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United States of America v. Tucson Unified School District

Judge David C. Bury

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United States of America v. Tucson Unified School District

Keywords

United States of America, Tucson Unified School District, CV-11-471-TUC-DCB, Education, National Origin, Sex, Female, Hostile Work Environment

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CV-11-471-TUC-DCB
)	
TUCSON UNIFIED SCHOOL DISTRICT,)	
)	
Defendant.)	
)	

CONSENT DECREE

This action was brought by the United States against the Tucson Unified School District (“TUSD”) to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., as amended (“Title VII”), following receipt by the United States from the Equal Employment Opportunity Commission (“EEOC”) of charges of discrimination filed by Donna Guzman (“Guzman”) (EEOC Charge No. 35A-2008-00376C) and Marcia Vela (“Vela”) (EEOC Charge No. 35A-2008-00378C). This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S.C. § 1345.

In its Complaint, the United States alleges that the TUSD discriminated against Guzman and Vela, as well as similarly-situated employees, including Veronica Leon (“Leon”), Santiago Miranda (“Miranda”) and Eddie Montano (“Montano”), in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e- 2(a), by subjecting them to a hostile work environment based on sex and/or national origin.

The TUSD denies that it has discriminated against Guzman, Vela, Leon, Miranda or Montano on the basis of their sex and/or national origin in violation of Title VII. Nevertheless, the United States and the TUSD, desiring that this action be settled by an appropriate Consent Decree (“Decree”), and without the burden and risks of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The parties also hereby waive, for purposes of entry of this Decree only, hearings and findings of fact and conclusions of law on all issues, and further agree to the entry of this Decree as final and binding between them with regard to the issues raised in the United States’ Complaint in this case.

This Decree, being entered into with the consent of the United States and the TUSD, shall in no way constitute an adjudication or finding on the merits of the case, nor be construed as an admission by the TUSD or a finding of any wrongdoing or violation of any applicable federal law or regulation.

In resolution of this action, the parties hereby AGREE to entry of this Consent Decree.

Accordingly,

IT IS ORDERED that this Court expressly **GRANTS** the motion to enter the consent decree (Doc. 2) and **APPROVES, ENTERS and ORDERS** the following:

I. DEFINITIONS AND PARTIES

1. The parties to this Decree are the United States of America and the Tucson Unified School District.

2. The terms “supervisor,” “site-administrator” and “director” include all employees of the TUSD who manage, supervise, and/or have authority to affect the hiring, firing, discipline, assignments, or pay rates of employees of the TUSD, and all persons who establish or enforce

policies or regulations for the TUSD.

3. Donna Guzman, Marcia Vela, Veronica Leon, Santiago Miranda and Eddie Montano are referred to collectively hereinafter as the “complainants.”

4. The Equal Employment Opportunity Commission is referred to hereinafter as the “EEOC.”

5. The term “EEO Compliance Officer” refers to the individual designated by the TUSD under its discrimination policies and regulations for receiving and investigating complaints of discrimination.

6. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq., is referred to hereinafter as “Title VII.”

7. “Sex and/or national origin discrimination” is any act that is prohibited under Title VII’s prohibitions against sex discrimination and/or national origin discrimination, which includes the creation of a hostile work environment based on sex and/or national origin.

8. “Day” or “days” refers to calendar and not business days unless otherwise noted.

9. “Date of entry of this Decree” refers to the date that the Court orders entry of the Decree.

II. PURPOSES OF THIS DECREE

10. The purposes of this Decree are to ensure that:

(a) the TUSD does not subject any employee or applicant for employment to discrimination on the basis of sex and/or national origin in violation of Title VII;

(b) the TUSD maintains and enforces clear, meaningful and well-publicized policies and regulations prohibiting discrimination based on sex and/or national origin, and retaliation for

complaints of sex and/or national origin discrimination in all of its facilities;

(c) the TUSD provides adequate training to TUSD employees, supervisors, administrators and officials concerning Title VII's prohibitions against sex and/or national origin discrimination and retaliation, and the TUSD's policies and regulations prohibiting sex and/or national origin discrimination and retaliation in the workplace; and

(d) the TUSD offers the complainants appropriate remedial relief.

III. GENERAL INJUNCTIVE RELIEF

11. The TUSD, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:

(a) subjecting any employee or applicant of the TUSD to discrimination based on sex and/or national origin;

(b) creating, facilitating, or tolerating a hostile work environment within the meaning of Title VII based on sex and/or national origin; and

(c) retaliating against any employee or applicant for opposing discrimination based on sex and/or national origin, making a complaint of discrimination based on sex and/or national origin, or assisting or participating in the investigation of a complaint of discrimination based on sex and/or national origin.

IV. POLICIES AND REGULATIONS ON SEX AND/OR NATIONAL ORIGIN DISCRIMINATION

12. Within thirty (30) days from the date of entry of this Decree, the TUSD shall review and propose revisions to its written policies and regulations that prohibit discrimination (including harassment) on the basis of sex and/or national origin, and provide a copy of its proposed revisions to the United States. Within twenty-one (21) days of its receipt of

the proposed revised policies and regulations, the United States shall either notify the TUSD in writing of its approval of the proposed revised policies and regulations or shall recommend changes. If the parties cannot agree regarding any recommended changes, either party may submit the dispute for resolution by the Court in accordance with Paragraph 28, infra. The TUSD shall ensure that the following are included in its proposed revisions to its non-discrimination policies and regulations:

- (a) a clear statement setting forth the prohibitions contained in Paragraph 11, supra;
- (b) a statement that the TUSD will investigate complaints of harassment based on sex and/or national origin promptly (but, in the case of investigations by on-site administrators or their designees, in no event later than fourteen (14) days after receipt of a complaint the on-site administrator or designee shall submit the initial investigation to the EEO Compliance Officer);
- (c) a statement that when complaints of discrimination based on sex and/or national origin are found to warrant responsive action by supervisors or administrators, supervisors or administrators will take reasonable action to correct such discrimination and prevent future recurrence, up to and including possible termination;
- (d) a statement that the TUSD's EEO Compliance Officer will be responsible for monitoring all actions taken by supervisors or administrators in response to complaints of discrimination based on sex and/or national origin, including receipt, investigations and resolutions of such complaints, as well as actions taken by supervisors or administrators in response to such complaints. Where necessary

to ensure compliance with Title VII and the TUSD's written policies and regulations, the EEO Compliance Officer shall take steps to amend, supplement or modify any such investigation, resolution or responsive action taken by supervisors or administrators; and

- (e) a statement that administrators or supervisors who fail to report a complaint of discrimination based on sex and/or national origin to the EEO Compliance Officer or otherwise fail to comply with the TUSD's policies and regulations regarding such discrimination will be subject to appropriate discipline, pursuant to such policies and regulations.

13. Within sixty (60) days of the entry of the Decree, the TUSD shall take all actions necessary to adopt its revised sex and/or national origin discrimination policies and regulations.

14. Within seventy-five (75) days after the date of entry of this Decree, the TUSD, through a designated supervisory employee, shall cause copies of the revised sex and/or national origin discrimination policies and regulations to be distributed to each current employee of the TUSD and shall certify to the United States that such distribution has taken place. The TUSD shall ensure that all future employees receive copies of such policies within fifteen (15) days of the date of hire.

15. The TUSD shall post its revised sex and/or national origin discrimination policies and regulations in prominent, conspicuous, centrally-located places commonly used for posting notices (e.g., bulletin boards) in all TUSD buildings and administrative offices. The TUSD shall designate one supervisory employee at each facility of the TUSD who is responsible for ensuring that these documents remain posted, that they are not defaced or altered in any fashion, and if

they are defaced or altered in any fashion, that they are immediately replaced.

V. TRAINING

16. Within one hundred twenty (120) days from the date of entry of this Decree, the TUSD shall provide mandatory training regarding Title VII's prohibitions against discrimination based on sex and/or national origin and retaliation to all directors, site-administrators and appointed and elected officials. Such training shall specifically include discussion of the written policies and regulations maintained by the TUSD pursuant to Paragraphs 12 and 13, supra. Such training shall specifically include discussion of:

- (a) the responsibilities of directors and site-administrators regarding receipt of complaints of discrimination and retaliation, including reporting the receipt of such complaints of discrimination and retaliation to the EEO Compliance Officer;
- (b) the responsibilities of directors and site-administrators regarding the proper investigation of such complaints of discrimination and retaliation;
- (c) the responsibilities of directors and site-administrators regarding the appropriate resolution of such complaints of discrimination and retaliation; and
- (d) the possible disciplinary consequences resulting from the non-compliance of directors and site-administrators with the TUSD's policies and regulations prohibiting discrimination based on sex and/or national origin and retaliation.

17. No later than sixty (60) days following the entry of this decree, the TUSD shall submit to the United States for review and approval the materials to be used during the proposed training, together with a list of all directors, site-administrators and appointed or elected officials

who will receive the training. If the TUSD and the United States cannot reach agreement on the suitability of the training program or materials proposed by the TUSD, either party may move for a resolution of the issue as provided for under Paragraph 28, infra.

18. Within thirty (30) days following the completion of the training required by Paragraph 16, supra, the TUSD shall make available to the United States written attendance records reflecting that the training has been completed and that all directors, site-administrators and appointed and elected officials required to attend such training in accordance with Paragraph 16 in fact did so.

VI. EVALUATION OF EMPLOYEES

19. Within sixty (60) days after the date of entry of this Decree, the TUSD shall adopt, as a criterion for evaluating the performance of all employees who have supervisory or managerial authority over other employees of the TUSD, a factor that takes into account those employees' awareness of and compliance with the TUSD's sex and/or national origin discrimination policies and regulations.

VII. INDIVIDUAL RELIEF FOR THE COMPLAINANTS

20. Without admitting the allegations of the United States as set forth in its Complaint, and in settlement of the claims of the United States for relief on behalf of the complainants, the TUSD shall offer the complainants individual monetary awards in the following amounts in compensatory damages:

- (a) Donna Guzman: \$15,000.00;
- (b) Marcia Vela: \$15,000.00;
- (c) Veronica Leon: \$5,000.00;

- (d) Santiago Miranda: \$5,000.00; and
- (e) Eddie Montano: \$5,000.00.

21. No later than ten (10) days from the date of entry of this Decree, the TUSD shall notify the complainants of the terms of this Decree by mailing each complainant, by certified mail, return receipt requested, a notice letter in the form set forth in Attachment A hereto, a copy of this Decree, and a copy of a release in the form set forth in Attachment B hereto.

22. The TUSD shall send a copy of the notice letter referred to in Paragraph 21, supra, to the United States at the same time it sends the notice letter to the complainants.

23. To receive the relief provided under this Decree, each complainant must execute the release form provided with the notice letter and return it to the TUSD within thirty (30) days from the date he or she receives the notice letter referred to in Paragraph 21, supra, unless he or she can show good cause within a reasonable period, to be determined by the United States, of his or her failure to do so.

24. The TUSD shall provide the United States with a copy of each complainant's executed release form within ten (10) days from the date of its receipt. Within thirty (30) days from the date of its receipt of a complainant's executed release form, the TUSD shall mail to that complainant a check made payable to that complainant for the amount of the monetary award set forth in Paragraph 20, supra, and send a copy of the check to the United States. The TUSD shall provide each complainant with appropriate IRS forms with respect to his or her monetary award at or before the time such IRS forms are required by law to be provided.

VIII. RECORD RETENTION AND REPORTING

25. The TUSD shall retain the following records during the term of this Decree or for the period of time required by applicable federal records retention requirements, whichever is longer:

- (a) the provisions and effective date of the policies and regulations implemented pursuant to Paragraphs 12 and 13, supra;
- (b) copies of its policies and regulations prohibiting discrimination on the basis of sex and/or national origin that are made available to employees, and employees' acknowledgments of their receipt of those policies and regulations as required by Paragraph 14, supra;
- (c) all posted notices and posters displayed in its facilities and intended to convey information regarding the prohibition of discrimination on the basis of sex and/or national origin, as set forth in Paragraph 15, supra; and
- (d) all documents that come into its possession relating to any written or verbal complaints of discrimination based on sex and/or national origin or retaliation related to such complaints made by any employee or applicant, including documents relating to the TUSD's investigation and resolution of any such complaints.

26. For a period of twenty-four (24) months after the effective date of this Decree, the TUSD shall send quarterly reports to the United States regarding any complaint of discrimination based on sex and/or national origin made by an employee of the TUSD. The first report is due ninety (90) days after the effective date of this Decree, with a report due every ninety (90) days thereafter until the dissolution of this Decree. In the report, the TUSD shall provide:

- (a) copies of any written complaint (or notes related to any oral complaint) of discrimination based on sex and/or national origin or of retaliation related to such complaint, received by the TUSD from an employee or applicant;
- (b) copies of all documents relating to investigation and resolution of such complaint by the TUSD;
- (c) the date of receipt of such complaint by the administrator and EEO Compliance Officer, together with the dates of investigation and resolution of the complaint, including the dates of any action taken by the TUSD in response to the complaint;
- (d) a statement of the results of the investigation of such complaint, including any findings or conclusions made and any actions taken by the TUSD to resolve the complaint; and
- (e) the identity of any and all supervisors or administrators who received the complaint, conducted the investigation, made findings or determined or enforced the action to be taken in response to the complaint.

27. The United States may review compliance with this Decree at any time and shall have the right to inspect and copy any documents that are relevant and necessary to monitor the TUSD's compliance with this Decree, upon thirty (30) days written notice to the TUSD, without further order from this Court.

IX. DISPUTE RESOLUTION

28. The parties shall attempt to resolve informally any dispute that may arise under this Decree. If the parties are unable to resolve the dispute expeditiously, either party may move the Court for a resolution of the issue upon seven (7) days of written notice to the other party.

X. MODIFICATION OF THE DECREE

29. This Decree constitutes the entire agreement and commitments of the parties. The parties may jointly agree to modifications of this Decree with the approval of the Court.

XI. JURISDICTION

30. The Court shall maintain jurisdiction over this case throughout the duration of this Decree for the purpose of enforcing the terms of the Decree as well as resolving any disputes between the parties with respect to the terms or implementation of the Decree.

XII. TERMINATION DATE

31. This Decree will expire without further order of the Court **twenty-four (24) months** after the date of entry of this Decree.

XIII. GENERAL PROVISIONS

32. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

33. Each party shall bear its own costs, expenses, and attorney's fees in this action, including the costs of compliance or monitoring, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Decree and require resolution by this Court.


34. All documents required to be delivered under this Decree to the United States shall be sent via overnight delivery to the following address:

Chief, Employment Litigation Section
United States Department of Justice
Civil Rights Division, PHB Room 4040
601 D Street, N.W.
Washington, D.C. 20579

This case is not terminated at this time.

IT IS SO ORDERED

DATED this 8th day of August, 2011.



David C. Bury
United States District Judge

For the United States:

For the Tucson Unified School District:

THOMAS A. PEREZ

Assistant Attorney General
Civil Rights Division

By: _____

DELORA L. KENNEBREW

(GA Bar No. 414320)

Chief

AARON SCHUHAM (DC Bar No. 461285)

Deputy Chief

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United States Department of Justice

Civil Rights Division

Employment Litigation Section

601 D Street, N.W., Room 4040

Washington, D.C. 20004

(202) 514-3831

(202) 514-1005 (fax)

Dated: _____

DR. MARK STEGEMAN

President

Dated:

ATTACHMENT A

**Via Certified Mail
Return Receipt Requested**

[Name]

[Address]

Re: United States v. Tucson Unified School District
Civil Action No. _____

Dear M/ _____ :

A Consent Decree has been entered settling a Complaint of employment discrimination filed by the United States against the Tucson Unified School District.

Under the terms of the Consent Decree entered into in the case of United States v. Tucson Unified School District, Civil Action No. _____ (D. Ariz.), a copy of which is enclosed, you are being offered a monetary award of \$_____, which represents compensatory damages.

The monetary award is offered to you on the condition that you release the Tucson Unified School District, its current, former and future officials, employees and agents from all employment discrimination claims you may have against them arising out of this case and EEOC Charge Nos. 35A-2008-00376C and 35A-2008-00378C.

In order to receive the relief that is offered to you pursuant to the Consent Decree, you must complete and return the enclosed Release. The Release must be signed before a Notary Public and returned to the undersigned. If you do not return the Release within thirty (30) days from your receipt of this letter, you will forfeit your rights to any relief under this Decree, unless you are able to show good cause for your failure to do so.

Payment to you of the monetary award will be made thirty (30) days after receipt by the undersigned of your signed Release.

If you have any questions concerning this settlement, you may contact Robert L. Galbreath, attorney for the United States Department of Justice, at (202) 353-9731.

Very truly yours,

ATTACHMENT B

RELEASE OF ALL CLAIMS

For and in consideration of the acceptance of the relief being offered to me by the Tucson Unified School District (the "TUSD"), pursuant to the provisions of the Consent Decree that has been submitted for entry by the Honorable _____, United States District Judge, in United States v. Tucson Unified School District, Civil Action No. _____ (D. Ariz.), including a monetary award to me of \$_____.

I, _____, forever release and discharge the TUSD and all current, former and future agents, employees, officials, designees, predecessors, and successors in interest of the TUSD from all legal and equitable claims, arising out of the Complaint filed in the above-captioned civil action and EEOC Charge Numbers 35A-2008-00376C and 35A-2008-00378C, that have accrued prior to the date of this release. I further agree that I will not institute another civil action alleging employment discrimination on the basis of EEOC Charge Numbers 35A-2008-00376C and 35A-2008-00378C, or any other EEOC charges filed against the TUSD before the date of this release.

I understand that the relief to be given to me, including the payment to me of any monetary amount, does not constitute an admission by the TUSD of the validity of any claim raised by me or on my behalf.

This release constitutes the entire agreement between the TUSD and me without exception or exclusion.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this _____ day of _____, 2010.

[Name]

STATE OF ARIZONA)

_____ COUNTY)
)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this _____ day of _____,
2010.

Notary Public
My commission expires: _____