

April 29, 2014

To: The Honorable David C. Bury

From: Willis D. Hawley, Special Master

Re: Report and Recommendation Regarding the Appointment of the Director for Culturally Responsive Pedagogy and Instruction.

Introduction

In September 2013, the TUSD Governing Board appointed Salvador Galbadon as Director of Culturally Responsive Pedagogy and Instruction (CRPI). Objections to this appointment have been made by the Fisher and Mendoza plaintiffs, both of whom object to the process by which the appointment was made and believe that the appointee's qualifications do not meet those specified in the USP. See Attachments A (for Fisher) and Attachment B (for Mendoza). The Department of Justice does not take a position on this appointment. While the District supports the recommendation I make below, its defense of the appointment is included as Attachment C (without exhibits).

Background

The USP provides for the appointment of the Director for CRPI (Section V.E.4.c). That the parties saw this position as exceptionally important is indicated by the fact that they spelled out in some detail the qualifications for the position. The District first advertised for this position in September 2013, six months after the USP was approved by the Court. At that time (and since), the job announcement did not include some of the qualifications specified in the USP and this fact was objected to by the Mendoza plaintiffs and the Special Master. The District refused to change the job description asserting that that the plaintiffs had no authority to influence the content of job descriptions and that the provisions of the USP did not meet the needs of the district.

In accordance with provisions of the USP, the District appointed a search committee including African American and Latino members (IV.D.1) and identified common questions to be asked of all candidates (IV.D.3). It

should be noted that these questions did not include direct inquiries about the applicant's knowledge of culturally responsive pedagogy. The search committee identified eight promising candidates but the search was terminated before the candidates could be further vetted when the names of the candidates were made public by one or more members of the committee. It is not clear that it was necessary to terminate the search; it is not uncommon for the names of candidates for positions to become public before final action can be taken.

The District then approached Mr. Galbadon and invited him to consider the position. He was subsequently interviewed by the Superintendent and Assistant Superintendent for Curriculum and Instruction after which he was asked to accept the position and was formally appointed by the Board.

Procedural Concerns

The procedures used to appoint Mr. Galbadon do not meet the requirements for personnel appointments specified in the USP. The District does not dispute this. He was not interviewed by the search committee and was not asked the standard questions. He did not, of course, apply. While this appointment was made more than a year after adoption of the USP, the district argues that the urgency of the of the appointment warranted the procedures that it used.

Qualifications

Mr. Galbadon was retired from the District when he was appointed. He has served in many roles in the District and has impressive credentials as an expert on bilingual education. He identifies himself as a Language Acquisition Specialist. Of his several writings and presentations, none deal with culturally responsive pedagogy. CRP does deal with the appropriate selection of culturally relevant curriculum and Mr. Galbadon has experience in developing curriculum for Latino students and has been an advisor to the District in its development of culturally relevant courses. From the record, one cannot tell if Galbadon has experience in curriculum development related to African American students, as required by the USP. It is important to note that the position has the somewhat redundant title of

Culturally Responsive Pedagogy and Instruction presumably to emphasize the teaching dimensions of the task. Experts on CRP would almost certainly rank facilitation of culturally responsive teaching as more complex than curriculum development.

Recommendation

I recommend that the Court approve the appointment of Mr. Galbadon as Acting Director of CRPI (he is now Director) and the initiation of a new search for the CRPI director. The person selected would be appointed no later than December 2014. The District should submit to the plaintiffs and the Special Master detailed descriptions of the position announcement and the procedures for searching and appointing the candidates for this position. This information should be provided to the plaintiffs and the Special Master within 15 days of the issuance of this court order. The purpose of this submission of information is to facilitate contributions to the search by the plaintiffs and the Special Master. These descriptions and procedures are subject to review and comment only to the extent that they are inconsistent with the specific provisions of the USP.

The District supports this recommendation, although it has not commented on the requirement that information about the position and procedures for the appointment be shared. The Mendoza plaintiff's, while endorsing the specific steps to be taken, believe that the process should be expedited and begin immediately with the goal of appointing an individual much earlier than December.

While it might be desirable to move more quickly, my understanding is that this would slow down the work Mr. Galbadon has been doing already (which has apparently led to changes in the work that had been done). Moving more quickly could also imply to the state—which is watching this closely re the curriculum side—that there is unhappiness with his work. Moreover, this search should take some time in order to assure that the pool is high quality.

Assuming the position is advertised in May, at least two months should be taken for applicants to apply (the school year is ending for both schools and

higher education—not a good time for recruiting). This means that screening and selection would take place in August, final interviews and selection in September. Then the Board approves giving the appointee two months to make whatever arrangements they need to make before moving. It is unlikely that an educator or a doctoral candidate would leave where they are in mid-semester and very unlikely that the process could be completed before mid-September even it were expedited, as urged by the Mendoza plaintiffs.

I urge the Court to act quickly on this recommendation.

Exhibit A

April 8, 2014

Special Master Hawley:

The Fisher Plaintiffs, for the reasons cited in your 04/04/14 email, respectfully object to the appointment of Sal Galbadon as Director of Culturally Responsive Pedagogy and Instruction (CRPI Director). However well-regarded and qualified Mr. Galbadon may be in the field of English Language Learning (ELL), he does not appear to meet the minimum qualifications set forth in the Unitary Status Plan for the CRPI Director. The Fisher Plaintiffs are also concerned by the apparent anomalies in the hiring process. On the basis of these objections, the Fisher Plaintiffs ask that you make a report and recommendation to the Court.

Thank you,

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Exhibit B

From: Nancy Ramirez [nramirez@MALDEF.org]
Sent: Wednesday, April 09, 2014 1:31 PM
To: Willis D. Hawley
Cc: Lois Thompson (lthompson@proskauer.com); Rubin Salter, Jr. (rsjr3@aol.com); Anurima.Bhargava@usdoj.gov; Zoe.Savitsky@usdoj.gov; Brown, Samuel (Samuel.Brown@tusd1.org) (Samuel.Brown@tusd1.org); brammer@rllaz.com; julie.tolleson@tusd1.org
Subject: Mendoza Plaintiffs' Request for R&R Re CRPI Director Selection Process

Dear Dr. Hawley,

Mendoza Plaintiffs request a Report & Recommendation for the District's failure to follow the hiring process set forth in the USP for hiring the Culturally Relevant Pedagogy and Instruction Director, Salvador Gabaldón. The USP requires an interview committee including African American and Latino members for the hiring of administrators and that the committee is to "utilize a standard interview instrument with core uniform questions to be asked of each candidate that applies for that position and a scoring rubric." (USP IV, D, 1; USP IV, D, 3.) According to documents provided by the District, Mr. Gabaldón was not interviewed by the USP- required interview committee and was instead interviewed by Steven Holmes and Superintendent Sanchez. According to an email from the Special Master dated April 4, 2014, the interview committee interviewed 37 candidates and eight candidates met the minimum threshold. However, according to the same email from the Special Master, none of the eight was considered for the position because the process was "compromised" as a result of a "leak to the public from the panel." Mr. Gabaldón did not apply for the position and therefore apparently never responded in the manner of all other candidates to the "core uniform questions."

While the Special Master reported that the District “thought about starting the process again, but felt the need for the position was urgent,” Mendoza Plaintiffs do not believe that this was an acceptable reason to bypass the process set forth in the USP. In fact, in so far as they are able to determine, the need to fill the position was no more urgent when the process was “compromised” than it has been for months. While Mendoza Plaintiffs have been concerned about the extensive delay in filling this position and while they have tremendous respect for Mr. Gabaldón, they are also concerned about how quickly the selection process was aborted based on it being “compromised.” The District could have assembled a new interview team and re-interviewed all eight candidates; it could have rescreened all 37 candidates and gone through interviewing the top eight candidates or done a myriad of other things to execute some damage control in dealing with the “compromise.” Instead, the District simply abandoned all applicants and top candidates and “resolved” the “compromise” by imposing yet another compromising employment practice by recruiting a single non-applicant to meet or be interviewed by Mr. Holmes and Supt. Sanchez. Last year when Mendoza Plaintiffs expressed concern over the length of time to fill this position they were informed that the District was undertaking a national search in order to hire the best person for the job. It is therefore of concern to them that regardless of the respect they have for Mr. Gabaldón the District abandoned the national search for the best possible candidate and hired Mr. Gabaldón outside the mandated process.

Mendoza Plaintiffs object to the District’s failure to follow the process set forth in the USP for hiring the CRPI Director.

Mendoza Plaintiffs further request that the Special Master and/or the Implementation Committee determine whether the District has been following the USP-required process for hiring other administrative positions given Mr. Holmes’ troubling statement that the hiring process for Mr. Gabaldón “is within the established protocols for the hiring of director level positions, wherein both Dr. Sanchez and [he] reviewed ...qualifications and conducted an in-depth interview...” and that if it has not been doing so, that the Plaintiffs immediately be informed so that they may seek whatever further relief may be appropriate.

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