THE DISTRICT'S BUDGET FOR  
DESEGREGATION-RELATED EXPENSES FOR THE 2013-2014 SCHOOL YEAR

1. The District's budget should include an external oversight mechanism to eliminate the perverse incentive for funding recipients to use up or misallocate surplus funds by engaging in unnecessary or low-priority activities

The desegregation budget does not appear to have any kind of external oversight mechanism to prevent funding recipients from retaining or otherwise misallocating surplus funds originally budgeted to meet a specific goal. Without such an accountability or oversight mechanism of this kind in place, we will be creating a perverse incentive for funding recipients to engage (an excessive number of employees) in unnecessary or low-priority activity to use up, rather than leave unspent, previously allocated funds. We need to make sure that a rational funding recipient will not be given incentives to allocate surplus funds in unintended ways. We need to know if and when a funding recipient has met their performance goals under budget if we expect to be able to identify and reallocate surplus funds to alternative or under-funded tasks in future budgets. This should be a high priority given that a large percentage of the budget is being allocated for entirely new activities that may prove much more or less costly in practice than we have estimated. We should have a mechanism in place to ensure that any over-budgeting in the budget for the 2013-2014 school year is corrected and reallocated in the budgets for the 2014-2015 and subsequent school years. While we certainly do not want to penalize successful programs for being cost-effective, we do want to make sure the choice about where to reallocate surplus funds is transparent and rational and clearly aligned with the various tasks required under the USP. We might, for example, want to consider formalizing a procedure to allow a funding recipient to draw or retain and then reallocate surplus funds to meet future goals where, and only where, the recipient can show that the proposed reallocation will be a financially and programmatically reasonable decision fully aligned with the requirements of the USP. Funding recipients could, for example, be required to request and receive approval for a budget revision (consistent with the goals of the USP) or an extension allowing them retain and reallocate any unspent funding the following fiscal year. Unspent funds would not be available to "back fund" previously incurred expenses. As stated, budget revisions and funding extensions should not be granted automatically. They should only be allowed when and where funding recipients have met the required showing and funding recipients failing to seek a reallocation or extension of unspent funds should forfeit their right to the funds.

2. The District should not be allowed to allocate any funds to cover overhead

The budget allocates seven million dollars to cover overhead costs. Unless the District can provide a compelling rationale for so doing, the allocation of desegregation funding to cover overhead costs would be inappropriate. The desegregation monies at issue here have been levied to remedy a constitutional violation. Seven million dollars is a significant percentage of the District's desegregation funding that would be better spent elsewhere. It is hard to see why a District operating under a federally mandated desegregation order should be treated as a grant recipient. This seems like an allocation that the Court would be very likely to take issue with.

3. The District's past allocation of desegregation funding justifies the retention of an external accounting firm to proactively eliminate any potential misallocation of funding

The District's questionable allocation of desegregation funding in past years justifies the retention of an accounting firm familiar with public school finance practices to review the proposed budget and the District's accounting practices and make recommendations on how to eliminate - inasmuch as possible - the potential misallocation of desegregation funding. The Court, the Special Master, the public and the plaintiffs alike should be assured that the District's allocation of desegregation funds is identical on paper and in practice. To ensure the impartiality of the review and recommendations, the accounting firm should not be selected by, have a past relationship with or in any way report to the District.

4. Where feasible, the allocation of a significant percentage of each desegregation funding item should occur only subsequent to the satisfaction of (or measurable evidence of reasonable progress towards) explicit and readily assessable performance goals

Where feasible, the allocation of desegregation funding should be linked to an expected performance outcome with the disbursement of a significant percentage of each funding item contingent on production of an expected outcome. Those outcomes should be articulated in the budget in sufficient detail to allow for their review and verification by the external auditor called for under the USP. The failure to rationalize the desegregation budget by providing funding recipients with strong financial incentives to reach expected outcomes on time and at or under budget will tend to limit the District's ability to meet the requirements of the USP.

5. The District should not be allowed to allocate desegregation funding for external counsel

Without in any way questioning the District's right to retain external counsel or the quality of the services provided by attorney Maree Sneed, the budget includes no evidence or argument to support the allocation of \$125,000.00 in desegregation funding to cover the cost of Ms. Sneed's services. If the District cannot show how her services will contribute directly to the satisfaction of the requirements of the USP, then her role in this case is likely equivalent to the function filled by local external counsel for the District, a function *not* funded from the desegregation budget.

6. The budget should discuss the performance outcomes linked to the funding for Mexican American and African American Student Support Services (MASSS and AASSS) to be able to assess the adequacy of the proposed funding levels

In its current form, the budget allocates a total of \$678,904 for Mexican American Student Support Services (MASSS) and a total of \$715,936 for African American Student Support Services (AASSS). Professor Hawley has stated, but the budget does not provide, comparative data showing that the latter amount represents a relative increase as a percentage of the overall desegregation budget for the current school year. The budget will need to include discussion of the key tasks MASSS and AASSS will be required to perform before the plaintiffs will be able to assess the adequacy of the proposed funding levels. This is precisely the level of transparency contemplated by the Court in its 10/26/12 order requiring the parties to work with the Special Master to develop detailed budgets for implementing the programmatic components of the USP.

7. The Fisher Plaintiffs join the Mendoza Plaintiffs in their objection to the paucity of information disaggregating the \$9,500,000 allocated to the District's magnet program

Specifically, the Fisher Plaintiffs join the Mendoza Plaintiffs in their objection to allocation of \$9,500,00 to the District's magnet program without further information disaggregating that amount into specific expenditures linked to specific performance outcomes, as discussed in general terms at point four above.

8. The Fisher Plaintiffs join the Mendoza Plaintiffs in their concerns with the expenditures allocated to the achievement support project as being potentially premature

Specifically, the Fisher Plaintiffs join the Mendoza Plaintiffs in their concern with: (1) expenditures not properly attributable to the District's obligations under the USP; (2) the inefficiency likely to result from the apparent lack of "overall coordination, integration, collaboration and direction" between many of the projects programs and activities; (3) the apparent continuation and funding of programs and activities of questionable efficacy, while funding for programs holding out a greater likelihood of success is limited; and (4) the risk of prematurely committing to significant changes and expenditures not yet informed by the feedback from the Special Master and the plaintiff classes as required under the USP.

9. The Fisher Plaintiffs join the Mendoza Plaintiffs in their objection to expenditure of over \$1,000,000 to prevent the misidentification of exceptional education students as excessive

The Fisher Plaintiffs join the Mendoza Plaintiffs in their objection to expenditure of some \$1,000,000 to prevent the misidentification of exceptional education students. The Fisher Plaintiffs agree that this amount appears to be excessive insofar as it appears to represent more funding than necessary to meet this particular goal of the USP.

10. The Fisher Plaintiffs join the Mendoza Plaintiffs in their expectation that the District will allocate facilities funding only as required under the USP

The Fisher Plaintiffs join the Mendoza Plaintiffs in their in their expectation that the District will allocate facilities funding only as required under the USP. This expectation is based on the District's representations regarding the continued maintenance of and funding for this project.