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March 6, 2015

Superintendent Kim Mercer  
East Providence School District  
145 Taunton Avenue  
East Providence, RI 02914

Charles Tsonos, Chairperson  
East Providence School Committee  
145 Taunton Avenue  
East Providence, RI 02914

Paul Lemont  
City Manager  
145 Taunton Avenue  
East Providence, RI 02914

Mayor Thomas A. Rose, Jr.  
East Providence City Council  
145 Taunton Avenue  
East Providence, RI 02914

Dears Supt. Mercer, Chair Tsonos, City Manager Lemont, and Mayor Rose:

I am writing on behalf of the American Civil Liberties Union of Rhode Island ("RIACLU") to express deep concerns regarding the hiring practices of the City of East Providence (the "City") and its School Department (the "Department"), and specifically the City's failure to abide by its own formal policies and ordinances and the Department's failure to meaningfully address serious allegations of discrimination against minority employees and applicants.

This is not a new issue for the Department or the City. As far back as 1994, a Conciliation Agreement at the Rhode Island Commission for Human Rights (the "1994 Agreement") required the Department to make certain changes to its hiring practices in support of Affirmative Action goals. The Department is still bound by the 1994 Agreement, and by its subsequent Affirmative Action Plan and City Ordinance (as well as State and Federal anti-discrimination laws). Unfortunately, recent events suggest that the Department and City are in violation of these commitments, and are generally disregarding their legal obligation to implement non-discriminatory hiring practices. We believe it is incumbent upon the City and the Department to address these issues in a meaningful way in order to restore faith in the city's minority community that East Providence is truly committed to a diverse workforce.

This letter has been prompted by conversations and a meeting I had with Jim Vincent, head of the Providence NAACP Branch (who I know has also written a letter to the City about these issues), as well as employees of the school department. The claims they have raised are disconcerting, and a review of the relevant documents has confirmed for the RIACLU the legitimacy of many of those claims.

Before going into details, I note that this letter relies in part on formal claims of discrimination filed against the Department by Nadine Lima in 1991 and, more recently, in 2013. I realize you might be constrained in fully responding to allegations that directly involve an open case, but the purpose of this letter is not to advocate on behalf of Ms. Lima's specific case. Rather, the information that I refer to, and for which the RIACLU and others seek answers, is all a matter of public record.

### **The 1994 Agreement**

The 1994 Agreement arose from the settlement of a claim brought in 1991 by Nadine Lima Booker ("Ms. Lima"), then a teacher in the Department, that the Department had violated R.I.G.L. 28-5, which prohibits discrimination in employment. After the Rhode Island Commission for Human Rights (the "Commission") found probable cause to believe that the Department had discriminated against Ms. Lima based on her color and national origin, the parties resolved her claim through a conciliation process. The 1994 Agreement remains in effect, and is binding upon the Department. It requires, among other things:

- That the Department appoint the School Committee Chairperson and the City's Affirmative Action Officer ("AAO") to the Department's Affirmative Action Committee;
- That the Department implement a specific procedure to fill a vacancy where there is "no minority representation or an underrepresentation of minorities"; and
- That the Department's Affirmative Action Committee prepare and submit an annual report regarding the Department's compliance with its Affirmative Action Plan.

Twenty years later, Ms. Lima is a Department employee and the principal of the Emma G. Whiteknact Elementary School. As she learned in 2013 when she applied for several possible promotions, the Department has failed to comply with the very agreement that induced her to settle her claim of discrimination two decades earlier. The School Committee Chairperson and AAO do not sit on the Department's Affirmative Action Committee, the Department does not follow the required procedures to improve minority representation, and the Affirmative Action Committee has not prepared annual compliance reports.

### **The Affirmative Action Plans**

The Department and the City have each adopted an Affirmative Action Plan ("AAP"). The City's AAP is incorporated into the City's Revised Ordinances, and represents the City's commitment to "equitable employment opportunities in municipal departments for all minority groups and women." (Rev. Ords. 1987, Section 11-137). More specifically, according to the Department's AAP:



"The goal of the East Providence School Department shall be to equalize – as much as possible, based on the availability of qualified applicants and on current employee attrition – the racial, handicapped, and gender breakdown of School Department employees so that minority representation among employees will closely approximate minority representation within the population of East Providence."

The City's AAP creates a classified service position of Affirmative Action Officer ("AAO") with several specific powers and responsibilities. East Providence Revised Ordinance 11-152 requires that the AAP "in conjunction with the personnel director shall oversee all hiring done by the city and shall move to ensure that all hiring will be conducted through the Personnel Department and in accordance with the provisions of this plan." (Emphasis added). The City AAP also creates an Affirmative Action Committee that is tasked, among other things, with making an annual written report to the city manager and city council of its activities and recommendations. (Rev. Ords. 1987, Section 11-153).

The Department's AAP incorporates the mandates of the 1994 Agreement, and commits the Department to several other policies and initiatives. For example, the AAP requires the following annual actions:

- A system-wide evaluation every June to determine if problems of discrimination exist. Problems identified will be considered for correction in the immediate future.
- Review of the staff selection process every June to ensure compliance with the School Committee's Recruitment Policy.
- Review of the Recruitment Policy every June to ensure its design continues to function in support of equal opportunity and practices.

As with the 1994 Agreement, the City and Department seem to have enacted these important policies only to ignore them in practice. The results speak for themselves: As reported in the City's own AAP, as of the 2010 U.S. Census, the population of East Providence was 84% white and 16% minority, including 5.8% of the population who identifies as Black, 4.1% as Hispanic/Latino and 4.2% as two or more races. In contrast, as of June 30, 2013, the Department employed 618 people, of whom approximately 95.8% were White and 4.2% were minorities. Clearly, the Department is a long way from reaching its laudable goal of representing the makeup of the community at large.

It is troubling that the annual reports and reviews required by both AAPs have not been prepared. More disturbing is the persistent failure of both the City and the Department to empower its AAO in the hiring process as required by ordinance and the City AAP.

### **The 2014 Probable Cause Finding**

Ms. Lima has now worked in the Department as a teacher and a principal for 15 years. In 2013 she applied for the positions of Superintendent, Director of Education and Curriculum Coordinator. The City itself conducted the Superintendent search (with the involvement of a state-appointed Budget Commission), while the Department filled the other two positions directly. Consequently, Ms. Lima was able to experience first hand the hiring processes of both the City and the Department. As noted above, Ms. Lima found that the City AAO and the School Committee Chairperson do not serve on the Department's Affirmative Action Committee; that there is no process in place to fill a vacancy where there is an underrepresentation of minorities (which was the case for all of the positions Ms. Lima sought); and that the City AAO had no involvement in the hiring process for any of the positions.

Based on these experiences, Ms. Lima filed a charge of discrimination with the Rhode Island Commission for Human Rights. The Department responded to the Charge by letter on December 9, 2013, in which it explained in some detail the hiring process for the three positions that Ms. Lima had sought. Nowhere in the letter did the Department even attempt to address the failures of the Department and the City to follow their own AAPs and City Ordinances, or to comply with the 1994 Agreement.

On July 11, 2014, a Preliminary Investigation Commissioner determined that there is Probable Cause to believe that the City and the Department have violated the Rhode Island Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island. The Commissioner also found Probable Cause to believe that the Department failed to comply with the terms of the 1994 Agreement.

### **Conclusion**

The concerns and problems that have been documented have been consistent and persistent. Back in 2006, the East Providence Minority Caucus was objecting to the low numbers of minority Department staff and the Department's failure to take initiative in addressing the issue. Little seems to have changed. Indeed, the date on a *Providence Journal* article citing those objections, enclosed, could be changed to today and the article would still be almost as accurate.

In short, more than 20 years after the Rhode Island Commission for Human Rights found Probable Cause to support Ms. Lima's initial Charge of Discrimination, history has repeated itself. But putting aside the merits of Ms. Lima's particular claim, it is difficult to believe that a City with a minority population of 16% can't achieve better than 4% minority representation in its School Department. The City's failure to include the AAO in the hiring process as required by ordinance also demonstrates a troubling disregard for equal opportunity in employment. The

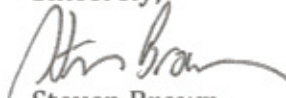


Department's unwillingness to directly address any of Ms. Lima's allegations in its December 9, 2013 letter to the Commission is cause for further concern, and suggests that the Department did not view Ms. Lima's allegations or the Commission's investigation worthy of a thorough response.

We believe the community deserves an explanation for this current state of affairs; an accounting of why the makeup of the Department staff is so devoid of minority representation; reasons why the City and the Department have failed to abide by the critical affirmative action requirements that have been long codified in plans, ordinances and settlement agreements; and a summary of the specific and concrete steps the Department has taken, is taking, and will be taking to address this critical issue. Members of the minority community in your city are, we believe, entitled to no less.

We look forward to your response. Thank you in advance for your prompt attention to this.

Sincerely,



Steven Brown  
Executive Director

cc: East Providence School Committee  
East Providence City Council  
Jim Vincent, NAACP  
Michael Evora, RI Commission for Human Rights  
Nadine Lima

Enclosure