

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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,  
\_\_\_\_\_  
Maria Mendoza, et al.,  
Plaintiffs,  
United States of America,  
Plaintiff-Intervenor,  
v.  
Tucson Unified School District No. One, et al.,  
Defendants.  
\_\_\_\_\_

CV 74-90 TUC DCB  
(lead case)

**ORDER**

CV 74-204 TUC DCB  
(consolidated case)

1 On October 22, 2014, the Court ordered TUSD to revise its 2014-15 Desegregation  
2 Budget to reflect the use of state funds allocated pursuant to A.R.S. § 15-910(G) to  
3 supplement, not supplant, other source funds for: psychologists, social workers in college and  
4 career coordinators, teachers for Culturally Relevant (Core) Courses (CRCs), Dual Language  
5 Teachers, and Fine Arts teachers in magnet schools. Subsection 910(G) provides: “The  
6 governing board may budget for expenses of complying with or continuing to implement  
7 activities which were required or permitted by a court order of desegregation or  
8 administrative agreement with the United States department of education office for civil  
9 rights directed toward remediating alleged or proven racial discrimination which are  
10 specifically exempt in whole or in part from the revenue control limit and district additional  
11 assistance.” In other words, funding obtained through taxing authority derived pursuant to  
12 A.R.S. § 910(G) may be budgeted by the governing board for expenses of complying with  
13 a Court desegregation Order, like the USP, or an agreement with the United States  
14 department of education, office of civil rights, an OCR agreement.

15 On February 4, 2015, TUSD filed the Revised 2014-15 Desegregation Budget.  
16 (Doc. 1742). The budget revisions required by this Court’s October 22, 2014, Order, resulted  
17 in a difference of \$1,777,070. TUSD added \$100,000,000 to its Professional Development  
18 budget and \$777,070 to its desegregation contingency budget. Only the Mendoza Plaintiffs  
19 object.

20 The Mendoza Plaintiffs object to the “freed-up” USP money being allocated to  
21 contingency funding for an OCR project: the remodeling of Duffy Elementary School as a  
22 new Governing Board Meeting place. In August, 2013, TUSD entered into a resolution  
23 agreement with the United States Department of Education’s Office for Civil Rights (OCR)  
24 to resolve a complaint against TUSD that it failed to provide adequate access to its public  
25 governing board meetings, disparately impacting Latino residents who sought to attend board  
26 meetings addressing Mexican American Studies classes. In May 2014, the TUSD Governing  
27

1 Board approved remodeling and renovating the previously closed Duffy Elementary School  
2 at an approximate cost of \$433,000 to be a new venue for conducting its board meetings.

3 Due to an oversight, the Duffy project was not included in TUSD's original 2014-15  
4 budget. The USP budget revisions required by this Court coincided with Arizona  
5 Department of Education (ADE) requirements to semi-annually revise school budgets by  
6 December 15, 2014, so TUSD added both the freed-up \$777,070 and the \$433,000 Duffy  
7 project to the revised "contingency" line-item budget. Effectively, TUSD is using  
8 approximately \$433,000 of the "freed up" USP \$777,070 to renovate Duffy Elementary  
9 School to satisfy the 2013 OCR agreement to improve public access to its board meetings.

10 The Mendoza Plaintiffs argue that in their original objection they asserted TUSD  
11 should increase funding for several specific USP programs that were underfunded: Advanced  
12 Learning Experiences; AP Summer Boot Camps; AVID; CORE Plus, and dual language  
13 programs. The Mendoza Plaintiffs believe that the Court endorsed this position when it  
14 required TUSD to revise the 2014-15 budget and, therefore, the \$777,070 should be allocated  
15 to these programs. The Court did not, however, reach any such position in its resolution of  
16 the first round of objections to the 2014-15 budget.

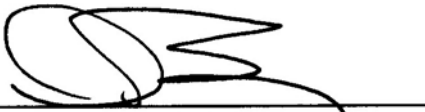
17 Specifically, in their original Objection to TUSD's 2014-15 budget, the contingency  
18 complained of by the Mendoza Plaintiffs was \$2,700,000, which TUSD explained contained  
19 a "place holder" to fund a \$500,000 African American Student Achievement Task Force  
20 (AASATF) student engagement project. In its response to the Mendoza Plaintiffs' original  
21 objection, TUSD agreed to move \$500,000 from the contingency budget to a separate line  
22 item under Project 5. In the Revised 2014-15 budget, there is no such line item in Project 5.  
23 Accordingly, it would seem that the desegregation contingency of \$2,767,010 still includes  
24 the \$500,000 place holder for AASATF so that in actuality, the contingency total, including  
25 the \$777,070, is \$2,267,010. The total desegregation budget is \$63,711,047.

1 The Court did not reach questions of cost effectiveness and suggested that the  
2 Mendoza Plaintiffs' challenges to TUSD's program choices be done by R&R and based on  
3 efficacy data. (Order (Doc. 1705) at 8 n.4.) At this point in the budget process, based on the  
4 limited record in respect to adequacy of funding for individual USP projects, the Court finds  
5 that TUSD may use \$433,000 of the \$777,0770, as kcontingency funding to satisfy the 2013  
6 OCR agreement. This is an expressly authorized expenditure under A.R.S. § 15-910(G).

7 **Accordingly,**

8 **IT IS ORDERED** that the Revised 2014-15 Revised Desegregation Budget is  
9 approved, with the record reflecting a place holder in the desegregation contingency budget  
10 of \$500,000 for AASATF and approximately \$433,000 for a Board meeting facility at Duffy  
11 Elementary School.

12 DATED this 19<sup>th</sup> day of February, 2015.

13  
14  
15   
16 David C. Bury  
17 United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28