

MEMORANDUM

TO: Representative Michael Dembrow
FROM: Ryan J. Hagemann, OUS General Counsel
DATE: March 5, 2013
RE: ORS 352.380(2)(b)
C: Dr. Melody Rose, OUS
Bridget Burns, OUS
Drew Hagedorn, Tonkon Torp
OUS Presidents
General Counsels, UO, OSU, PSU

You have asked for an update on OUS' compliance with ORS 352.380(2)(b). This statute requires certain actions in the recruitment of head coaches and athletic directors at each of the OUS campuses. It provides that OUS institutions must: "Interview one or more qualified minority applicants when hiring a head coach or athletic director, unless the public university was unable to identify a qualified minority applicant who was willing to interview for the position. It is an affirmative defense to a claim of a violation of this paragraph that the public university, in good faith, was unable to identify a qualified minority applicant who was willing to interview for the position." At the same time, Title VII of the Civil Rights Act of 1964 makes it illegal for employers to discriminate on the basis of race, color, religion, sex, or national origin. See 42 USC § 2000e et seq. Title VII expressly makes it unlawful for an employer: "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 USC § 2000e-2(a)(2).

The campuses were asked to provide data from 2011 and any information about recruitment and/or human resources processes. The results are as follows:

University of Oregon

Since 2011, UO has hired a head coach in track and field, women's soccer and football. UO has elaborate hiring procedures in place—procedures that are far in excess of those required by state and federal law. Any head coaching position at UO is a high profile position nationally and, in some cases, internationally. Many qualified candidates are available.

In each search, UO interviewed at least one qualified candidate in an underrepresented group.

In 2012, UO hired Robert Johnson as the head coach of track and field. Mr. Johnson's biographical sketch can be found here:

http://www.goducks.com/SportSelect.dbml?DB_OEM_ID=500&SPID=243&SPSID=4363&KEY=

In 2012, UO hired Katherine "Kat" Mertz as head coach of women's soccer. Ms. Mertz's biographical sketch can be found here:

http://www.goducks.com/SportSelect.dbml?DB_OEM_ID=500&SPID=237&SPSID=4313&KEY=

In 2013, UO hired Mark Helfrich as head coach of football. Mr. Helfrich's biographical sketch can be found here:

http://www.goducks.com/SportSelect.dbml?DB_OEM_ID=500&SPID=233&SPSID=3376&KEY=

Oregon State University

OSU has hiring procedures in place that exceed those required under state and federal law. The hiring process for the Oregon State University Athletics Department calls for recruitment of a diverse field of candidates, and OSU actively recruits qualified minority applicants to the pool when those candidates can be ascertained.

OSU has filled one Head Coach Position since 2011. In August, 2012, OSU appointed Laura Berg as Head Coach of softball. OSU appointed Ms. Berg, who was then an Assistant Coach in the softball program, under OSU's procedures for waiver of search, which are administered by OSU's Office of Equity and Inclusion. OSU's procedures can be found here:

<http://greeks.oregonstate.edu/oei/policy-and-procedures-waiver-regular-search-process>

<http://oregonstate.edu/oei/waiver-search-faq>

Ms. Berg was waived into the position based on her unique qualifications for the position as well as the fact that her hire would advance OSU's affirmative action goals. Among her other accomplishments, Ms. Berg is the most decorated USA softball athlete in history, having won three gold medals for the United States. Her biographical sketch can be found here:

http://www.osubeavers.com/sports/w-softbl/mtt/laura_berg_779361.html

Portland State University

Since 2011, PSU has hired only one new head coach--for men's and women's tennis. PSU has an elaborate hiring procedure in place--procedures that exceed those required by state and federal law.

In its hiring process for a tennis coach, PSU interviewed at least one qualified candidate in an underrepresented group. Ultimately, PSU hired Jay Sterling. Mr. Sterling's biographical sketch can be found here:

<http://goviks.com/coaches.aspx?rc=202&path=mten>

Oregon Institute of Technology

Since 2011, OIT has hired three head coaches, including one for cross country/track and field and two coaches for the men's and women's soccer teams (at .5 FTE for each). Each search committee includes staff with affirmative action and/or human resources training and no stake in the hire. That person is tasked with guiding the committee's effort to ensure that no candidate is subject to discrimination. OIT's head coaching searches are never chaired by the Athletic Director, but the director does provide an additional review of the candidate pool.

Each of OIT's coaching searches were nationally advertised and included postings with the NCAA, NAIA and Chronicle of Higher Education.

In 2011, OIT conducted a search to hire a head coach for cross country/track and field. Among the seven candidates interviewed by phone were an African American candidate and another candidate of Hispanic/Latino ethnicity. OIT ultimately hired Jack Keggs as head coach for cross country/track and field. Mr. Keggs's biographical sketch can be found here:

<http://www.oit.edu/athletics/track/coaching-staff>

In 2012, OIT conducted a search to hire a soccer coach. Among the thirty-five candidates who applied for the position, none of the candidates provided an affirmative action response indicating that they were from an underrepresented group. OIT ultimately hired two people at .5 FTE to serve as coaches of the men's and women's soccer teams. Matt Munhall's and Mike Hedlund's biographical sketches can be found here:

<http://www.oit.edu/athletics/mens-soccer/coaching-staff>

<http://www.oit.edu/athletics/womens-soccer/coaching-staff>

Southern Oregon University

Since 2011, SOU has hired two head coaches for football and track and field. SOU designates an appropriately trained human resources representative to work with its search committee to ensure that no candidate is subject to discrimination and that at least one qualified minority candidate was interviewed for each head coaching position. Both of SOU's coaching searches were widely advertised.

In addition to attempting to draw qualified minority outside candidates to its head coaching positions, SOU recently initiated a plan to promote the professional development of its promising young assistant coaches from underrepresented groups in an effort to retain them as head coaches for future openings at SOU and develop them as strong candidates for openings at other institutions.

In 2012, SOU conducted a search to hire a head track and field coach. There were nine candidates interviewed by telephone, three of whom were later interviewed on campus. Among the nine candidates interviewed by telephone were two individuals who provided affirmative action responses indicating that they were of African American ethnicity. SOU ultimately hired Grier Gatlin. Mr. Gatlin's biographical sketch can be found here:

<http://www.souraiders.com/coaches.aspx?rc=144&path=track>

In late 2010 and early 2011, SOU conducted a search to hire a head football coach. There were seventeen persons interviewed by telephone, four of whom were later interviewed on campus. One of the four finalists brought to campus for an interview provided an affirmative action response indicating that his ethnicity was Asian. SOU ultimately hired Craig Howard. Mr. Howard's biographical sketch can be found here:

<http://www.souraiders.com/coaches.aspx?rc=115&path=football>

Eastern Oregon University

Eastern Oregon University has hired five head coaches since 2010: women's soccer (twice); volleyball (twice) and softball. EOU have not hired an athletic director since 2010.

Privacy issues prevent the release of names for specific applicants. Furthermore, affirmative action regulations preclude us, as the hiring agency, from requiring an individual to provide their race and ethnicity (this information can only be given voluntarily by the candidate). It is not ethical, or legal, to assume a candidate's racial identity based on physical observations during the search process or even after a hire is made. Again, this information can be given voluntarily and we cannot force an individual to provide this information in anyway. Below is the information that has been voluntarily provided by the candidates, by search:

Softball:

84 Applications—20 provided statistical information

8 female, 12 male

- 1 Latino
- 19 Caucasian
- 6 interviewed (3 female, 3 male; 1 Latino and five declined to provide racial information.)

Volleyball #1:

54 Applications—26 provided statistical information

- 14 female, 12 male
- 2 Native Hawaiian

- 1 Black
- 1 Hispanic
- 22 Caucasian
- 3 interviewed (2 female, 1 male; 1 Hispanic and 2 declined to provide racial information.)

Volleyball Hire #2:

This position was not fully searched. The incumbent of the position was killed in an automobile accident just prior to the start of the volleyball season. EOU asked the former coach, a female, who resigned the previous year due to personal obligations, if she would return to service on an interim basis. During the season, she informed EOU that she would like to return to the position as her personal circumstances had changed. In the original search, she was selected through a national and competitive search process

Soccer Hire #1:

82 Applications—34 provided statistical information

- 6 female, 28 male
- 3 Black
- 2 Hispanic
- 29 Caucasian
- 4 interviewed (all male; 1 Caucasian, 1 Hispanic and 2 declined to provide racial information.)

Soccer Hire #2 (hired in February 2012):

80 Applications—69 provided statistical information

- 10 Latino
- 1 Asian
- 4 Black
- 44 Caucasian
- 1 “2 or more” races
- 1 undisclosed
- 8 interviewed (3 female, 4 male; 5 Caucasian and 3 declined to provide racial information.)

EOU has formalized all university searches to be conducted and lead by our Human Resources Office. Starting in 2011, all of EOU’s searches require the search committee to develop and implement a plan specifically to attract minority candidates. As part of this effort, EOU purchased the computer software package, *PeopleAdmin*, which enables EOU to accurately track applications for positions. Through *PeopleAdmin*, all candidates submit their materials on-line. As a result of this, EOU has seen a significant increase (and as evidenced above) in the number of applicants who voluntarily provide Affirmative Action information—again, as you know, this is not required and cannot be required of candidates to provide. This data has provided EOU with information to refine marketing efforts to more effectively recruit minority candidates. Furthermore, EOU, through our Human Resource Office, complies with Federal and State laws and regulations along with Oregon University System and Eastern Oregon University human resources policies regarding filling positions. This would include compliance with House Bill 3118.

One, as noted above, EOU’s volleyball coach died in a catastrophic accident shortly before the season started. It would have been impossible to conduct a search in that time frame. EOU was able to ask the previous coach to return for the season. Towards the end of the season, she requested to remain on as head coach as her personal circumstances had changed. Following that request, EOU did conduct an abbreviated search process by listing the position on the NAIA web site and received only a handful of inquiries. However, due to her well known previous success at Eastern, and the success of that year (being ranked 3rd in the region) it proved to be improbable, and a waste of resources, to amass a pool of qualified candidates that would unseat her. She did interview with the Athletic Committee that was

comprised of faculty, staff and students and they recommended to me the search process be concluded and unanimously recommended to offer her the permanent position.

EOU aggressively pursues all avenues to recruit minority candidates for all positions. This includes special placement of advertisements in focused publications and web sites as well as an aggressive approach to individual contacts through professional networks and associations. EOU's challenges include, which are commensurate with other universities our size, budget allocation as well as geographic considerations. Individuals must make career decisions based on the salary we are able to offer as well as the decision to live in a rural and remote area—i.e., closest airport is 2.5 hours away. EOU is in the process of implementing a broad based and aggressive affirmative action plan with the specific goal of increasing the diversity of our faculty and staff. These efforts support the goals and objectives of HB 3118.

Western Oregon University

Three head coaching positions have been filled since 2011: Women's Soccer, Men's Basketball and Women's Softball.

Head Women's Soccer

72 Completed Applications were received – 58 offered statistical information

Of the 58 – 10 were female; 8 identified as minority

9 candidates were interviewed by phone and/or on campus – 2 were Hispanic

Head Men's Basketball

82 Completed Applications were received – 75 offered statistical information

Of the 75 – 25 identified as minority

5 candidates were interviewed by phone and/or on campus – 2 were African American

Head Women's Softball

37 Completed Applications were received – 34 offered statistical information

Of the 34 – 15 were female; 1 identified as a minority, but didn't meet the qualifications for the position

9 candidates were interviewed by phone and/or on-campus – 4 were women, 4 were male and 1 declined to give statistical information

These searches were conducted using the same methods, tracking, and reporting as all others on campus to fill faculty and staff positions. All searches are conducted to comply with Federal and State laws and regulations along with Oregon University System and Western Oregon University human resources policies regarding filling positions on campus. This would include compliance with House Bill 3118.

WOU uses the same methods to identify minority candidates for these positions as we do for all other positions on campus. WOU advertises through the organization recognized as the one that those

looking for positions in higher education would be using. WOU also uses networking opportunities by those in our Athletics department, alumni and others within the athletic community.

The challenges are the same as with other recruitments for other positions at a university of our size and budget. Candidates must make career decisions based on the income provided by the position in addition to other career considerations.