

May 29, 2015

Rebecca Chopp, Chancellor
Office of the Chancellor
Mary Reed Building
2199 S. University Boulevard
Denver, CO 80208
Rebecca.chopp@du.edu

Re: Summary of Conclusions – Fact-Finding Investigation

Dear Chancellor Chopp:

Thank you for retaining me to perform an investigation with respect to the complaints made by members of the Faculty of Color Association (“FOCA”) and/or Staff of Color Association (“SOCA”) in July 2014. This letter constitutes a summary of my conclusions. A full report including detailed factual findings was submitted to you on April 20, 2015.

I was asked to investigate whether, in connection with the searches for the Deans of Morgridge College of Education and University College in the Summer of 2014 (“Subject Searches”), the University of Denver (“the University”) discriminated against any person on the basis of race or ethnicity (the EEO Complaint), and more broadly whether the University’s actions in the manner in which it conducted the Subject Searches were inconsistent with its policies or stated commitments to inclusive excellence.

There are seven individual complainants to the EEO Complaint, in addition to the two Associations, representing its members of faculty and staff. I spoke in person to approximately 25 individuals, including the seven complainants, other members of the Associations, members of each search committee, including the Chair of each committee, as well as current and former members of the Administration. In addition to the interviews, I have reviewed a number of email messages, files related to other recent Dean searches, University publications, and other key documents. See *Appendix* attached hereto.

In a separate report sent to Kathy Grove, Director of EEO, on April 20, 2015, I addressed two questions related to the EEO Complaint: first, whether there is factual evidence to support a claim that, in conducting the Subject Searches, the University has discriminated against any person on the basis of race or color or ethnicity as prohibited by the University’s Non-Discrimination policies, and second, whether the process used for said Searches violated any

specific University policy or rule. As to both of those questions, I found no evidence to support such complaints.

The following three questions address the broader issues initiated by FOCA/SOCA:

1. Was the process specified to be used in conducting the Subject Searches inconsistent with the University's stated commitments to bring more diverse candidates to positions of leadership? If so, did that process create a perception that a judgment had been made to select the Interim Deans already in place?
2. Would the University benefit from establishing a mechanism for groups of employees to voice concerns such as this?
3. Is there a generalized fear of retaliation among certain employees for raising these complaints?

Findings

This complaint raises very complex issues and is indicative of much broader issues that seem to have plagued the University for a long time. A fact-finding investigation such as this is not necessarily the best way to get to the root of such complex issues, as there are few material facts in dispute. Diversity and inclusive excellence concepts are about more than simply counting how many people of color or women hold which positions. I am optimistic that through Chancellor Chopp's new initiatives, and with the expertise of many constituents throughout the University community, that the conversation that has begun through this investigation will continue.

Of concern, however, are the people who are angry and frustrated with what they perceive to be a longstanding course of conduct at the University of Denver that discourages an open discussion of, and creation of solutions to, these difficult issues surrounding diversity and inclusive excellence.

As for the issues presented herein, I find as follows:

- 1. Was the process used to conduct searches for the Deans of Morgridge College of Education and University College in the Summer of 2014 inconsistent with the University's stated commitments to bring more diverse candidates to positions of leadership? If so, did the process create a perception that a judgment had been made to select the incumbent Interim Deans?**

It is my opinion that the process used by the University in conducting the Subject Searches was inconsistent with its stated commitments to increase compositional diversity in its workforce, and specifically its leadership positions. Many documents exist that reflect the University's commitment to do so. See *Appendix* attached hereto. In his Statement of Diversity, Chancellor Coombe committed the University to "the pursuit of excellence by including and integrating

individuals who represent different groups as defined by race, ethnicity...” Further, this commitment “requires that we attract members of historically under-represented racial and ethnic groups...and create initiatives and programs designed to capitalize on the benefits of diversity...In sum, our actions must speak louder than our words.” Although she was not at the University during the relevant time period, Chancellor Chopp has subsequently made consistent statements regarding the importance of diversity.¹

Each of the documents which I reviewed reflects this commitment in one way or another, and as such they are undisputed. See *Appendix* attached hereto. As reported in the Report on the Status of Women and People of Color, issued the same month as the decision to conduct the Subject Searches, the University has failed to have in place “a staff hiring process that includes resources on the development of more diverse pools and provide training to support inclusive excellence in all searches.” The evidence reflects that the University’s recruiting strategy lacks consistency, accountability, and goals with measurable outcomes.

Thus, I find that while there is no specific policy prohibiting the internal search, perhaps this is the problem. It is undisputed that the Chancellor must retain discretion to conduct searches differently under different circumstances. It is the lack of transparency in exercising such discretion, however, which creates the concerns. Here, the decision to conduct such a search, without stated criteria, is inconsistent with the University’s many stated **commitments** to achieve diversity among senior level administrators. Among the concerns are the minimal training offered to and composition of the search committees, the timing of the searches, failure to involve the University’s Chief Diversity Officer or Director of Recruiting on strategic decisions, the stark contrast between the Subject Searches and other recent national searches conducted by other schools within the University, and generally comments made by the Administration while attempting to explain the decision that reflect a failure to integrate inclusive excellence throughout the hiring process.

Generally, Chancellor Coombe has publically stated that actions speak louder than words. His actions, in making the decision to conduct an internal search, sent a message, likely unintended, to many in the University community, that he already knew who he wanted to select for these positions. This is not a reflection on the quality of these candidates. Rather, it is an indictment of the process that was used. And by sending this message to the community, I find that in doing so, he discouraged at least some otherwise qualified internal applicants from applying.

2. Would the University benefit from establishing a mechanism for groups of employees to voice concerns such as this?

Yes. It would be helpful for the University to create a process for allowing groups such as FOCA/SOCA to raise concerns that affect groups of similarly situated individuals. These concerns impact the University community at large and must be heard, regardless of in what form. Had such a mechanism existed, these issues could have been raised in a more collegial forum.

¹ Chancellor Chopp’s Statement of Diversity, Equity and Inclusive Excellence provides in part: “Actively seeking a student body and a faculty and staff who represent the diversity of our region, nation and work is necessary to prepare our students for an increasingly globalized and connected world.”

3. Is there a generalized fear of retaliation among certain employees for raising such complaints?

There is near unanimity amongst the people of color with whom I spoke that raising concerns related to the issues discussed herein carries great risk. As one witness describes it, "Using your voice takes great courage and carries great risk". In an environment where the optimal environment is described as one characterized by mutual trust, freedom of inquiry and expression, and the absence of intimidation, oppression and exploitation, it is surprising to hear well-educated and well-positioned employees speak of their fear of retaliation from Administration. It is further surprising to hear that this fear is not limited to people of color. Several Caucasian witnesses, including fairly high level individuals, asked for confidentiality and credibly expressed their fear of retaliation for speaking openly with me.²

III. Conclusions

Again, I want to thank you for the opportunity to conduct this investigation and to meet the many interesting and well-meaning individuals at the University of Denver. Regardless of which side of the issues they are on, they worked hard on the Subject Searches and recommended to the Chancellor very qualified applicants. This investigation has not been about the individuals selected for these positions. Rather it is about the complex issues raised in the context of the Subject Searches, involving what really is the University's commitment to diversity and inclusive excellence.

Very truly yours,

Littleton Alternative Dispute Resolution, Inc.



Kathryn E. Miller, Esq.

² I make no finding as to whether these stated fears of retaliation are based on reasonable factual evidence. To do so would entail a much more detailed look into what complaints were made, and what "adverse action" if any was taken against the complaining employee following the complaint. To then find a nexus between the complaint and the adverse action, one would have to investigate the University's explanation for its actions.

Appendix

Key Language implicated in the Conclusions from Policy and other University Statements

A. University of Denver Strategic Plan for Inclusive Excellence

The Strategic Plan for Inclusive Excellence is dated March 24, 2011. It is found on the University's web site at <http://www.du.edu/cme/media/documents/du-IEStratPlan-2011.pdf>.

In the 15-page Plan, the University outlines its goals, objectives and suggested actions that will provide tools to the University to live up to its commitment to diversity. "Inclusive Excellence focuses on (1) increasing compositional diversity, with a particular emphasis on historically underrepresented groups, (2) creating a positive campus climate where all persons are treated with respect, and (3) embedding the first two within University policies and practices so that they become part of the very fabric of the University... Our expectation is that, as the University moves forward, we will go beyond the limits of this document and demonstrate the value we place on the wealth of human identities and experiences... diversity and educational quality are positively connected... progress depends on the commitment of the central administration to using its power and influence to advance change..."

B. Chancellor Coombe's Statement on Diversity, Non-Discrimination, Affirmative Action Policy and Recruiting Philosophy

"The University of Denver community is strongly committed to the pursuit of excellence by including and integrating individuals who represent different groups as defined by race, ethnicity, gender, sexual orientation, socioeconomic background, age, disability, national origin and religion. The University's commitment to diversity in particular requires that we attract members of historically under-represented racial and ethnic groups. ... Our commitment must entail the creation of initiatives and programs designed to capitalize on the benefits of diversity in education, research and service. In sum, our actions must speak louder than our words..."

RECRUITING PHILOSOPHY: "...to ensure that the best possible candidate is identified for every open position the University supports a recruiting program that..."

2. Supports a consistent, systematic hiring process to eliminate the possibility of discriminatory actions,
4. Utilizes tools that reach the broadest possible range of diverse candidates.
7. Requires appropriate due diligence in the review of candidate's background to ensure a workforce that is both highly qualified and a proper fit to the University's culture.

C. Chancellor Chopp's Statement on Diversity, Equity and Inclusive Excellence

"In an organization so reliant on its people, creating a diverse and inclusive community isn't only the right thing to do; it's critical to the successful implementation of our mission... Actively seeking a student body and a faculty and staff who represent the

diversity of our region, nation and work is necessary to prepare our students for an increasingly globalized and connected world.”.

D. University of Denver Discrimination/Equal Opportunity Policy contained in its Policy Manual, eff. Date 6/6/2014: “The environment of the University should be characterized by mutual trust, freedom of inquiry and expression, and the absence of intimidation, oppression and exploitation...Retaliation or attempted retaliation ... is a violation of the Policy and will be subject to severe sanctions...”

E. Statements related to Inclusive Excellence contained on the websites for the Center for Multicultural Excellence (“CME”):

Conducting a Fair & Inclusive faculty hiring process...CME works in collaboration with campus colleges, schools, departments and external organizations to integrate inclusive Excellence throughout the hiring process. Particular attention is given to (1) preparation of search committees, (2) recruitment & evaluation of large and diverse pools of applicants, and (3) faculty retention.

F. Procedures of the Office of Equal Opportunity 2014-2015

“The University of Denver is committed to establishing and maintaining a safe and nondiscriminatory educational environment in which all individuals are treated with respect and dignity. The University does not permit discrimination or harassment in its education or employment programs and activities...”

Reporting Party is any person who has shared a concern or incident of discrimination or harassment or other prohibited conduct under these Procedures. The reporting party need not be the Complainant.

G. Conceptual Framework for an Inclusive Excellence Hiring Process authored by Debbie Mixon Mitchell, Ph.D.

Recruit Broadly”: ...establish a plan to recruit applicants that includes active efforts to inform women & members of underrepresented groups about the open position. Cast the net very wide...**Post** announcement on relevant websites; **Place** announcements in newspapers and journals aimed specifically at underrepresented audience; **Email** the position announcement to relevant professional list-serves & affinity groups; **Contact** peers/colleagues at other institutions; **Advertise** far and wide; **Committee** members a faculty may actively recruit candidates from diverse groups.”

H. University of Denver Executive Summary – Status of Women and People of Color Studies June, 2014

Relevant Findings:

- The University would benefit from a more strategic and integrated approach to diversity

- The implementation will also require addition support and resources in order to institutionalize diversity and embed it in all areas of campus life
- Both women and people of color report a lack of commitment and accountability for Inclusive Excellence at all levels (including Trustees)
- Both women and staff & faculty of color report inconsistent hiring patterns and lack of accountability in the overall hiring process

Relevant Top Recommendations:

- Ensure that the next strategic plan incorporates diversity, including specific diversity goals with measurable outcomes
- Elevate the Chief Diversity Officer position to report to the Chancellor and also be a part of the senior team
- Develop plan to achieve greater diversity among senior level administrators and the Board of Trustees
- Ensure implementation of preliminary recommendations through the two existing committees, guaranteeing that this process continues
- Develop an aggressive, deliberate and intentional recruitment strategy for faculty of color, incentivizing competitive hire. Develop a document on faculty hiring to be used in all searches, with best practices included
- Develop a staff hiring process that includes resources on the development of more diverse pools and provide training to support inclusive excellence in all searches
- Ensure consistency and accountability in all searches
- Ensure that there is an effective and well-publicized mechanism to deal with and investigate faculty, staff and student allegations of discrimination, sexual assault and sexual harassment.