

1 Anurima Bhargava
Zoe M. Savitsky (CA # 281616)
2 U.S. Department of Justice
601 D Street, NW Suite 4300
3 Washington, DC 20004
Telephone: (202) 305-3223
4 zoe.savitsky@usdoj.gov
Attorney for Plaintiff-Intervenor
5

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

7 ROY and JOSIE FISHER, et al.,)
8 Plaintiffs,)

9 UNITED STATES OF AMERICA,)
10 Plaintiff-Intervenor,)

11 vs.)

12 ANITA LOHR, et al.,)
13 Defendants,)

14 and)
15 SIDNEY L. SUTTON, et al.,)
Defendants-Intervenors.)

16 MARIA MENDOZA, et al.,)
17 Plaintiffs,)

18 UNITED STATES OF AMERICA,)
19 Plaintiff-Intervenor,)

20 vs.)

21 TUCSON UNIFIED SCHOOL)
DISTRICT NO. ONE, et al.,)
22 Defendants.)

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

UNITED STATES' RESPONSE TO
THE SPECIAL MASTER'S
REPORT AND RECOMMENDATION
REGARDING THE APPOINTMENT
OF THE DIRECTOR FOR
CULTURALLY RESPONSIVE
PEDAGOGY AND INSTRUCTION

I. Introduction

1
2 Plaintiff-Intervenor the United States Department of Justice (“United States” or
3 “DOJ”), by and through counsel here undersigned, responds to the Special Master’s April
4 29, 2014 Report and Recommendation (ECF No. 1579) (“April 29, 2014 R&R”) on the
5 appointment of Salvador Gabaldón as Director of Culturally Responsive Pedagogy and
6 Instruction (“CRPI Director”). Based on the facts in the record, the United States does not
7 object to the CRPI Director appointment.

II. Procedural History

8
9 On February 6, 2013, this Court adopted the Parties’ negotiated Unitary Status Plan
10 (“USP”). One of its provisions, USP § (V)(E)(4)(c), requires the District to “hire or
11 designate” a CRPI Director. In September 2013, the District’s Director of Academic
12 Equity for Asian and Pacific Student Services was designated as the Acting CRPI Director
13 while the District conducted a search to permanently fill this position. Exhibit to April 29,
14 2014 R&R (ECF No. 1579-1) (“R&R Exhibit”) at 4. From September 2013 through
15 March 2014, the District sought applications and interviewed potential candidates for the
16 position. *Id.* at 4-5. Based on the documents provided, the interview committee, when
17 constituted, complied in composition with USP § (IV)(D)(1). *Id.* at 4, 18. In March 2014,
18 the District reports that its interview process had been compromised, and could therefore
19 no longer be considered a fair process. *Id.* at 5, 44-47, 49-50. On March 11, 2014, the
20 District’s Governing Board approved the designation of Salvador Gabaldón as CRPI
21 Director. On April 4, 2014, the District, through the Special Master, provided the *Fisher*
22 Plaintiffs, the *Mendoza* Plaintiffs, and the United States with materials related to the CRPI
23
24

1 Director hiring and designation process. *Id.* at 1. On April 8, 2014, the *Fisher* Plaintiffs
2 submitted a request for a Report and Recommendation on the CRPI Director appointment.
3 *Id.* at 1, 29. On April 9, 2014, the *Mendoza* Plaintiffs also submitted a request for a Report
4 and Recommendation on the appointment. *Id.* at 2, 33. On April 29, 2014, the Special
5 Master filed the Report and Recommendation to which this filing responds.

6 **III. United States' Response**

7 USP § (V)(E)(4)(c) requires the District to “hire *or* designate an individual who
8 shall supervise the implementation of courses of instruction that focus on the cultural and
9 historical experiences and perspectives of African American and Latino communities” and
10 to “supervise, develop and implement a professional development plan . . . on how best to
11 deliver these courses of instruction and to engage African American and Latino students.”
12 USP at 36 [emphasis added]. The provision also lists certain qualifications for this
13 individual: specifically, that they “have experience developing and teaching curriculum
14 focused on the African American and/or Latino social, cultural, and historical experience
15 at the secondary level.” *Id.*

17 USP § (IV)(D) contains requirements for any hiring process for, among others,
18 administrators such as the CRPI Director. The USP does not contain requirements for the
19 process by which the District designates an individual to fill a position. The USP also does
20 not require that, once the District attempts to hire or designate an individual for any “hire
21 or designate” position, that the District proceed only with that means of filling the position.
22 The USP contains no prohibitions against deciding to hire rather than designate for a “hire
23 or designate” position once a designation process has begun, and vice versa.
24

1 Mr. Gabaldón was designated to fill the CRPI Director position after the
2 Superintendent and the Assistant Superintendent for Curriculum and Instruction
3 interviewed him and reviewed his qualifications. R&R Exhibit at 6-7, 9, 49-50. The
4 Governing Board subsequently designated him to fill the position on March 11, 2014. *Id.*
5 at 1. Because the USP permits designation to this role, and does not contain requirements
6 for the designation process, the District's designation of Mr. Gabaldón to the CRPI
7 Director position complied with the USP-mandated process. Further, the District has
8 provided evidence that Mr. Gabaldón meets the qualification requirement in the USP that
9 the CRPI Director have "experience developing and teaching curriculum focused on the
10 African American and/or Latino social, cultural, and historical experience at the secondary
11 level." USP at 36; R&R Exhibit at 9-17, 49-50 (detailing, among other things, Mr.
12 Gabaldón's more than a dozen years of experience in TUSD developing and teaching
13 multicultural literature with an emphasis on Mexican American literature at the high
14 school level). With no information in the record indicating that Mr. Gabaldón does not
15 meet the qualifications for the position as described in the USP, the United States does not
16 object to his designation.
17

18 **IV. Conclusion**

19 Based on the foregoing, the United States does not object to the process of
20 designating Mr. Gabaldón to the position of CRPI Director, nor to Mr. Gabaldón's
21 qualifications for the position.
22
23
24
25
26

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

Respectfully submitted, this 12th day of May, 2014,

/s/ Zoe M. Savitsky

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

ANURIMA BHARGAVA, Chief
ZOE M. SAVITSKY
Educational Opportunities Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Suite 4300
Washington, D.C. 20530
Tel: (202) 305-3223
Fax: (202) 514-8337

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2014, 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:

William Brammer
Oscar S. Lizardi
Michael J. Rusing
Patricia L. Victory
Rusing, Lopez & Lizardi, PLLC
6363 N. Swan Rd., Suite 151
Tucson, Arizona 85718

Julie C. Tolleson
Tucson Unified School District
Legal Department
1010 E 10th St.
Tucson, AZ 85719

Rubin Salter, Jr., Esq.
Kristian H. Salter
177 N. Church Ave., Suite 903
Tucson, Arizona 85701-1119

Lois D. Thompson
Jennifer L. Roche
Proskauer Rose LLP
2049 Century Park East, Suite 3200
Los Angeles, California 90067

Nancy Ramirez
MALDEF
634 S. Spring Street, 11th Floor
Los Angeles, California 90014

I hereby certify that on May 12, 2014, I electronically transmitted the attached document to the following, who is not a CM/ECF registrant:

Dr. Willis Hawley
2138 Tawes Building, University of Maryland
College Park, MD 20742
wdh@umd.edu