

2021 WL 1851415

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United States District Court, D. Arizona.

Roy and Josie FISHER, et al., Plaintiffs
and
United States of America, Plaintiff-Intervenor,
v.
TUCSON UNIFIED SCHOOL DISTRICT, et al.,
Defendants,
Maria Mendoza, et al., Plaintiffs,
and
United States of America, Plaintiff-Intervenor,
v.
Tucson Unified School District, et al. Defendants.

No. CV-74-00090-TUC-DCB (Lead Case)
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No. CV-74-0204-TUC-DCB (Consolidated Case)
|
Signed 05/10/2021

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ORDER

Report & Recommendation Re: Reallocation of 2020-20 910G Funding - APPROVED

David C. Bury, United States District Judge

*1 Pending before the Court is the District's request to reallocate 910G funds originally budgeted in SY2020-21 for costs of transporting students that were not spent because the District closed its brick and mortar schools this past year due to the COVID-19 pandemic. The District proposes to reallocate these 910G funds, previously allocated for transportation, towards a massive summer education program it is undertaking to help students regain lost ground this past year during the pandemic.

The District proposes to reallocate approximately \$5,000,000, with \$3,000,000 reallocated for a Summer Program which will cost a total of approximately \$9,000,000. Oversimplified, it appears that the District plans to reopen its schools this summer. The remainder of the \$5,000,000 910G reallocation is as follows: \$1,000,000 for Enhanced Learning Spaces at Targeted Improvement Magnet Schools, \$300,000 Professional Learning, \$466,000 for Minibus purchases, and \$544,000 for Accelerated Technology, Supplies, and Material Purchases.

The Special Master and budget expert worked extensively with the District, made suggestions for substantial changes to the District's initial request, afforded the plaintiffs the opportunity to comment and object, and considered objections raised by the Plaintiffs, including those reasserted here. The Special Master reports that the reallocation now proposed by the District addresses the important objections of the Plaintiffs which were made during the review process, and that both he and the budget expert assisting him approve the reallocation in its entirety. He recommends the Court act quickly to approve the reallocation because summer school begins soon and reallocations of 2020-21 910G funding can't be made as

of July. (R&R (Doc. 2574)).

The Mendoza Plaintiffs object, generally, to the proposed reallocation as maybe not being sufficient to address the needs of the summer program and not sufficiently supported by direct links to the USP.

Specifically, the Mendoza Plaintiffs oppose the reallocation of the \$466,000 to purchase six minibuses. The Plaintiffs argue that the District fails to link the minibus purchase to the USP. The Court has understood past allocations of 910G funding for transportation to be generally linked to the USP because of the important role played by transportation in attaining integration. In this way, purchasing busses including minibuses, is generally linked to the USP. Specifically, purchasing six minibuses to improve transportation for extracurricular activities is linked to the USP because equity in extracurricular activities for African American and Latino students, who are also low-income students with limited access to personal means of transportation to after school activities, is dependent on transportation.

The general objection fishtails into the specific minibus objection because Plaintiffs argue that perhaps the \$446,000 minibus reallocation should be, instead, to the summer school program, but who knows because “[t]he District has provided insufficient information to permit an informed assessment of many of the other expenditures that it proposes.” (Mendoza Objection (Doc. 2575) at 2, 4.)

***2** The Mendoza Plaintiffs underscore that “they support reallocations of unspent 2020-21 transportation sums to fund needed summer programs for both students and District employees and the accelerated purchase of technology, supplies, and material purchases.” *Id.* at 3. They simply suggest that “more 910(G) money (including that which had been proposed to be spent on the mini-bus purchase) should be allocated to these areas,” *id.* at 4, instead of to the minibuses. For example, they complain it is unclear whether the reallocated \$3,000,000 covers transportation for the summer program to elementary and middle school sites or the cost of free meals, etc.

The District responds that the reallocated \$3,000,000 will make up a part of the approximately \$9,000,000 summer program. It appears that the District’s summer program is equitably available to all students at every elementary and middle school (Reply, Ex. A (Doc. 2579-1)) and high school, *id.*, Ex. B (Doc. 2579-2). The only evidence to the contrary arises from the Mendoza Plaintiffs’ complaint

that the District refused to respond to its inquiry regarding transportation priorities for summer programs, which it asked in response to the District’s report to its Governing Board that “it might not be able to provide transportation to all elementary and middle school summer school sites because of a shortage of bus drivers.” (Mendoza Objection (Doc. 2575) at 4-5.) Notably, this is the problem addressed by the purchase of the minibuses because they do not require commercial-licensed drivers, which enables the District to stretch their transportation resources by using regularly licensed drivers to drive minibuses when ridership does not require regular buses and commercially-licensed drivers. (Reply (Doc. 2579) at 4-5.)

In response to the Mendoza Plaintiffs’ concerns that it may not be adequately prioritizing the needs of Latino and African American students for reallocating the 910G funding, the District responds: “If, as plaintiffs contend, the impact of learning through the pandemic has disproportionately affected African American and Hispanic students, then the summer education program will disproportionately benefit them, and it is truly appropriate to use § 910(G) funds for this purpose.” (Reply (Doc. 2579) at 3).

The District’s clever response sweeps to broadly in painting its priorities if it means to suggest that student programs, like the summer program, that benefit students disproportionately benefit Latino and African American students simply because these students make up the majority of the District’s students. The disproportionate disadvantage experienced by Latino and African American students during the COVID-19 pandemic was because of a lack of resources, which does not correlate to any advantage for these students from the summer school program. Unlike the disproportionate disadvantage these students experienced during the pandemic, these students will not experience a disproportionate advantage from the summer programs, unless the District is simply considering their disproportionate numbers in the student population attending the summer program. Then, this would only be true for Latino students, not African American students which make up less than 10% of the District’s students.

There is no reason, however, to delay the 2020-21 910G funding reallocation decision as suggested by the Mendoza Plaintiffs for further inquiry. Without further delay, the Court addresses the Mendoza Plaintiffs’ concerns by finding that the District shall ensure that in any circumstances relevant to the summer programs

where there is a shortage of resources, including any offered academic programs, materials, or transportation, the District shall prioritize delivery of summer school services to and for meeting the needs of students attending Racially Concentrated schools.

***3 Accordingly,**

IT IS ORDERED that the Report and Recommendation Re: 2020-21 Reallocations (Doc. 2574) is ADOPTED, approving the District's reallocation of the 2020-21 910G funding.

IT IS FURTHER ORDERED in any circumstances relevant to the summer programs there is a shortage of resources, including any offered academic programs, materials, or transportation, the District shall prioritize delivery of summer school services to and the needs of students attending Racially Concentrated schools.

All Citations

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