

EXHIBIT C

February 8, 2015

To: Parties

From: Bill Hawley

Re: Fisher Request for R&R on Appointment of CRPI Director: Initial Findings\

The Fisher plaintiffs have requested a Report and Recommendation challenging the appointment of the Director for Culturally Responsive Pedagogy and Instruction. I have invested a considerable amount of time trying to get at the facts relating to this appointment, a quest complicated by the fact that the district shared some key information about this appointment with the Fisher plaintiffs and with me that was not accurate.

Because objections to this appointment were based in part on misinformation, before I submit a Report and Recommendation, I want to summarize my findings thus far to determine whether the Fisher plaintiffs still want to pursue an R&R.

There appear to be three reasons why this appointment could be denied:

1. The candidate did not meet the minimal qualifications set forth in the job description.
2. The process for recruitment was so flawed as to result in *de facto* discrimination; that is, the process significantly limited or discouraged qualified candidates-- in this case, given the Fisher objections, African American candidates.
3. Discrimination or bias resulted in the selection of a candidate who was not the best qualified candidate.

Qualifications

It is clear that the candidate appointed, Lorenzo Lopez Jr., does not meet the qualifications set out in the job description shared with the plaintiffs and with me that was used by the Fisher plaintiffs in their request for an R&R. However, the district now asserts and provides documentation accordingly (see Attachment

dated 2-3-15), that the job description posted on its website to which the job announcement referred interested candidates was a job description proposed by the consultant used by the district (and recommended by me), Dr. Jacqueline Jordan Irvine. As the February 3, 2015 shows, the job description posted and used by the interview committee and to which candidates responded is significantly different from the job description that the district has shared up until the last few days. Mr. Lopez does meet the qualifications of the posted job announcement. See attachment dated January 30, 2015

Process

Those aspects of the appointment process specified in the USP—a standard set of questions and racially diverse search and interview committees—are met. However, the process was seriously flawed. Too little time was given for responses, the position statement says nothing of the unique and important role to be played and doesn't anticipate concerns that might be expected given the attacks by the state, and was not sent to sources with great potential to yield candidates. And, while it may be pro forma, neither the job announcement nor the job description included a statement that TUSD is an equal opportunity employer, a phrase or its equivalent that is a common code for welcoming diverse applicants.

The Fisher plaintiffs argue that these flaws explain why only three African Americans applied. The question is whether these flaws affected the quality and diversity of the candidate pool to the extent that it is likely that highly qualified African American candidates would have applied. There is no way, of course, to know the answer to this question.

A better search process would almost certainly have yielded a larger and more diverse pool. The District asserts that this search was posted for a month, a much longer period than is common. While it is disturbing that job announcements for key positions typically give a week for responses to job announcements, it suggests that there was no intent to limit the applications so as to favor "internal" candidates. Note that sending a job announcement to a national organization does not mean that the announcement is posted immediately, if at all.*

The initial information provided by the District about where the job announcement was publicized indicated that it was sent to the National Association of State Boards of Education. The Fisher plaintiffs rightfully point out that the sending of the job announcement to this organizations would not be appropriate. However, it turns out that the position announcement was sent to the National Association of Black Educators, a more like source of applicants though hardly the best place to advertise such a position.

Few candidates would have experience in developing and teaching culturally relevant courses or have CRP expertise for both Latino and African American students (that is apparently the case for teachers who taught culturally relevant courses in TUSD). And, because much of the success of the MAS program--which is used as justification for the inclusion of the requirement for CRC courses in the USP--had to do with the role teachers played, Mr. Lopez, having worked as a teacher in the MAS program, brings experience to the position an external candidate would be unlikely to have.

Discrimination

Since no African American candidates completed the application (only three African American individuals expressed interest), there was no qualified African American candidate and, therefore, no overt discrimination. One candidate was offered another position in TUSD which was accepted. Unfortunately, there was no effort to discover why the other two African American candidates (one local and one external) who expressed some interest did not follow through and complete the application.

Conclusion

If I were to prepare and R&R, I would go into more detail on each of these points but would recommend that the appointment be sustained. In discussions with the district, I have learned that the district is committed to engage a panel of experts to review the CRC courses and the elements of professional development particularly relevant to CRP. It is also prepared to engage an African American

expert on CRP who would advise Mr. Lopez on the aspects of CRP that are especially important to the success of African American students.

The Fisher plaintiffs have every right to insist on my submitting an R&R and to object to the conclusions I reach. But, given that some of the Fisher objections were based on misinformation and the commitments to ensure that issues related to CRP that are especially relevant to African American students, I wanted to share this with the parties before submitting an R&R.