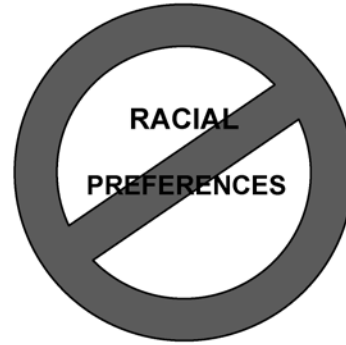


SRJC'S COMMITMENT TO DIVERSITY: POST PROPOSITION 209



Summary

Santa Rosa Junior College (SRJC)

- "Building a Legacy of Excellence" (campus motto)
 - One of Sonoma County's finest assets
- Struggling with demographics while remaining dedicated to providing academic rigor to its students through an excellent faculty.

The 2007 Spring Schedule of Classes includes this statement: "**---the District is committed to increasing the diversity of its staff to reflect the great diversity of its student population**"

What do you, the reader, think this means? Should the word diversity have a constant, clear and acceptable meaning? The Merriam-Webster dictionary defines diversity as *"the condition of being diverse: the inclusion of diverse people (as people of different races or culture) in an organization or group programs intended to promote diversity in schools"*

The Sonoma County Grand Jury believes the word diversity should have a constant, clear and acceptable meaning, especially when used in global statements of far-reaching impact and consequence in the day-to-day operations of an institution like Santa Rosa Junior College.

The grand jury performed an investigation in response to a complaint alleging that the Santa Rosa Junior College (SRJC) hiring procedures and practices were not in compliance with Article 1 Section 31 of the California Constitution. This section reflects the results of Proposition 209, passed by voters in 1996, which basically prohibits affirmative action programs based on racial preferences. Relevant procedures, laws and Community College Governing Board directives and recommendations were reviewed. Investigation of specific, recent and ongoing hirings revealed that the SRJC web site, and not all hiring procedures have been amended to reflect Proposition 209. The jury's investigations found that there was an apparent effort to hire faculty applicants that would, by their immutable (unchangeable) characteristics advance the District in its goal of greater staff diversity.

Although SRJC advertises itself as an Equal Opportunity Employer, evidence received by the jury supports, to some degree, allegations that some candidates may have received preferential treatment.

The term "diversity" is often used when referring to racial, ethnic or other immutable characteristics. The grand jury was told that the term "diversity" had nothing to do with ethnicity or any other immutable characteristic and was therefore not illegal to use as a goal. The California Education Code (Ed Code), Title 5, does not define "diversity", leaving open the possibility of creative interpretation to work toward goals that may not be in the spirit and possibly the letter of Proposition 209.

“Heritage Speaker” was a term placed in a job announcement seemingly for the purpose of using it as criteria for ranking candidates. The hiring action, following that job announcement, was alleged to have been done illegally. Different definitions of “Heritage Speaker” were given during interviews, varying from “students whose primary language is the one being taught” to “an instructor who is raised in a country where the language being taught is spoken”. A recent SRJC job announcement included “heritage speaker” as a reference to the students themselves. That same announcement then gave preference to candidates who had spent time living in countries where the language was spoken.

The fundamental question was whether the hiring practices violated Proposition 209. SRJC administrative and supervisory personnel interviewed said that their practices are in compliance – absolutely. Faculty Hiring Procedure 4.3.2P includes provisions for the Sonoma County Junior College District Compliance Officer (DCO) to “determine whether the applicant pool is sufficiently diverse” and further, the DCO may recommend suspension of the hiring process. That procedure had not been updated since 4/10/01 and still included “affirmative action” policy statements.

It is important to the understanding of this report to know that federal laws that prohibit discrimination against any individual or group on the basis of race, sex, color, ethnicity, or national origin are still very much the law. Proposition 209 prohibits any preferential treatment to be granted to any individual or group for those same reasons. For the last eleven years, California law says there shall be no discrimination against OR preferences granted on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education, or public contracting.

Reason for Investigation

A complaint was received alleging that violations of Proposition 209 were taking place at SRJC, that successful candidates were pre-selected and that hiring committees were being formed in a way to guarantee a pre-selected candidate’s success. Another allegation was that candidates who didn’t have a chance were being put through the process, at considerable time and expense, without any hope of being chosen.

It was alleged that SRJC was using racial preference as a factor in the selection, among a pool of candidates, for hiring faculty. It was alleged that this is a practice encouraged and directed by all levels of SRJC management.

Background

The SRJC is under the jurisdiction of the Sonoma County Junior College District Board of Trustees and is part of the California Junior College system, governed by the State Board of Governors and the State Chancellor.

The jury’s investigation was focused on one department but included many district wide documents and interviews with employees outside of that department.

The defining paragraph of the California Constitution – Article 1 Section 31 states that:

*“The State shall not discriminate against, or **grant preferential treatment to**, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”* (Emphasis added.) This is a simple statement that duplicates the language of Proposition 209, passed in 1996.

The language was purposely worded so that its meaning was very clear. Proposition 209 was approved by over 4.7 million voters and had the effect of adding another layer to existing federal anti-discrimination laws. Because of this and because Proposition 209 did away with any prior conflicting laws, it is the ultimate standard that must be followed. California is very unique among the fifty states, having amended its constitution to prohibit affirmative action programs which give preferences based on race, sex, color, ethnicity, or national origin. It is important to understand that federal law generally doesn't require that preferences be given in order for agencies to receive federal funding. However, if federal funding is actually dependent on addressing prior discriminatory practices, Proposition 209 included provision (e) which states: *“Nothing in this section shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal programs, where ineligibility would result in a loss of federal funds to the state.”* Affirmative action can mean race neutral and in California, current affirmative action plans/programs need to be race neutral in order to comply with Proposition 209.

Investigative Procedures

Personal interviews and reviews of Sonoma County Junior College District, California Educational Code (Ed Code), and SRJC policies and recommended procedures were the basis of this investigation. Some documentation was provided by persons interviewed and much was obtained from SRJC and State web sites.

The persons interviewed were:

- An SRJC faculty member
- The SRJC Director of Human Resources (DHR)
- The Sonoma County Junior College District Compliance Officer (DCO)
- An SRJC department chairperson
- An attorney who specializes in Proposition 209 law
- An adjunct (part time) SRJC instructor.

Documentation reviewed included:

- A Citizen's Complaint Form, submitted with enclosures
- SRJC Policy 4.3.2P Faculty Hiring: Regular and Adjunct adopted June 11, 1990 (last revised April 10, 2001)
- California Constitution – Article 1, Section 31
- 2005-07 Tentative Agreement, April 2006, Santa Rosa Junior College All Faculty Assoc.
- SRJC Schedule of Classes, Fall 2006
- SRJC Administration Standing Committees - District Staff Diversity
- SRJC Faculty job announcement brochures
- SRJC Mission statement 1.1
- SRJC Confidentiality and Conflict of Interest Agreement – Human Resources Dept.
- The State of California Education Code

- “White Paper: Increasing Faculty Diversity at Santa Rosa Junior College”. (See Appendix A)

Findings

F1. The jury found many inconsistencies in the understanding of how a hiring committee is formed, including the composition of the committee.

F2. The jury found that recent changes in the composition of hiring committees may have impacted final candidate selection.

F3. There was a breach of confidentiality in a 2003 faculty hiring process.

F4. The job announcement for a recent permanent Spanish teacher, under preferred requirements for the position specified a demonstrated ability or potential to succeed in teaching Spanish to heritage speakers and developing curriculum in that area. The term heritage speaker has been defined to the jury by persons interviewed as:

1. A student whose first language is not English and who is enrolled in a course teaching that student's native language;
2. A person (student or teacher) who grew up in a non-English speaking country;
3. A teacher who has lived for an extended time in a country where the language being taught is spoken.

Official SRJC documents, including this job announcement, use definition #1.

F5. SRJC administrators verified that it is not only legal but essential to give preference to a candidate who has taught heritage speakers. It was explained that one can't teach a language without having spent significant time in a country where that language is spoken.

F6. The jury, in reviewing recent job announcements for language instructors noted that the preference as listed in F5 above was included for Spanish instructors but not for a French instructor.

F7. According to testimony, having a stated preference for candidates who have taught heritage speakers may be, in fact, viable and legal ranking criteria. It may not then be used to give preference for scoring purposes to a candidate who happens to be a heritage speaker (definition #2 in F4) as they are not the same thing at all. In one case the students are heritage speakers and in the other case, the candidate would benefit by being a heritage speaker.

F8. Only criteria identified in published job announcements may be used for scoring or ranking candidates.

F9. SRJC administrators stated that at no time in a hiring process has a candidate been pre-selected.

F10. Ranking candidates based on race, gender or ethnicity is prohibited and the DCO was not aware of any hiring committee having used race or gender as a criteria. It was further reported that no official guidelines have been made available, nor should they be made available, to help any hiring committee select a candidate of a certain ethnicity.

F11. A 13 step hiring process was described to the jury. The process starts with the chairperson of the hiring department writing a job announcement (using mostly “boiler plate” language), forming a hiring committee and ending with a final, selected candidate being approved by the president. [Note: The process is not actually complete until the Board of Trustees acts on it.] As listed in the Hiring Procedure and the Chairperson Job Description, the chairpersons are allowed to use their best judgment in choosing whom to recruit for the hiring committee. The Human Resources department trains committee members and the DCO sits in on all meetings, not as a voting member, but to assure compliance with law and procedures.

F12. After establishing the hiring committee, the job announcement is created. This can and usually is based on prior announcements for the same position. The jury found that the announcements for Spanish instructors have been significantly altered to include the following preferences for candidates who have:

- Demonstrated ability or potential to succeed in teaching Spanish to heritage speakers and developing curriculum in that area
- Ability to speak Spanish with native or near native proficiency
- Prior study, travel and residence in Spanish speaking communities.

F13. According to testimony, these preferences, once included in the job announcement may then be used as criteria in ranking individual applicants. They may even be weighted, meaning they may be worth more than other preferences when candidates are scored. Additional points may be given for a candidate having these specific attributes. This creates ranking systems that can yield preference to underrepresented minorities.

F14. The jury found that the use of the words diverse and diversity in goals, policies and procedures, when vaguely defined, introduce uncertainty while Proposition 209 is specifically worded to bring clarity and certainty. This then introduces a semantics problem that the California Constitution avoids. California is somewhat unique in clearly forbidding preferential actions – a protection over and above previous legal measures and a constitutional level of protection greater than in all but one other state, Michigan. Michigan voters passed the Michigan Civil Rights Initiative in November 2006, mirroring Proposition 209.

F15. An article in the Press Democrat (2/24/07) titled “Wal-Mart wants more diversity among suppliers” spoke in terms of women and minorities as the “diversity” it sought among its suppliers. This is a more commonly understood usage of the word.

F16. The Faculty Staffing Request for a recent Spanish instructor position clearly demonstrates that the goal of this search was to hire a faculty member “with expertise in teaching Spanish to heritage speakers, thereby contributing to the institutional goal of increasing the ethnic diversity of our faculty.” Here, diversity is clearly used to mean “ethnic diversity”, setting the wheels in motion for a potential violation of Proposition 209.

F17. The Faculty Staffing Request for a recent Spanish instructor position included the following language:

“Although there is no guarantee that our new faculty member will be from an underrepresented group, with our priority on hiring faculty with experience teaching Spanish for Heritage Speakers, there is much greater probability that the outstanding candidate will be representative of the Latino community.” This language does not even try to avoid references to ethnicity, much less an exact ethnicity.

F18. SRJC follows a policy/practice whereby the word Staff is used in the Schedule of Classes when the name of the instructor is not known at the time the schedule is published. This policy/practice was not followed in the Fall 2006 Schedule of Classes. That schedule included the name of an instructor who had not yet been hired.

F19. One administrator reported to the jury that, given two equally qualified candidates, selection between the two could be based on race or ethnicity. This violates Proposition 209 in that the final selection is based on race or ethnicity – a clear violation.

F20. SRJC management reported that any employee should feel free to express concern or criticism about any subject, including the administration, without fear of retribution.

F21. Some SRJC employees shared their fears of retribution for having spoken with the jury.

F22. The SRJC hiring policy 4.3.2P as posted on the SRJC web site, has not been updated since April 10, 2001. It still contains references to “affirmative action policy” as part of the hiring procedures.

F23. New employment laws are integrated into operating procedures and policies as the director of human resources (DHR) receives information from sources such as the college attorneys, professional organizations, Chancellor’s office, etc. Equal opportunity issues are the responsibility of the district compliance officer (DCO).

F24. Testimony was given that SRJC “assiduously” adheres to Proposition 209, that all policies were reviewed intending to bring them into full compliance with Proposition 209. Changes to the hiring procedure went to the Board of Trustees in December of 2006. As of March 2007 it had still not been revised. Proposition 209 became law over 10 years ago.

F25. A review of the SRJC hiring policy 4.3.2.P raised concerns regarding certain provisions of the hiring process that put SRJC at potential risk of costly litigation, a waste of scarce resources for higher education. Proposition 209 pertains to the entire hiring process, not just to the final decision making. To prove a violation of Proposition 209, something official in writing, such as a policy or regulation, is usually needed. Those provisions of the hiring process referred to in the written policy, included:

- Composition of Search Committee as the policy states: *“Each search committee should include members of underrepresented groups (i.e., ethnic/racial minorities, women, and people with disabilities) who are knowledgeable about District action goals.”* This provision gives preference based on immutable characteristics.
- Possible suspension of the hiring process as the policy states that the “DCO is to assist in determining whether the applicant pool is sufficiently diverse”, and the policy also gives the DCO the power to “recommend a suspension of the hiring process at any time a question of non-compliance is raised.” This language could be used to suspend hiring process if the applicant pool is judged to be not sufficiently diverse. This provision gives preference based on immutable characteristics.
- On-going training in affirmative action procedures tied to district goals when goals are not clearly specified as the policy states: *“All [hiring committee] participants in the process are given regularly updated, appropriate training in affirmative action procedures and District goals and timetables to ensure success in reaching the goals.”* What goals?

If members should include those of historically underrepresented groups, this gives preference to these individuals. This appears to be a violation of Proposition 209.”

F26. Violations of Proposition 209 could result in civil liability, including punitive damages risking scarce resources available for public education.

F27. One document reviewed by the jury was called White Paper: Increasing Faculty Diversity at Santa Rosa Junior College.

F28. The White Paper was described to the jury in different ways. They included:

- A document with an aura of secrecy about it - not openly distributed
- A document that is widely circulated and readily available
- A document meant to educate and promote discussion
- A document that hasn't been used by anybody for anything
- An end-run around proposition 209
- A document that to whatever extent it is being used, is being used in a manner such as to circumvent Proposition 209.

F29. The White Paper outlined strategies that could be used to create an increased potential that successful candidates will be from underrepresented races/ethnicities, referred to as the “lack of diversity in SRJC faculty.”

F30. One such strategy outlined is the careful crafting of job announcements “particularly in states where state law forbids considering race and ethnicity in hiring”. The advice for the job announcement concludes with the direction that “if the institution has expressed diversity as a part of the definition of academic excellence, it can give positive consideration to candidates’ agendas that enhance the understanding of race, ethnicity, gender, multiculturalism, etc.” The jury saw this type of language inserted in the 2006 job announcement for a Spanish instructor. No such language was inserted in the job announcement for a French instructor.

F31. A second strategy outlined focuses on the composition of the search committee by stating that “the appointment of search committee members committed to diversity is essential to influencing the outcome of a search.” It goes on to advise that “the department heads and deans should appoint senior faculty members from other departments who are known for their commitment to diversity”. It was stressed that “committee should give guidance on ways to evaluate candidates in a way that values diversity.”

F32. The third strategy outlined has to do with effective advertising. Advice given includes to “advertise in journals and periodicals that make special efforts to reach minority faculty and graduate students.” Suggestions for alternative places to advertise listed: CareersNow-Oline.com; Craigslist; Hispanic Outlook; La Voz; EL Mensajero.

F33. The White Paper appears to be written by someone very well versed in both federal and state laws. References in the White Paper go back and forth between federal and state laws. Some references in the report are troubling and of great concern, such as: “Race should be considered a ‘plus’ factor, not the deciding factor.” Under California law, race is not a factor at all, at any time.

F34. Another reference began, “to the extent that race is considered, the burden on those who do not get a plus factor should be considered as part of the analysis of the impact of the diversity program.” The law says that race is not to be considered to any extent, at any time.

F35. A definition of diversity given by an SRJC supervisory person to the jury: “A range of applicants. If you had two equal candidates and one was from an underrepresented ethnicity, you can choose that one.” Statements such as this are illegal as they actually give preference based on ethnicity which is prohibited by law. A legal solution to a decision between equal candidates would be by chance.

F36. The jury was told by an SRJC administrator that SRJC is not constrained by Proposition 209 in accomplishing its commitment to diversity because diversity is a state of mind, a tolerance, having a much broader concept – not a limited view. Since diversity is neither race nor ethnicity it therefore is not covered by Proposition 209.

F37. There is a District Staff Diversity Committee listed on the SRJC web site list of standing committees. It was “*established to assist the District to achieve an understanding and compliance with the employment policies and programs outlined in the District Affirmative Action Policy.*” The preceding quotation is from an undated paper that details committee function, meeting schedule and structure. This committee was unknown to all but one person interviewed by the jury and that person was the chairperson of the Diversity Committee.

F38. The State Chancellor’s web site defines diversity as follows: “*Diversity means a condition of broad inclusion in an employment environment that offers equality and respect for all persons.*” This definition is not precise enough to be used as the basis of evaluating one candidate in comparison to other candidates during the hiring process.

Conclusions

A higher education institution, such as SRJC, may have a beautiful campus and an extensive schedule of classes but the key to a high quality educational experience is the level of talent, expertise and dedication of the teachers that are part of that institution. The hiring and maintaining of the best possible teaching personnel by selecting the best candidates regardless of immutable characteristics, as Proposition 209 mandates, must be the rule.

The jury concluded that a strong effort was being made at SRJC to achieve affirmative action goals by the creative use of a vaguely defined term, “diversity”. By giving preference to job applicants for certain faculty positions to those with somewhat exclusive life experiences may, in fact, lead to a stronger ranking for members of certain races and or ethnicities. A proposition 209 specifically prohibits any preferential treatment to any individual or group on the basis of race or ethnicity or national origin.

The SRJC, as well as other institutions of higher learning, has been slow to let go of “affirmative action” type programs and language that gives preference based on race, ethnicity, etc. A considerable time has passed since California voters, by a substantial margin, said yes to Proposition 209 – effectively ending affirmative action programs that give preference. Over ten years later SRJC has not completed updating its official policies to reflect this very major change in law.

SRJC’s use of the word “diversity” moves around from meaning a race or ethnicity to meaning a tolerance in thinking. The jury believes that this thinking and creative use of language might pose a risk to SRJC, a risk that could play out in a court of law, jeopardizing funds for higher education. This obfuscation may be unintentional or it may be an intentional strategy to

circumvent Proposition 209. The jury does not know if either one is the truth. The jury does, however, raise the question of whether divergent uses of such a vital but apparently varied meaning of the word are appropriate.

It is the jury's conclusion that, all things considered, the SRJC hiring process may have, in some cases, violated the spirit if not the letter of the law.

The jury did not find that there was indisputable evidence to prove that the hiring process was illegal. The jury also did not find that SRJC is in absolute compliance with Article 1, Section 31 of the California Constitution.

Commendations

The jury commends faculty who have been willing to come forward to help the jury despite their fear of retribution. The fears were so pronounced that the jury is compelled to make a statement supporting the individual's rights not to experience any retribution, retaliation or failure to advance as the result of having spoken to this jury.

The jury commends SRJC for initiating an independent investigation into its hiring practices.

Recommendations

R1. The SRJC should review all governing documents and its web sites to remove all language that is contrary to Proposition 209.

R2. The SRJC should include clear definitions, in the context of their use, of terms such as "diversity" and "heritage speaker" that are critical to the meaning of goals, policies, procedures and job announcements.

R3. The SRJC should provide sufficient direction and oversight at all levels of administrative supervision to ensure that SRJC practices equal opportunity employment with absolutely no employment preferences given based on race, gender, ethnicity, etc. at any time.

R4. The Board of Trustees of SRJC should provide all employees access to an independent ombudsman (not an SRJC employee) so that employees can express concerns without fear of retribution.

R5. The SRJC should provide the grand jury with a copy of the independent investigation report.

Required responses to Findings

President of SRJC
F20

District Compliance Officer
F22, F24

Requested responses to Recommendations

None.

Required responses to Recommendations

Board of Trustees, SRJC

R4

President, SRJC

R2, R3, R5

District Compliance Officer. SRJC

R1, R2, R3

Human Resources Department Director, SRJC

R1, R2, R3, R5

Appendix A

“White Paper: Increasing Faculty Diversity at Santa Rosa Junior College”