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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

JIN ZHU,

Plaintiff,

v.

NORTH CENTRAL
EDUCATIONAL SERVICE
DISTRICT – ESD 171,

Defendant.

NO. 2:15-cv-183-JLQ

PLAINTIFF’S LR 56.1(a)
STATEMENT OF FACTS
ISO PLAINTIFF’S MOTION
FOR PARTIAL SUMMARY
JUDGMENT

Hearing Date: July 8, 2016

Without oral argument

COMES NOW plaintiff Jin Zhu by and through his attorneys and hereby submits his Statement of Facts pursuant to Local Rule 56.1(a).

The Declaration of Matthew Crotty, filed herewith, contains excerpts of Richard McBride, Suzanne Reister, and the ESD 171’s Fed. R. Civ. P. 30(b)(6)

1 deposition. The Declaration of Matthew Crotty also contains the ESD 171's
2 responses to Plaintiff's Interrogatories and Requests for Production.

3 The Declaration of Jin Zhu, which is cited in the below statement of facts, is
4 filed individually.

5
6 **A. THE PARTIES.**

7 1. Jin Zhu is a Chinese-American citizen who was born in China and
8 immigrated to the United States in 2004. (Zhu Decl. ¶2)

9 2. Mr. Zhu worked as a math teacher in the Waterville School District
10 from 2006 to 2012. (Zhu Decl. ¶3)

11 3. Waterville School District placed Mr. Zhu on administrative leave on
12 August 7, 2009, and issued Mr. Zhu a Notice of Probable Cause for Discharge on
13 September 7, 2010. (Zhu Decl. ¶4)

14 4. On September 28, 2010, Mr. Zhu filed a Federal race discrimination
15 and retaliation lawsuit against the Waterville School District and Raymond Reid, its
16 Superintendent. (Zhu Decl. ¶5) That lawsuit is captioned *Jin Zhu v. Waterville*
17 *School District No. 209, and Raymond Reid, CV-10-0333-LRS.*

18 5. Mr. Zhu contested the September 7, 2010 Notice of Probable Cause for
19 Discharge and, following a six-day trial, Statutory Hearing Officer, William Etter,
20 found "that sufficient cause for discharge [did] not" exist with regard to Waterville's
21 attempt to terminate Mr. Zhu's employment. *Jin Zhu v. Waterville School District*

1 *No. 209 Findings of Fact, Conclusions of Law and Order, pg. 37 (July 5, 2011).* (Zhu
2 Decl. ¶6)

3 6. On January 25, 2012, the trial court in the *Zhu v. Waterville* federal
4 court case granted, in part, Mr. Zhu's motion for summary judgment and denied, in
5 full, Waterville School District's motion for summary judgment. *Jin Zhu v.*
6 *Waterville School District No. 209, and Raymond Reid, CV-10-0333-LRS (Dkt. 55*
7 *January 25, 2012)*

8
9 7. On March 13, 2012, Mr. Zhu settled his federal court action against
10 Waterville; but, as a condition of the settlement resigned his position at Waterville.
11 (Zhu Decl. ¶7)

12
13 8. Local media published reports on Mr. Zhu's legal dealings with
14 Waterville School District in 2009, 2010, 2011 and 2012. (Zhu Decl. ¶8 & Ex. A)

15
16 9. Following his resignation from the Waterville School District Mr. Zhu
17 applied for two positions at ESD 171, a Math-Science Specialist position (in May
18 2012) and a Regional Science Refurbishment position (in April 2013). (Zhu Decl.
19 ¶9)

20
21 10. ESD 171 is an organization that provides support services to 29 school
22 districts within North Central Washington (Crotty Decl., at Ex. A *citing* McBride
23 Dep. 11:21-25; 12:1-23.)

1 11. Richard McBride is ESD 171's Superintendent and its Affirmative
2 Action Officer. (Crotty Decl. at Ex. A *citing* McBride Dep. 5:21-25; 64:19-24)

3 12. Suzanne Reister is ESD 171's Associate Executive Director of Human
4 Resources, has served in that position since 2008, has twenty years of HR experience
5 with a private employer, and has passed the Society of Human Resource Manager's
6 (SHRM) Professional in Human Resources designation program - - a 150 question
7 three and one half hour test "over state and federal laws [and] anything
8 encompassing in and around HR." (Crotty Decl. at Ex. B *citing* Reister Dep. 9:22-
9 24; 10:15-21; Crotty Decl. at Ex. C *citing* Reister 30(b)(6) Dep. 15:18-25; 16:1-16)

10
11
12 **B. FACTS RELATING TO PLAINTIFF'S DISPARATE IMPACT CLAIM.**

13 13. On March 28, 2013 ESD 171 posted a job opening for a Regional
14 Science Refurbishment Assistant position. (*Compare* ECF 019, ¶30 with ECF 022,
15 ¶30)

16
17 14. Suzanne Reister wrote the job announcement along with ESD 171
18 employee Cindy Duncan. (Crotty Decl. at Ex. B *citing* Reister Dep. 45:7-15)

19
20 15. The "Job Opening Announcement & Job Description" for the Regional
21 Science Refurbishment Assistant" stated that applicants needed to provide:

22 [T]he following information to the NCESD:

- 23
24
25
- Cover letter directly addressing your interest and qualifications for this position
 - Resume

- 1 ➤ Three current letters of recommendation. (Zhu
2 Decl. ¶19 & Ex. D)

3 16. The “**timeline**” set out on the job announcement provided:

- 4 ➤ The position opens March 28, 2013
5 ➤ Position closes when filled
6 ➤ Screening & Interviews TBD
7 ➤ Position begins - as soon as possible.

8 **Note:** Employment contingent upon successful clearance of a
9 Washington State Patrol, FBI fingerprint criminal history
10 background check, and Sexual Misconduct background check.
11 *Id.*

12 17. ESD 171 sends such job announcements throughout the state so as to
13 ensure “folks are aware that a position opening exists” at ESD 171. (Crotty Decl. at
14 Ex. A *citing* McBride Dep. 85:15-25; 86:1-12; Crotty Decl. at Ex. B *citing* Reister
15 Dep 19:15-25; 20:1-9)

16 18. ESD 171 claims that one way it ensures a fair and appropriate screening
17 process for publically posted jobs is to ensure that a prospective candidate’s job
18 application is complete. (Crotty Decl. at Ex. A *citing* McBride Dep. 30:23-25; 31:1-
19 25; 32:1-10)

20 19. Jesse Swider (a white female), after being informed of the Regional
21 Science Refurbishment Assistant job announcement, applied for that position on
22 April 1, 2013. (Crotty Decl. at Ex. B *citing* Reister Dep. 40:17-20)

23 20. Ms. Swider did not submit any letters of recommendation with her
24 application for the Regional Science Refurbishment Assistant position even though
25

1 the job announcement called for “three current letters of recommendation.” (*Id.* at
2 Reister Dep. 40:23-25; 41:1-3)

3 21. Cindy Kahn (a white female) applied for the Regional Science
4 Refurbishment Assistant position. (*Id.* at Reister Dep. 42:4-12)

5
6 22. Ms. Kahn did not submit any letters of recommendation with her
7 application for the Regional Science Refurbishment Assistant position even though
8 the job announcement called for “three current letters of recommendation.” (*Id.* at
9 Reister Dep. 42:4-12)

10
11 23. Richard Robbins (a white male) applied for the Regional Science
12 Refurbishment position. (*Id.* at Reister Dep. 41:20-25)

13
14 24. Mr. Robbins did not submit any letters of recommendation for the
15 Regional Science Refurbishment Assistant position. (*Id.* at Reister Dep. 42:1-3)

16 25. On April 4, 2013 at 4:03 PM Mr. Zhu (a Chinese male) emailed
17 Suzanne Reister as follows:

18 My name is Jin Zhu. You met me during the interview for the
19 math/science assistant position last summer. I am interested in the
20 regional science refurbishment assistant position. Could you please tell
21 me whether my application package is still valid? Is there anything else
22 that you need? (*Id.* at Reister Dep. 43:5-21; Zhu Decl. ¶11 & Ex. C)

23 26. That same day Ms. Reister replied to Mr. Zhu’s email stating “[i]f your
24 application packet is less than a year old all I will need from you is a ‘letter of
25

1 interest' for this part time, temporary position.” (*Id.* at Reister Dep. 43:22-25; 44:1-
2 5)

3 27. On April 5, 2013, Mr. Zhu replied to Ms. Reister’s email stating:

4 Dear Ms. Reister,

5
6 Thank you for your reply. My application packet was submitted in June
7 2012, so it is less than a year old. Attached are my letter of interest and
8 updated resume for the part-time, temporary Regional Science
9 Refurbishment Assistant position. (*Id.* at Reister Dep. 44:6-11)

10 28. Out of the four applicants for the Regional Science Refurbishment
11 position Mr. Zhu was the only applicant who followed the instructions on the job
12 announcement by ensuring that three letters of recommendation were submitted as
13 part of his application for the Regional Science Refurbishment Assistant position.
14 (Reister Depo. 44:22-25; 45:1-5)(Zhu Decl. ¶¶10-12 & Ex. B *citing* ESD 3950--
15 00343-00352)

16
17 29. On April 5, 2013, Mr. Zhu, in accordance with Ms. Reister’s
18 instructions, emailed Ms. Reister a letter of interest and an updated resume. (Zhu
19 Decl. ¶12)

20 30. On April 16, 2013 at 8:31 AM Mr. Zhu emailed Ms. Reister stating:

21 Dear Ms. Reister,

22
23 Do you know when the interview for the part-time, temporary position
24 will take place? (Zhu Decl. ¶13)

25 31. On April 16, 2013 at 8:35 AM Ms. Reister replied:

1 Good morning.

2 We are currently working out details on this. (Zhu Decl. ¶14)

3 32. On April 18, 2013 ESD 171 informed Mr. Zhu that he did not get the
4 Regional Science Refurbishment Assistant position. (Zhu Decl. ¶15)

5
6 33. Ms. Swider's personnel file reveals that Ms. Swider executed an IRS
7 W-4 on April 17, 2013 and that said IRS W-4 was "entered" on May 6, 2013. (Crotty
8 Decl. at Ex. B *citing* Reister Dep. 36:1-25; 37:1-5; Crotty Decl. at Ex. D *citing*
9 Reister Dep. Ex. 20 (Swider personnel file excerpts))

10
11 34. Ms. Swider's personnel file reveals that Ms. Swider's
12 "Personnel/Payroll Action" document was approved on May 8, 2013. *Id.*

13
14 35. The "Personnel/Payroll Action" document regarding Ms. Swider's
15 application for the Regional Science Refurbishment position reflects a May 8, 2013
16 "approval" date and that the payroll action was for the "replacement" of Tina Judd.
17 (Crotty Decl. at Ex. D *citing* Reister Depo. Ex. 20 at 000537 – 00551)

18
19 36. ESD 171's records reflect that it first paid Ms. Swider for work she did
20 as the Regional Science Refurbishment Assistant sometime after May 31, 2013.
21 (Crotty Decl. at Ex. E *citing* Defense Response to Plaintiff Interrogatory No. 7 &
22 NCESD 002198 – 002199)

23
24 37. ESD 171's records reflect that Mr. Zhu and Ms. Swider both contained
25 the same required and preferred skills for the Regional Science Refurbishment

1 Assistant position. (Crotty Decl. at Ex. B *citing* Reister Dep. 63:12-17; Crotty Decl.
2 at Ex. F *citing* Reister Dep. Ex. 28)

3 38. On August 8, 2013, Ms. Reister informed Mr. Zhu that “prior to
4 receiving any applications [for the Regional Science Refurbishment Assistant
5 position] the decision was made to review individual packets in the order received”,
6 i.e. on a “first come first served basis.” (Crotty Decl. at Ex. B. *citing* Reister Dep.
7 70:24-25; 71:1-13; 76:12-21; Crotty Decl. at Ex. G *citing* Reister Dep. Ex. 31)
8

9 39. “There’s nothing on the refurbishment job announcement and job
10 description that says ‘first come first served’” nor is there anything stated on the job
11 announcement which informs applicants that the “applications will be reviewed in
12 the order in which they [are] received.” (Crotty Decl. at Ex. B *citing* Reister Dep.
13 74:2-6; 79:20-24)
14
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16 40. ESD 171 maintains a “first come first served” policy meaning that the
17 first person who submits an application for a temporary opening gets that position.
18 (Crotty Decl. at Ex. A *citing* McBride Dep: 116:12-15; 118:13-15)
19

20 41. ESD 171’s Superintendent and Affirmative Action Officer does not
21 dispute that the “first come first served” policy might “limit the opportunities of
22 other qualified applicants to get the job.” (*Id.* at McBride Dep. 118:16-23; 119:17-
23 24)
24
25

1 42. ESD 171's Superintendent and Affirmative Action Officer; however,
2 would not conclusively answer the question as to whether the "first come first
3 served" policy would limit other opportunities for qualified applicants "without
4 knowing the circumstances surrounding" the employee's application. (*Id.* at
5 McBride Dep. 119: 17-25; 120:1-6)
6

7 43. ESD 171's Superintendent and Affirmative Action Officer could give
8 no examples other than "workload", "someone need[ing] to go on emergency leave,
9 someone [getting] injured overnight in a car accident, [or] someone giving birth
10 today" that would justify use of the "first come first served" policy. (*Id.* at McBride
11 Dep. 121:7-25; 123:17-20)
12

13 44. ESD 171 is aware of no other organization that uses a "first come first
14 served" hiring practice. (Crotty Decl. at Ex. B *citing* Reister Dep. 71:14-19)
15

16 45. ESD 171 admits that its "first come first served" practice fails to
17 measure whether all applicants for a job are able to actually do the job. (*Id.* at Reister
18 Dep. 74:8-13)
19

20 46. ESD 171 has done no research to determine whether a "first come first
21 served" hiring practice complies with equal opportunity. (*Id.* at Reister Dep. 71:20-
22 22)
23

24 47. ESD 171 agrees that alternatives exist to a "first come first served"
25 hiring practice including "go[ing] to an employment agency" to fill the position or

1 allowing more than one applicant to go through the hiring process. (*Id.* at Reister
2 Dep. 71:23-25; 72:1-12)

3 48. ESD 171 has not researched whether a “first come first served” practice
4 is professionally recognized as it relates to hiring temporary employees but
5 acknowledges that a “first come first served” hiring practice is not a professionally
6 recognized practice vis-à-vis hiring permanent employees. (*Id.* at Reister Dep.
7 74:25; 75:1-15)

8
9 49. ESD 171’s HR Director testified that “all candidates who are qualified
10 for a temporary part-time position should get a fair shot at competing for that job”
11 but that if ESD 171 did not have “time available” and “if it is a position that we need
12 help now that may not be the case.” (*Id.* at Reister Dep. 24:11-16)

13
14 50. ESD 171 has no written policy that sets out the criteria by which it
15 determines whether some qualified candidates do (or do not) get the opportunity to
16 compete for a job opening. (*Id.* at Reister Dep. 26:3-9)

17
18 51. “[T]he only time [ESD 171 has] ever” used its “first come first served”
19 practice is when Mr. Zhu applied for the Refurbishment position in April 2013. (*Id.*
20 at Reister Dep. 70:24-25; 71:1-8)

21
22 52. ESD 171’s Superintendent and Affirmative Action Officer would not
23 substantively answer the “yes or no” question as to whether allowing a person who
24
25

1 did not submit a complete application would be consistent with ESD 171's stated
2 EEO policy. (Crotty Decl. at Ex. A *citing* McBride Dep 96:13-25; 97:1-7)

3 53. Tellingly, ESD 171's Superintendent and Affirmative Action Officer
4 tacitly admitted that ESD would allow an candidate who did not submit a complete
5 application to go through the complete interview process over a candidate who did
6 submit a complete application if the "background and experience of" the candidate
7 who followed the instructions on the job posting and submitted his or her application
8 accordingly "weren't satisfactory." (*Id.* at McBride Dep 96:13-25; 97:1-7)
9

10 54. ESD 171's Superintendent and Affirmative Action Officer admits that
11 it would be good practice to maintain written and objective criteria so as to ensure
12 applicants for employment were afforded equal opportunity. (*Id.* at McBride Dep
13 97:8-25)
14

15 55. The ESD 171's Superintendent and Affirmative Action Officer could
16 not identify a single written screening process as it relates to applicants for
17 employment even though he, as the Affirmative Action Officer, was personally
18 charged with developing such policies. (*Id.* at McBride Dep 91:4-6; 88:14-25; 89:1-
19 8; ECF 017-1, pg. 16-18)
20

21 56. ESD 171's HR Director testified that it is ESD 171's unwritten practice
22 to, at times, allow individuals who submit incomplete applications to gain
23 employment "if the person had worked for us before and was a known person" and
24
25

1 that such practice was applied regarding “the part-time position Jessie [Swider]” was
2 hired into because Ms. Swider “had worked for [ESD 171] before.” (Crotty Decl. at
3 Ex. B *citing* Reister Dep. 38:7-25; 39:1-3; Crotty Decl. at Ex. C *citing* Reister
4 30(b)(6) Dep. 43:23-25; 44:1-25; 45:1-5)

5
6 57. ESD 171’s HR Director is charged with executing ESD 171’s unwritten
7 practice that allows former ESD 171 employee preferential treatment (such as being
8 able to gain employment without submitting the required application documents in
9 the job application process) but could articulate no steps by which ESD 171 ensures
10 that the above referenced practice is not abused. (Crotty Decl. at Ex. B *citing* Reister
11 Dep. 39:4-22)

12
13 58. ESD 171 does not inform the public that prior employees of ESD 171
14 get preference in hiring over those employees who never worked with ESD 171. (*Id.*
15 at Reister Dep. 39:15-22)

16
17 59. ESD 171’s HR Director testified that she did not agree that a company’s
18 EEO policy should be taken into consideration during the hiring process. (*Id.* at
19 Reister Dep. 52:23-25; 53:1-4)

20
21 60. ESD 171 currently employs Celeste Beatty (a white female) as its
22 Regional Science Refurbishment Assistant. (Crotty Decl. at Ex. C *citing* Reister
23 30(b)(6) Dep. 45:14-25; 46:1-2; Crotty Decl. at Ex. F *citing* NCESD 3950-012190)

1 61. Ms. Beatty (like Jesse Swider) was previously employed with ESD 171
2 before being offered the Regional Science Refurbishment Position. (*Id.* at Reister
3 30(b)(6) Dep. 49:8-12)

4 62. ESD 171 publically advertised the Regional Science Refurbishment
5 position before hiring Celeste Beatty into that position. (*Id.* at 30(b)(6) Reister Dep.
6 51:3-6)

7 63. ESD 171's "ethnicity report" reflects that 117 ESD 171 employees are
8 white, 9 ESD 171 employees are Hispanic, and no ESD 171 employees are Chinese.
9
10 (Crotty Decl. at Ex. H *citing* NCESD 012190 - 012195)

11 64. On January 15, 2014, ESD 171 informed Mr. Zhu that 10 out of its 95
12 employees self-identified as minorities. (Crotty Decl. at Ex. I *citing* Reister Dep. Ex.
13 51 NCESD 00148)

14
15
16 **C. FACTS RELATING TO PLAINTIFF'S PUBLIC RECORD ACT CLAIM.**

17 65. On January 13, 2014 Mr. Zhu sent (via facsimile, regular mail, and
18 email) ESD 171 a document titled "Public Records Request". (Crotty Decl. at Ex. B
19 *citing* Reister Dep. 82:1-25; 83:1-15)(Zhu Decl. ¶16)

20
21 66. Mr. Zhu's January 13, 2014 public record request sought:

22 [A] copy of North Central ESD's programs (effective prior to June 21,
23 2012) that encouraged the school districts in North Central Washington
24 to employ minority teachers and/or that aimed to increase minority staff
25 in the NCESD. (*Id.* at Reister Dep. 86:1-17; Crotty Decl. at Ex. J *citing*
Ex. 50 NCESD 00154)

1 67. Ms. Reister received and read Mr. Zhu's January 13, 2014 public record
2 request. (Crotty Decl. at Ex. B *citing* Reister Dep. 86:18-21)
3

4 68. Ms. Reister communicated with an attorney after receiving Mr. Zhu's
5 January 13, 2014 public record request. (*Id.* at Reister Dep. 88:2-5; 89:4-7)
6

7 69. ESD 171 responded to Mr. Zhu's January 13, 2014 public record
8 request on January 22, 2014 and, in doing so, stated:

9 We estimate the time of response will be approximately February 27,
10 2014. The time required to respond to your request is based upon the
11 need to locate and assemble the records requested and/or to determine
12 whether any of the requested records are exempt from public disclosure.
(*Id.* at Reister Dep. 86:22-25; 87:1-17; Crotty Decl. at Ex. K *citing* Ex.
53 NCESD 00153)

13 70. Regarding the need for the month-plus extension to answer Mr.
14 Zhu's public record request, Mr. Reister testified as follows:
15

16 Q. So I don't want to know what a lawyer told you, I just want to know
17 your reason, your own reason for asking an additional month or so to
18 respond to Mr. Zhu's January 13th public record request?

19 MR. MOBERG: Again, if your answer is based on any advice you
20 received from counsel I'm instructing you not to answer the question.

21 A. Okay. I will not answer the question.

22 Q. Do you have an understanding as to why it would take an additional
23 month to respond to Mr. Zhu's request?

24 A. To give us the time to research.

25 Q. And what needed to be researched?

1 MR. MOBERG: Again, don't answer that question if it's based on any
2 advice you received from an attorney.

3 A. I won't answer the question. (Crotty Decl. at Ex. B *citing* Reister
4 Dep. 88:21-25; 89:14-21)

5
6 71. On February 27, 2014 ESD 171, with the assistance of Val Hughes (an
7 attorney with the Seattle, Washington based Perkins Coie law firm who "has more
8 than 25 years of experience in the areas of employment litigation, discrimination and
9 harassment litigation, collective bargaining, grievance arbitration, and
10 administrative proceedings") issued its final response to Mr. Zhu's January 13, 2014
11 public record request. (*Id.* at Reister Dep. 91:12-23; Crotty Decl. at Ex. L *citing*
12 Reister Dep. Ex. 56 NCESD 00152) *See* Valerie L. Hughes – Overview – *available*
13 *at* <https://www.perkinscoie.com/en/professionals/valerie-l-hughes.html> (last visited
14 May 11, 2016).

15
16
17 72. ESD 171's February 27, 2014 response stated, in relevant part: "There
18 are no records responsive to your request. Educational Service Districts are not
19 required to have affirmative action programs." (*Id.* at Reister Dep. Ex. 56)

20
21 73. As of January 13, 2014, ESD 171 possessed two documents "that aimed
22 to increase minority staff in the NCESD", those documents being its Administrative
23 Procedures No. 5600 P-1 "Affirmative Action" and Board Policy No. 5600
24 "Affirmative Action." (ECF No. 17-1 pgs. 2, 9, 15-18 *citing* ESD 171 Response to
25

1 Plaintiff Request for Production No. 14; Crotty Decl. at Ex. B *citing* Reister Dep.
2 98:18-23)

3 74. ESD 171's Administrative Procedures No. 5600P-1 "Affirmative
4 Action" is dated 3/29/89 (Revised 10/2/90) and its Board Policy No. 5600
5 "Affirmative Action" is dated 10/24/77 (Revised 3/28/89). (ECF No. 17-1 pgs. 17-
6 18)
7

8 75. Ms. Reister did not give Mr. Zhu ESD 171's Administrative Procedures
9 No. 5600 P-1 and Board Policy No. 5600 because she was "confused" and "thought
10 he wanted a program." (Crotty Decl. at Ex. B *citing* Reister Dep. 92:23-25; 93:1-5;
11 99:6-10)
12

13 76. Ms. Reister did not ask Mr. Zhu what Mr. Zhu meant by "programs".
14 (*Id.* at Reister Dep. 93:23-25; 94:22-24)(Zhu Decl. ¶¶17-18)
15

16 77. Ms. Reister did not consult a dictionary to find out what the word
17 "program" meant. (*Id.* at Reister Dep. 95:9-11)
18

19 78. Ms. Reister refused to describe the process she went through in
20 determining that no records were responsive to Mr. Zhu's January 13, 2014 public
21 record request claiming such would "be violating my conversation with our
22 attorney." (*Id.* at Reister Dep. 96:18-25)
23
24
25

1 79. Ms. Reister refused to explain why she told Mr. Zhu that “Educational
2 Service Districts are not required to have affirmative action programs.” (*Id.* at
3 Reister Dep. 97:1-17)

4 80. Ms. Reister refused to explain why she used the words “affirmative
5 action” in responding to Mr. Zhu’s January 13, 2014 Pubic Record Request even
6 though Mr. Zhu never used the words “affirmative action” in his January 13, 2014
7 public record request. (*Id.* at Reister Dep. 100:11-16)

8 81. Ms. Reister acknowledged that she knew what the phrase “public
9 record” meant, that Mr. Zhu’s January 13, 2014 request was a request for public
10 records, that “written programs that relate to...the employment of minorities exist at
11 ESD 171,” and the ESD 171’s “affirmative action policy and procedures...would be
12 considered a record.” (*Id.* at Reister Dep. 110:20-25; 111:1-6; 111:23-25; 112:1-3)

13 82. Ms. Reister testified that she was aware of ESD 171’s affirmative action
14 policy. (*Id.* at Reister Dep. 14:17-19)

15 83. Ms. Reister testified that she (a) knew where the affirmative action
16 policy was physically located, (b) knew that the affirmative action policy was on
17 ESD 171’s intranet (c) accessed the affirmative action policy on ESD 171’s intranet
18 “four or five times” within the last three years, (d) knew where the policy was located
19 if she were told to retrieve it; but, (c) did not know whether the policy was available,
20 online, to the public (*Id.* at Reister Dep. 16:1-23)

1 84. Ms. Reister (a) acknowledged familiarity with the phrase “public record
2 request”, (b) attended “several sessions on public record requests as part of [her]
3 continuing ed[ucation]”, (c) stated an agency needs to be careful “when [it] receives
4 letters, that sometimes it’s not really apparent that they are a public record request”,
5 and (d) acknowledged that it is her “practice” to “confer with legal counsel” when
6 she receives public record requests. (*Id.* at Reister Dep. 30:22-25; 31:1-25; 32:1-13)

8 85. Ms. Reister stated that she has had “ongoing” training on responding to
9 public record requests throughout her time at ESD 171. (Crotty Decl. at Ex. C *citing*
10 Reister 30(b)(6) 24:11-25; 25:1-19)

12 86. Upon receiving a public record request Ms. Reister “date stamp[s] it”
13 then “read[s] it carefully,” and then “make[s] sure that [she] confirm[s] with legal
14 counsel.” (Crotty Decl. at Ex. B *citing* Reister Dep. 33:7-25)

16 87. Ms. Reister assisted ESD 171 in responding to Mr. Zhu’s
17 Interrogatories and Requests for Production - - - including the Request for
18 Production that sought production of the “policy, practice or procedure that relates
19 to or is associated with discrimination, equal opportunity and/or retaliation that was
20 in effect during January 1st, 2012 to May 1st, 2013.” (*Id.* at Reister Dep. 58:2-13)

22 88. The Administrative Procedures No. 5600 P-1 “Affirmative Action” that
23 ESD 171 did not produce in response to Mr. Zhu’s January 13, 2014 public record
24 request states that the “North Central ESD is committed to affirmative action” and
25

1 requires that ESD 171's Affirmative Action Officer (a) issue an annual affirmative
2 action report to ESD 171's board prior to July 1st of each year, (b) compile a list of
3 employment agencies or other job referral sources for use in notifying women and
4 minorities of position openings, (c) convey information regarding applicant gender
5 and race/ethnic origin to ESD 171's board, and (d) develop a work force profile .

6 (ECF 071-1 at pg. 16-17)
7

8 89. ESD 171's Superintendent and Affirmative Action Officer has not (a)
9 issued an annual affirmative action report to ESD 171's board (nor could ESD 171's
10 Affirmative Action Officer ever recall saying the words "affirmative action" to the
11 board), (b) compiled a list of employment agencies or other job referral sources for
12 use in notifying women and minorities of position openings, (c) conveyed
13 information to ESD 171's board regarding applicant gender, race, or ethnic origin,
14 and (d) developed a work force profile. (Crotty Decl., at Ex. A *citing* McBride Dep.
15 70:9-19; 71:2-25; 72:17-15; 73:1-4; 77:16-25; 78:1-15; 99:7-15; 100:8-17)
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18 90. ESD 171's Superintendent and Affirmative Action Officer could not
19 list a single agency which represents minority and female candidates even though
20 ESD 171's Administrative Procedures No. 5600 P-1 "Affirmative Action" requires
21 that "[w]here appropriate, specific mailings [of job openings] will be made to
22 agencies which represent minority and female candidates." (*Id.* at McBride Dep.
23 75:10-18)
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1 91. ESD 171’s Superintendent and Affirmative Action Officer could not
2 name a single instance in which ESD 171 made specific mailings regarding job
3 openings to agencies that represent minorities and female candidates. (*Id.* at
4 McBride Dep. 76:5-16)

5 92. ESD 171’s Superintendent and Affirmative Action Officer could not
6 identify a specific screening instrument or selection procedure even though ESD
7 171’s Administrative Procedures No. 5600 P-1 “Affirmative Action” charges the
8 Affirmative Action Officer with developing or obtaining such instruments and
9 procedures. (*Id.* at McBride Dep. 78:16-25; 79:1-5; 88:14-25; 89:4-8; 91:4-6)

10 93. The Board Policy No. 5600 “Affirmative Action” that ESD 171 did not
11 produce in response to Mr. Zhu’s January 13, 2014, public record request states that
12 “[t]he Board will annually receive a report on the composition of the workforce and
13 efforts to promote or employ women or minorities.” (ECF 017-1, p. 18)

14 94. ESD 171’s board has never received a report that sets out the
15 composition of the workforce and efforts to employ women or minorities. (Crotty
16 Decl., at Ex. A *citing* McBride Dep. 104:9-12)

DATED this May 11, 2016.

s/ Matt Crotty

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CERTIFICATE OF SERVICE

I certify that on May 12, 2016 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties, if any, shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this May 12, 2016.

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