

EXHIBIT F-1



LEGAL DEPARTMENT
P.O. BOX 40400
1010 EAST TENTH STREET
TUCSON, ARIZONA 85717-0400

Julie C. Tolleson, General Counsel
Nancy H. Woll, Legal Counsel
Samuel E. Brown, Legal Counsel

Telephone (520) 225-6040
Facsimile (520) 225-6651
Email: Julie.tolleson@tusd1.org

January 26, 2015

To: Dr. Willis D. Hawley *transmitted via email only to* wdh@umd.edu
From: Samuel E. Brown, Legal Counsel
Re: TUSD Response to Fisher Request for Report and Recommendation re CRPI Director

Dear Dr. Hawley:

On January 15, 2015, the Fisher Plaintiffs requested a Report and Recommendation related to TUSD's hiring of a Director of Culturally Responsive Pedagogy and Instruction ("CRPI Director"). Please find below TUSD's response to the Fisher request, including supporting documents attached.

I. The Hiring and Application Process was Appropriate

A. Duration of National Search

The Fisher Plaintiffs assert the search for a CRPI Director did not "meet the standards of true national applicant search," yet they do not state an appropriate standard other than to request that a renewed national search "be left open for a minimum of ninety (90) days." (Fisher Request for R&R, January 15, 2015, "Request"). As a matter of established practice and protocol, TUSD posts vacancies/available positions for a period of seven days. (Affidavit of CHRO Anna Maiden, Attachment 1, ¶3). In hiring the Director of Culturally Responsive Pedagogy and Instruction ("CRPI Director"), the position was held open for more than four times TUSD's minimum search duration. (Id., ¶3). TUSD typically posts positions for a period of 14-20 days; it is rare that TUSD posts a vacancy for 30 days or more. (Id., ¶4). There is no evidence that the

30 day time limit unreasonably restricted the applicant pool, nor any indication that it disparately impacted any particular group of candidates.

It is also important to consider the nature of the position. A potential applicant conducting a basic level of online research would quickly discover that this position is politically charged, that he or she would be in the middle of an ongoing controversy between the interests of plaintiffs in a federal court case and the interests of the State of Arizona, and that former CRPI Directors had been subjected to intense criticism, personal and professional attack, and public vitriol. Over the past few years, the ethnic studies issue has been a source of adverse publicity for Arizona generally, and specifically for TUSD. While it is impossible to know for sure, it is likely that negative publicity contributed more to the low numbers of applicants than the duration of the posting.

B. Scope of National Search

TUSD's Outreach, Recruitment, and Retention Plan includes a list of national entities with whom TUSD would collaborate to advertise "open Administrator and Certificated Staff positions," including Teachers of Color Magazine (renamed "Diversity Recruitment Partners in Education"), HBCUs, and the National Alliance of Black School Educators (NABSE)¹. TUSD advertised the CRPI position on its website and with all three of the above-referenced national online venues. (Id., ¶6). Of the three venues, the first is geared towards diversity recruitment; the latter two specifically target recruitment of African American candidates. (Id., ¶6).

C. Interview Panel Composition

The composition of the panel reflects how seriously TUSD treated this process. The interview panel included a diverse collection of the highest leadership staff in TUSD, including: the General Counsel, the Deputy Superintendent for Teaching & Learning, two Assistant Superintendents, and the Chief Human Resources Officer. The panel included three Latinos, one African American, and one Caucasian.. (Affidavit of CHRO Anna Maiden, Attachment 1, ¶7). The USP does not require "stakeholder representation" for this or for any other USP position. The USP requires TUSD to "ensure that interview committees for the hiring of administrators and certificated staff include African American and/or Latino members." (USP § IV(D)(1)). The interview panel for this position included three Latinos, one African American, and one Caucasian. (Affidavit of CHRO Anna Maiden, Attachment 1, ¶7). Nothing in the USP suggests that this position should be filled in a manner different from the process used for hiring at the highest levels. The concept of "stakeholder representation" on the interview panel is without

¹ On January 8, 2015, TUSD responded to your January 4, 2015 request for information related to the CRPI Director hiring process. In its response, TUSD stated that one of the entities with which it had advertised was "NASBE." This specific response had a typo: TUSD advertised the position with the National Alliance of Black School Educators (NABSE), not the National Association of State Board Educators (NASBE). (See Affidavit of CHRO Anna Maiden, Attachment 1, ¶5).

precedent in TUSD practice and nowhere mentioned in the Unitary Status Plan. TUSD does not use outside personnel on interview panels for any of its hiring at the Director level or above under its current practices. (Id., ¶8). The interview panels consist of internal leadership in order to protect confidentiality and to ensure that the panel includes those most familiar with the work required by the position. (Id., ¶8).

II. The Selected Candidate is Qualified for the Position

Mr. Lorenzo Lopez meets the qualifications set forth in the job description, and the requirements set forth in the USP. Prior to the job posting, TUSD utilized the services of an outside consultant, Dr. Jacqueline Irvine. (Affidavit of Assistant Superintendent Steve Holmes, Attachment 2, ¶3). Dr. Irvine is an African American expert in Culturally Responsive Pedagogy (CRP) who was recommended by the Fisher Plaintiffs. (Id., ¶3). In her role, Dr. Irvine provided feedback and consultation to our Human Resources department in developing the job description, the job announcement, and the interview questions. (Id., ¶4). TUSD utilized Dr. Irvine's proposed interview questions verbatim, with the exception of a single question added by TUSD related to climate. (Affidavit of CHRO Anna Maiden, Attachment 1, ¶9).

The USP requires the CRPI Director to "supervise the implementation of courses of instruction that focus on the cultural and historical experiences and perspectives of African-American and Latino communities." (USP § V(D)(4)(c)). The USP does not require the CRPI Director to have educational experience related to both Latino and African American cultural communities. Likewise, the job description requires the candidate to have experience "in instruction and culturally responsive pedagogy, as well as related areas in curriculum and Ethnic Studies, Cultural studies, Mexican American Studies, African American Studies, Urban Education, Multicultural Education *or* a related field." (See Attachment 3, Job Description, *emphasis added*).

Culturally responsive pedagogy and instruction will benefit all students without regard to race, which is likely why the USP states that the CRPI Director "shall have experience developing and teaching curriculum focused on the African American *and/or* Latino social, cultural, and historical experience at the secondary level." (See USP § V(E)(4)(c), *emphasis added*). That is, the CRPI Director is not responsible for curriculum development, although he or she may have a consulting role. Rather, per the USP, the CRPI Director serves two main functions: supervising the implementation of CRC courses; and supervising, developing and implementing a professional development plan to strengthen culturally relevant instruction and student engagement.

To support Mr. Lopez, many of the critical curriculum positions in TUSD are held by African Americans, including the Sr. Director of Curriculum Deployment (Richard Foster) the Sr. Director of Curriculum Development (Clarice Clash), and the Director of Multicultural Curriculum (Desiree Cueto). (Affidavit of Assistant Superintendent Steve Holmes, Attachment

2, ¶5). African Americans are well represented in TUSD’s curriculum leadership. Further, TUSD is seeking assistance from an expert with experience teaching curriculum focused on the African American social, cultural, and historical experience to enhance the quality and content of its culturally relevant course. (Id., ¶6).

Finally, Mr. Lopez’s educational career has been in Arizona, a state with a high Latino population, and in TUSD, a district that is two-thirds Latino. In his letter to the Curriculum Department, Mr. Lopez discusses his experiences and conveys his passion – he is not showing bias towards one or another group. Mr. Lopez ends his letter by stating that it is his desire “to continue to affect change within the field of education; specifically as it relates to the equitable educational outcomes of *students of color*.” (October 29, 2014 Letter to the Curriculum, Instruction, and Professional Development Department, Attachment 4, pg. 5, *emphasis added*). If the selected candidate had come from an HBCU, or if the candidate’s career had been exclusively in a region with a high African American population, he or she would have likely spoken about their experiences related to African American students, but not necessarily Latino students.

III. Request

For the reasons set forth above, TUSD requests that you deny the Fisher Plaintiffs’ request in its entirety. It is critical to the success of both the specific CRC classes as well as the expansion of training and mentoring faculty in culturally responsive practices that this position not remain under a cloud of uncertainty.

Attachments:

- 1 – Affidavit of Anna Maiden
- 2 – Affidavit of Steve Holmes
- 3 – Job Description
- 4 – Lorenzo Lopez CV and October 29, 2014 Letter to the CIPD Department