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**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 Plaintiffs Fisher and Plaintiffs Mendoza called for a Report and Recommendation
2 (R&R) relating to the Appointment of the Director of Culturally Responsive Pedagogy and
3 Instruction (CRPI). The Special Master filed the R&R on April 29, 2014. He made certain
4 recommendations, which he withdrew May 23, 2014, after reaching certain agreements with
5 TUSD. There remain two areas of dispute between Plaintiffs and TUSD,¹ both pertain to the
6 Unitary Status Plan (USP), § V.E.4.c, requirements for the CRPI Director, which provides
7 as follows:

8 Director of Culturally Responsive Pedagogy and Instruction (“CRPI Director”). The
9 District shall hire or designate an individual who shall supervise the implementation
10 of courses of instruction that focus on the cultural and historical experiences and
11 perspectives of African American and Latino communities. The CRPI director shall
12 also supervise, develop and implement a professional development plan for
13 administrators, certificated staff, and paraprofessionals, as appropriate, on how best
14 to deliver these courses of instruction and to engage African American and Latino
15 students. The CRPI director shall have experience developing and teaching
16 curriculum focused on the African American and/or Latino social, cultural, and
17 historical experience at the secondary level.

18 USP § V.E.4.c. As well, the USP provides specific procedures in § IV.D.1 for hiring
19 administrators and certificated staff, which are as follows:

20 1. The District shall ensure that interview committees for the hiring of
21 administrators and certificated staff include African American and/or Latino
22 members. For school site-level hiring, the principal shall submit to the
23 District human resources department the names and race/ethnicity of the
24 members of each interview panel. For District-level hiring, the individual
25 who selects the hiring panel shall also submit this information to the District
26 human resources department.

27 3. Each interview committee, at both the site level and district level, shall
28 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 and .3.

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¹The Intervenor Plaintiff, the United States, does not object to the R&R for reasons which appear to be consistent with TUSD’s interpretation of USP’s hiring requirements , § IV.D.1 and .3, applicable to hiring decisions made by designation. (U.S. Resp. (Doc. 1587)).

1 The Mendoza Plaintiffs do not object to Dr. Gabaldón's qualifications, but the Fisher
2 Plaintiffs and the Special Master point out there is no evidence that Dr. Gabaldón is qualified
3 to determine CRPI for African-American students. Plaintiffs Mendoza object to the
4 divergence by TUSD from the hiring protocol required by USP § IV.D.1 and .3. TUSD
5 replies that the hiring protocol does not apply when it chooses to "designate" an individual
6 for a position rather than "hire" him or her to fill a position.

7 The Special Master believes that both Plaintiffs' concerns have serious implications
8 for the case: 1) the smaller-class Fisher Plaintiffs' interests must not be overborne by the
9 much larger-class Mendoza Plaintiffs' interests, and 2) whether there is an exception to the
10 USP hiring procedures if TUSD chooses to fill a mandatory administrative and certificated
11 position with a current rather than a new employee. The Special Master, however, believes
12 that for the time being agreements by TUSD, made subsequent to the filing of the R&R,
13 resolve his concerns. He, accordingly, withdraws his recommendations.

14 The Agreement.

15 As the Court understands the agreement: Dr. Gabaldón is serving as Acting Director,
16 and TUSD is involved in a national search and hiring process, meeting the procedures
17 required in USP § IV.D.1 and .3, for a permanent Director of CRPI, who will meet the
18 qualifications required by USP § V.E.4.c.

19 In its Response, TUSD objects to the Special Master's recommendation that this
20 Court "approve the appointment of Dr. Galbadon (sic) as Acting Director of CRPI . . . and
21 the initiation of the new search for a CRPI Director," (Response (Doc. 1584) at 6-7 (quoting
22 R&R (Doc. 1579) at 3) because "the USP neither requires nor permits court approval of the
23 CRPI appointment or hiring." *Id.* at 7. Inconsistently, TUSD asks the Court to approve the
24 agreement between it and the Special Master, *id.*, "[s]o TUSD may begin a new hiring
25 process for a permanent CRPI Director to be completed by the end of the calendar year." *Id.*

1 Given the District's position regarding its autonomy to act in regard to the CRPI Director,
2 the Court presumes it has moved forward, pursuant to the agreement.

3 As the Special Master has withdrawn his recommendations, the Court does not need
4 to address its authority to approve or disapprove the CRPI appointment or hiring. As
5 requested by TUSD, the Court approves the agreement between TUSD and the Special
6 Master for Dr. Gabaldon to serve as the Acting Director and for hiring a new CRPI Director,
7 pursuant to USP § IV.D.1 and .3 and § V.4.E.4.c, to be completed by the end of the calendar
8 year: December 31, 2014.

9 Conclusion

10 As for the Fisher Plaintiffs concern that Dr. Gabaldón lacks CRPI experience with
11 respect to African Americans, the Court notes, pursuant to the agreement between the Special
12 Master and TUSD, that Dr. Jacqueline Jordan Irvine, Professor of Urban Education in the
13 Division of Educational Studies at Emory University, may serve as the African American
14 CRPI expert for the hiring and selection process currently underway. She serves at no cost
15 to the District; the Special Master is paying for her to serve in this capacity. The Court directs
16 the District to use Dr. Irvine's services to assist Dr. Gabaldón, also at no cost to the District.

17 As for the Mendoza Plaintiff's concern regarding TUSD's interpretation that the
18 hiring procedures in USP § IV.D.1 and .3 do not apply if it "designates" a current TUSD
19 employee to fill a position, the Court calls for further briefing because TUSD is allowed to
20 designate or hire employees to fill a vast number of positions mandated under the USP. For
21 example, USP § II, Student Assignment, requires hiring or designating a Director of Student
22 Assignment, § .c.1, and Director-level employee responsible for the magnet program. The
23 USP § IV.B, Administrators & Certificated Staff: Personnel, requires hiring or designating
24 a Director of ORR, § .2, Director of Professional Development, § .3, and § I, Professional
25 Support provides for designating or hiring New Teacher Mentors, § .1, and § J, Professional
26 Development, provides the same for ORR trainers, § .2. The USP § V, Quality of Education

1 requires designating or hiring of an employee to coordinate Advanced Learning Experiences
2 (ALE), Gifted and Talented Programs (“GATE), University High School (UHS), etc., § A.2,
3 and § E, Student Engagement and Support requires designating or hiring an Academic and
4 Behavioral Support Coordinator, § 2.a, and § 4.a-d, Personnel, requires designating or hiring
5 the Director of African American Student Achievement, Director of Latino Services and
6 Student Achievement, Director of CRPI, and Director of Multicultural Curriculum. The USP
7 § VI.C.1 and 2, Disciple: Personnel, requires designating or hiring both a District and Site
8 Restorative and Positive Practices Coordinator, and § .E requires the same for trainers for
9 professional development. The USP § VII.B.2, Family and Community Engagement,
10 requires designating or hiring a Family Engagement Coordinator. Finally, USP § X.A2,
11 Accountability, requires designating or hiring an employee to review data collection and
12 tracking. Obviously, TUSD’s position has broad implications reaching beyond the
13 procedures applicable for filling the CRPI Director position.

14 **Accordingly,**

15 **IT IS ORDERED** that the R&R (Doc. 1579) is WITHDRAWN.

16 **IT IS FURTHER ORDERED** that the agreement (TUSD Response (Doc. 1584),
17 Brammer Decl. ¶ 3, Ex. A: Hawley email: 4/24/2014) is approved.

18 **IT IS FURTHER ORDERED** that by December 31, 2014, TUSD shall file a Notice
19 with the Court that is has hired a CRPI Director in full compliance with the herein approved
20 agreement. THERE SHALL BE NO EXTENSIONS OF TIME as the December 31, 2014,
21 deadline is almost two years after the February 20, 2013, adoption by this Court of the USP
22 which mandated the hiring of the CRPI Director.

23 **IT IS FURTHER ORDERED** that the District shall use the interim services of Dr.
24 Irvine as the CRPI expert to resolve Plaintiffs Fisher’s concerns regarding Dr. Gabaldón’s
25 limited experience in CRPI relevant to African Americans.

