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ATTORNEY WORK PRODUCT

VIA FACSIMILE AND MAIL 805.963-3146

Dr. Brian J. Sarvis
Superintendent
Santa Barbara School Districts
720 Santa Barbara St.
Santa Barbara, California 93101

Re: *Interview Questions*
Client-Matter: SA440-001

Dear Dr. Sarvis:

You asked me to provide a brief summary of my advice regarding the conduct of interviews, and in particular whether some candidates for employment can be asked different questions during an employment interview.

You have described your interview process as consisting of a first round of interviews including questions that have been prepared in advance and asked of all candidates, followed by a second round of interviews of the top candidates which are less "scripted" and more individualized. You have asked whether it is permissible for a member of an interview team in the first round to deviate from the pre-planned interview questions with one candidate but not with all candidates. In our view, this is a risky practice.

Interviews are an important component of the hiring process. However, from a legal perspective, an assessment of an applicant based on an interview is highly subjective and difficult to defend. We always advise employers to plan interviews carefully to be as objective as possible, and to ensure that the interview process is neutral regarding the race, religion, sex, national origin, color, ancestry, medical condition, marital status, sexual orientation, and other immutable attributes of applicants.

To this end, we advise that appropriate job-related questions should be developed in advance. This way the questions can be screened for incipient bias. The interviewers should be fully aware of the duties and requirements of the position to be filled, as it becomes much easier to design interview questions that test an applicant's ability to perform that job. The questions should be balanced between objective and subjective criteria. Objective criteria include subjects such as experience, education, and relevant test scores. Subjective criteria include attitude, work ethic, and ability to get along with others. Any subjective criteria must be adequately related to

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the position to be filled.

Of course, interviews must be non-discriminatory. Thus, all questions must relate to the applicant's ability to perform the job. Questions should not be asked about an applicant's protected status. But one reason we recommend that the questions be formulated in advance, and posed to all candidates, is that even comments made with the best of intentions, with no discriminatory motive, may be impermissible if they create an impression that the employment decision may be based on impermissible factors.

This does not mean that follow up or clarifying questions are improper, although they should be formulated with care, and we advise planning ahead how follow up questions will be handled. But if, during the first round interview process, one candidate is asked a question or asked to comment on a topic entirely different from those asked all the other candidates, that person will experience either an advantage or a disadvantage not experienced by other candidates. This can create the impression that a candidate has been favored or disfavored based on some impermissible factor.

Your practice of individualizing the interviews after the field has been narrowed is a safer way to screen for the personal qualities and experience you seek in a successful candidate. You should still plan ahead for these interviews to assure that all candidates have an equal opportunity to present themselves to you.

If you have additional questions about these issues, please do not hesitate to call me.

Very truly yours,

LIEBERT CASSIDY WHITMORE


Mary L. Dowell

MLD:dlr