



October 10, 2019

VIA EMAIL

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RE: Uniform Complaint Procedure Complaint re: Fresno Unified School District's Failure to Comply with the California Department of Education and Fresno School Board's Requirements Pertaining to Racially Hostile Environments, Retaliation, Bullying, and Disparate Discipline

Dear Superintendent Nelson and Director Plascencia,

The American Civil Liberties Union Foundation of Northern California ("ACLU") submits the following Uniform Complaint Procedure ("UCP") complaint regarding Fresno Unified School District's ("District") failure to comply with the California Department of Education and Fresno Unified School Board's requirements pertaining to racially hostile environments, on behalf of A'mya Wilson and her mother, Autumn Hays, and Elana Henderson and her mother Elisha Henderson ("clients"). This complaint details how Bullard High School ("Bullard") staff, including its senior leadership discriminated against our clients; illustrates how our clients civil and constitutional rights were violated; and enumerates the appropriate remedies.

A. Clients

1. A'mya Wilson

A'mya Wilson is a Black sophomore and was enrolled in Bullard High School until she was pushed out of the District due to the backlash she received after reporting the blackface video. When the District failed to take measures regarding staff retaliation and subsequently failed to affirmatively rectify discrimination against Black students, A'mya knew she had to leave Bullard High School. Despite her mother removing her from the environment, A'mya continues to face racial hostility when she tries to obtain basic documentation from Bullard. In fact, it was the District administrators and Bullard who made it widely known that A'mya filed complaints regarding a white student who wore blackface. Indeed, that is why she felt forced to disenroll. A'mya also believes the District allowed retaliation against her because she was the only student who did not make the cheerleading team after standing up for Black students. This was within 48 hours after the cheerleading coaches told her that she did a great job during the week-long cheer clinics. She has faced threats and harassment for raising this issue with Bullard staff. At no point has the District resolved the multiple complaints that A'mya raised with staff regarding the racially hostile environment for her and other Black students. Likewise, the District has failed to acknowledge that Bullard affirmatively pushed A'mya out of school. And the District has yet to center any efforts, that A'mya has seen, regarding her being the only student that did not make the cheerleading team out of the students who cheered their ninth-grade year. According to A'mya, the District's actions aggravated the situation and perpetuated a hostile environment not only for her, but for all Bullard Black students.

2. Elana Henderson

Elana Henderson is a Black sophomore at Bullard High School. Elana regularly witnesses non-Black students who are comfortable saying the n-word around campus, particularly white students. She has been subjected to a racially hostile environment through the callous nature of the Administration when she raises this issue and by other incidents that make Black students feel uncomfortable at school. Elana also had to attend class with the student who created the blackface video, a constant reminder of the District's inaction. Because of how poorly the District has handled racial hostility, including the blackface incident, Elana does not want to attend Bullard high school anymore. In effect, the District's failure to support Black students is pushing her out of the school.

B. Climate of Bullard High School for Black Students

According to our clients, Black students are forced to endure being called the n-word and hear the n-word by non-Black students on a regular basis. Additionally, Black students submit complaints, but there is rarely any meaningful follow-up by Bullard staff when this happens. As detailed below, A'mya and Elana submitted complaints, but the District failed to implement any resolution that seemed reasonable to the students once this happened. In at least one instance, the school district failed to protect a Black student, our client A'mya, when she made a report

regarding racial harassment. Indeed, the District publicly made known her complaint and she felt forced to disenroll due to the hostile environment that the District created.

Furthermore, Black parents and students are regularly told their concerns are not a priority and that it is the onus of the Black parents and students to create solutions for Black students' well-being at Bullard. In 2019, Bullard Black Student Union ("BSU") students have put the school on notice by expressing to the Administration that "they did not feel they could trust neither staff or administration at Bullard and that if they felt they were in danger or that they had something wrong they would just wait until they got home." They also expressed in at least one meeting in 2019 that they felt discouraged and afraid because of past events where Black students reported racial harassment and the Administration failed to act. In addition, parents of Black students consistently express that they do not trust Bullard and District staff or Administration. In 2018, Black parents called on the District to fix issues at Bullard, but they have yet to get a response.¹

Black students at Bullard High School bear the brunt of some of the worst discriminatory discipline practices in the District. According to the California Department of Education, Black students at Bullard comprise 10.4% of the population and white students make up 26.2%.² Across Fresno Unified, Black students make up 8.2% of the population. The suspension rates in the 2017-18 school year for Black students were 21.8% and 16.9%, respectively. Black students in the District received the highest percentage of "Defiance" suspensions out of any other ethnic group in the District.³ The disparate treatment gets worse as family income levels decrease. In fact, the District suspended 1 in 4 low-income Black students at Bullard High School during the 2017-2018 school year.⁴ All of the disparate treatment occurs in direct violation of local, state and federal policies.

1. The Blackface Incident at Bullard High School

On Thursday, May 23, 2019, a white Bullard High School student, Maddie Tucker, posted on social media a video in which she wore blackface and exclaimed "Who said I can't say [the N-word]?" A'mya, watched the video at school and was appalled at the racist behavior. She grew upset. She knew that racial insensitivity was nothing new in the Fresno community, but felt she had to report the video to seek justice for the girl's behavior. Since that time, the District allowed for the white student to stay on the cheerleading team, created a hostile environment by forcing Black students to express how they felt regarding the video, and in some instances, asked the

¹ "Fresno Unified says the situation for its African American students is a state of emergency" Fresno Bee, Apr. 2019, available at <https://www.fresnobee.com/news/local/education/article227253409.html>.

² California Department of Education, "2018-19 Enrollment by Ethnicity- Bullard High School Report, available at <https://dq.cde.ca.gov/dataquest/dqcensus/enrethlevels.aspx?agglevel=School&year=2018-19&cds=10621661030279>.

³ California Department of Education "2017-18 Suspension Rate- Fresno Unified School District", available at <https://dq.cde.ca.gov/dataquest/dqCensus/DisSuspRate.aspx?year=2017-18&agglevel=District&cds=1062166>.

⁴ California Department of Education "2017-18 Suspension Rate- Bullard High School", available at <https://dq.cde.ca.gov/dataquest/dqCensus/DisSuspRate.aspx?year=2017-18&agglevel=School&cds=10621661030279>.

Black students to share some blame in how the situation should be resolved. In addition to the May 23 video, the white student created a snapchat photo where she wore blackface and typed a quote reading “same [n-word] I hate white pe[o]ple too.”⁵ Our client, A’mya, did not make the cheer team days after her complaint regarding this incident, and was the only student removed from the cheerleading team. The Superintendent received both the video and snapchat photo soon after Maddie created them.⁶ Although A’mya did not make the cheer team for this school year, Maddie was offered a position on the cheerleading team and has remained on the team.

Despite the District’s inaction immediately after receiving complaints, once the blackface video went viral, the District tried to force Black students to meet with Maddie Tucker as part of the restorative circle program. Black students said they did not want to meet with Maddie but that they would consider speaking with one of the other freshman cheerleaders who helped record Maddie’s video. The Superintendent agreed that the racial discrimination and hostility sections of the policies needed to be updated to Elana and Elisha, but the District has failed to take tangible steps for this remedy.

On multiple occasions, as outlined below, Black students were made to feel that their concerns did not rise to a level worth administrative action, specifically when the school failed to address the harassment and underlying causes of the blackface incident. According to our clients, at least one Administrator openly admitted to using the n-word when talking with students of “African descent.” Thus, a culturally incompetent environment is nothing new for Black students at Bullard and perpetuated an environment for students like Maddie Tucker to feel comfortable recording videos and taking photos in blackface. As Black Student Union students summarized in interviews, they routinely feel isolated and that their concerns are not heard. They feel that they do not receive the same standard of education and attention as white students. This is clearly demonstrated by how the District handled the blackface situation and administrators minimizing the use of the n-word.

Additionally, Fresno Unified Trustee Slatic made the situation worse by stating to the cheerleaders, “Anybody can leave the team right now. ... The games stop now. Pass this on to your parents.”⁷ Trustee Slatic reportedly scolded the Bullard High School Cheerleading team (“the team”) during a cheer practice for speaking up against the aforementioned blackface incident. According to a varsity cheerleader’s allegations reported in a Fresno Bee (“The Bee”) article,⁸ members of the team feel that the cheerleaders involved in the blackface incident should not be let back on the team. The article reports that Slatic arrived uninvited to the team’s practice during the week of July 8, 2019 and “threatened to have students kicked off of the cheer team or

⁵ See Exhibit A

⁶ The ACLU has on file the email with accompanying documentation sent to Superintendent Nelson by Autumn Mays, A’mya’s mother detailing how A’mya reported these incidents to Bullard on May 24, 2019.

⁷ “Cheerleader’s Blackface Video Raises Ghost of Fresno’s Racist Past” LA Times, August 2019, available at <https://www.latimes.com/california/story/2019-08-31/fresno-racism-slur-blackface-election>.

⁸ “Fresno school trustee under fire again. This time, blackface and cheerleaders are involved” The Fresno Bee, July 2019, available at <https://www.fresnobee.com/news/local/article232597447.html>.

barred from attending cheer camp if they brought up the blackface incident.” The article also reports that Slatic told the team “If I make one call, I can shut you guys down.”⁹

2. How the Blackface Video Impacted A’mya Wilson

A’mya found out about the video shortly after it was posted. Disgusted that this was happening at her school, the next day, at school, A’mya reported the video to then Vice Principal Rachael Maciel¹⁰ and filed a written statement about the inappropriate behavior on or around Friday, May 24, 2019 in the morning. However, Maciel was visibly hostile with A’mya when A’mya arrived in her office. Soon after, Maciel also stated to A’mya’s mother, Autumn, that she did not have time to remedy issues regarding racial issues like the use of the n-word. Instead of creating a safe environment for students to file complaints with Bullard Administrators, by that Friday afternoon, news spread that A’mya had reported the incident to school authorities. A’mya found out her complaint leaked because white students started to bully her soon thereafter.

That Saturday, May 25, A’mya found out she had not made the junior varsity cheerleading team at Bullard. A’mya was shocked by the outcome. She had been involved in cheerleading and was on the freshman team at Bullard the previous year. A’mya did not receive a rationale for the coach’s decision, nor had she received negative feedback about her performance during the cheer clinics. A’mya was devastated when she found out that everyone else on the freshman team made it on the junior varsity team. The next week, the environment for A’mya got worse and school officials failed to intervene on her behalf.

The following Tuesday, May 28, white students began harassing A’mya at school and told her that she should not have reported the incident as detailed below. Despite the persistent intimidation, A’mya chose not to respond to the harassing behavior. Instead that same week, A’mya filed multiple complaints with Bullard’s administration letting the school know that they needed to address the hurtful behavior. Then Vice Principal Rachael Maciel continued to express aggression and disdain toward A’mya’s statements and as a result, A’mya felt she could not report the ongoing bullying she was facing at school. Maciel called several students into the office, including the student who recorded the video and Maddie Tucker, the students who were involved in the blackface video. While speaking with A’mya about the video, Maciel told A’mya that she personally did not understand how the video was racist because “she was not African American.” Maciel’s insensitivity and complete disregard for the offensive behavior did not help A’mya as various parents got involved to harass A’mya and more white students bullied A’mya for months following her complaints.

Soon after Autumn filed one of her final complaints with Maciel, Autumn, A’mya’s mother, called Vice Principal Shalita Grayson-Herod to speak to her directly about what had happened. Ms. Grayson-Herod was not aware of the incident and told Autumn that the report was still sitting on her desk. She said she would investigate and respond to Autumn soon. Autumn called every day after that to request an update on the investigation. Later that week, Autumn spoke

⁹ *Id.*

¹⁰ Our understanding is that Vice Principal Maciel is now Vice Principal at another school in the District.

with then Vice Principal Maciel and reported to her that A'mya was being harassed and bullied at school. Maciel told Autumn that she uses the n-word when talking with parents of "African descent" so she did not see the problem with the use of the word.

That Thursday, May 30, after not receiving a follow-up response on the blackface video from the principal's office, Autumn sent an email to Superintendent Bob Nelson, outlining the recent events. Although, Autumn had not received a response from Superintendent Nelson, she happened to see Superintendent Nelson on June 4, right before his press conference. Superintendent Nelson referred to the video as being "all about cheer" and not once mentioned that the video was a racially charged occurrence. To Autumn, this demonstrated that even the District's highest officials lacked care or respect for harassment towards Black students. Even though the Superintendent held a meeting with Black students that afternoon, Autumn felt this gesture was perfunctory considering his remarks just that morning and the lack of acknowledgement to her email. Nevertheless, Black students used that meeting as another attempt to flag for the District that they felt isolated and harassed at Bullard.

Finally on May 31, 2019, Nelson submitted a public post on his Facebook page writing that "our community is grappling with a jarring incident of racial insensitivity that in a matter of a few hours tonight, has spiraled," but Nelson failed to provide clear and tangible steps to address the "cultural proficiency" at Bullard.¹¹ Furthermore, these incidents have made clear that the District staff is ill-equipped to demonstrate cultural proficiency regarding how it treats Black students. Indeed, Black students need comprehensive support not just social media posts.

A'mya's bullying continued until she eventually felt forced to disenroll from the school. And even now that she was affirmatively pushed out of the school, she still faces harassment and bullying when she needs to go on campus for documentation from Bullard so that she can continue her education elsewhere. Although the District and Bullard were the source of the bullying and harassment A'mya faced when standing up on behalf of Black students, the school never stepped in to help A'mya.¹² In fact, certain administrators wanted nothing to do with helping A'mya when she reported the video and harassment by white students that followed. Because of those events, which showed Autumn that A'mya is not safe from discrimination and harassment at Bullard High School, Autumn decided to pull A'mya out of the District and homeschool her.

A few weeks later, a second video that circulated on social media showed the same white student laughing and then using the n-word around other students at Bullard. Once again, the school did nothing to address the student's unacceptable pattern of conduct.

¹¹ Superintendent Bob Nelson public post on racial tensions, May 31, 2019, *available at* <https://www.facebook.com/superintendent.bob/posts/10219547428140185>.

¹² The school made several performative attempts to make A'mya engage with Maddie. Given how A'mya had been treated, she did not want to engage with a student who was a source of her bullying at campus. For example, the school forced A'mya participate in a restorative justice circle, and A'mya received an apology with no tangible follow-up actions by the District to affirmatively combat this behavior in the future. Superintendent Nelson returned Autumn's calls after nearly a month of complaints and calls, but the Superintendent refused to address that this created a racially hostile environment for Black students.

3. Elana's Involvement with Advocating for a Better School Environment

Elana has endured years of recalcitrant administrators at Bullard and other Fresno Unified schools as it relates to staff creating a welcoming environment for Black students. She believes that blackface incident is part of a trend for staff to be openly dismissive of harmful and hurtful actions towards Black students. Elana also believes that the n-word has been normalized because of the nonchalant attitude administrators take regarding this slur.

For example, Elana recalled one of her Black friends telling a white person not to say the n-word in October 2018, and the white student looked at her friend as if there was absolutely nothing wrong with it. Elana believes this environment is created because occurrences like this happen frequently at Bullard, and teachers dismiss the wrongdoing and do not punish students when they hear it.

In December 2018, in a similar instance in Elana's biology class, a white student said the n-word to his other white friend during a conversation. Elana looked up at him and the white student said "no offense" after he saw Elana looking at him. She did not say anything to the student. Because of the District's and school staff's dismissive attitude in so many instances regarding this inappropriate word, she did not report the incident to her teacher Mr. Stafford. However, he was in the classroom at the time and Elana believes Mr. Stafford should have heard the comment. Elana also felt like nothing would happen to the white student based on the pattern of staff to dismiss these situations. She does not feel like the school has adequate policies in place to address these types of issues.

And by the time Maddie Tucker created the blackface video and said the n-word, Elana felt that the video was a breaking point in the hostile environment at Bullard. She had English class with Maddie and did not want to attend school after this happened.

Nearly a week after Maddie created the video and the District's notice of the incident, eight Black students were called into the administration's office at Bullard. It was only at this point that Elana realized that the District knew about the incident. According to Elana, she believed that because the video had not gone viral when the District first learned of the video, the District was not addressing the situation. Nevertheless, when Superintendent Nelson asked how the cheerleaders felt the blackface incident should be resolved, Elana had some hope that for once the District would listen to Black students.

According to Elana, Black cheerleaders told Nelson that Maddie should not be on the cheer team because it created a hostile environment for them. The cheerleaders thought Maddie was going to be removed from the cheer team based on their conversation with Nelson and the other Administrators, but Maddie remained on the team. Elana felt frustrated that once again Black student voices were not actually heard and that she had a visual reminder every day of the school's decision. She also believed that Black Bullard students were being forced to endure a horrible situation that they did not cause in the first place.

Elisha Henderson has advocated along with her daughter Elana, asking the school district to change the culture of racial hostility at Bullard High School. Elana continued to see how the school failed to address a racially hostile environment in a direct way every day because Elana had English class with Maddie. Because Elana was shocked when she heard Maddie had no repercussions from the blackface video, she discussed the incident with her mother. Subsequently, Elisha called the school and was brushed off by Bullard staff who told Elisha the school was "investigating." Despite the District's policy to follow-up with aggrieved parties when harassment and/or bullying happens, the District did not call Elisha back. Notwithstanding the District's indifference, Elisha continued calling because Elana feared for her safety and the environment of other Black students during this time. The District continued to ignore Elisha.

Realizing the District refused to intervene on behalf of Black students in the egregious situation, Elisha reached out to individuals who could possibly help to get the District to do anything to address the racially hostile environment for Black students. After weeks of no response or resolution, Elisha decided to go to the school on June 3, 2019, to request an in-person meeting for Black parents. To her surprise, Elisha was met by twelve (12) police officers. After an hour of waiting for a meeting, the Administration said they could not discuss the discipline of another child.

Elisha and other parents were granted a meeting, but the District staff including the principal and Superintendent only wanted to hear about the Black students' "experiences," rather than discuss how the District planned to rectify the racially hostile environment. In the meeting, the Black parents expressed frustration and once again, put the District on notice of the continued racially hostile environment for Black students. Black parents described how the blackface incident was part of a larger problem for Black students. They also explained that Black students have reported these issues to staff, even before the blackface video. The parents expressed that they were frustrated by the District's failure to properly resolve racial harassment, including their dismay that Black students were required to stay in groups with Maddie and that a Bullard teacher had forced the only Black student in at least one class to publicly discuss what the blackface incident meant to them.

Likewise, when Elana asked the District what was going to happen to Maddie, the District said it could not tell her about individual student's discipline plans. And when Elana affirmatively asked the District what the normal procedure was when a racist incident occurs, the District responded by saying it was up to the District's discretion regarding whether any suspension or expulsion would occur. However, Maddie was neither suspended nor expelled. As evident by the blackface incident, Bullard staff did not identify any specific policy regarding racist acts, and furthermore, according to our clients' meeting with District staff, Bullard does not track racist acts such as the blackface video.

4. Educational Barriers Against Black Students in the School District

Black students are forced to tackle tremendous barriers to succeed at Bullard. Although the BSU has not been funded for years, it is part of some Black students' criteria for scholarship programs in California. Additionally, BSU students have tried to meet since this incident and

have faced obstacles including the doors to the meeting space locked during their meeting time. Elana, for example, needs the BSU program because her leadership program outlines that BSU attendance is a requirement for her scholarship to guarantee her admission into UC Merced.

In addition, Black athletes enjoyed working with a Black tutor who used to be contracted to Bullard. Although the parents and students who worked with this tutor felt that he was instrumental to the academic success of Black students at Bullard, he is no longer at the school. According to parents, it does not seem to be a priority to replace the one Black tutor who helped Black students at Bullard. Black parents and students believe this is a tangible demonstration that Black student success is put on the backburner with something as simple as prioritizing recruitment and retaining Black faculty and tutors. Moreover, Black parents are concerned that the District is looking for band-aid fixes to deep-rooted issues that impact Black students daily. For example, it is our understanding that the District is looking to censor all students, including Black students from saying any version of the n-word as a remedy for systemic racism.¹³

C. Legal Claims

1. The District violates the California Education Code and its board policies and regulations by creating a hostile environment for Black students and refusing to affirmatively combat racism against Black students

By perpetuating a hostile environment for Black students, the District currently violates its nondiscrimination Board Policies (“BP”), Administrative Regulations (“AR”) and the California Education Code.¹⁴ The board policy states that the District “is committed to equal opportunity for all individuals in education... district programs, activities and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race.”¹⁵ Moreover, the Education Code makes clear that all school districts have a mandatory obligation to create a safe and inclusive environment for students and to combat discrimination

¹³ We are concerned that the District is using this opportunity to potentially censor speech. According to parents, District staff, Keisha Thomas, is now trying to prevent all kids from saying the n-word and using the Ujima project as the vehicle to prohibit free speech. It is also our understanding that the Knights of Valor program will educate students about the n-word but is not a program for Black students. Our understanding is that there are drafts of policies being reviewed. As a reminder, banning protected speech violates the First Amendment, California Constitution, and the California Education Code. It is important for the District to undergo cultural sensitivity and training specifically rooted in understanding Black students to recognize that this word when used by non-Black people can have a totally different meaning. Regardless, this ban will likely undergo legal challenges. It also does not address the root cause of the trauma towards Black students. And as often the case when Districts adopt additional disciplinary actions, it will likely allow the District to discipline Black students for an issue that they did not create.

¹⁴ Fresno Unified’s Board Policies and Administrative Regulations referenced in this complaint are attached as Exhibit B

¹⁵ Fresno Unified School District Board Policy 0410 “Nondiscrimination In District Programs And Activities” available at <https://www.fresnounified.org/sites/board/policies/Documents/0410-BP-Nondiscrimination-In-DistrictPrograms-and-Activities.pdf>.

based on race.¹⁶ The Education Code further mandates that the District investigate reported instances of bullying by students and teachers.¹⁷

The District has failed to create a welcoming for Black students and openly dismisses its obligations for Black students. Although it is a theme that Black students' concerns are routinely dismissed by District administrators, the most recent round of racially charged and harassing videos where Maddie mocks Black students and Black people proves that the District ineptly responds to these situations. Indeed, District staff uses the n-word when talking to parents of "African descent" perpetuating this racially charged environment. Despite written and verbal complaints that a white Bullard High School student posted a video on social media in which she wears blackface and says the n-word, the District continued to ignore the needs of Black students when those same students explained to the District that the videos interfered with their likelihood of success at Bullard. The Superintendent believed that these racially harassing videos were supposedly just a "cheer" thing and ignored Autumn's email that outlined many of the issues described in this complaint, including a video and photo of Maddie using the n-word. And at least one past Bullard administrator continuously dismissed complaints stating that she did not have time to deal with racial issues.

In addition to these recent events, the District's African American Acceleration Task Force stated that the environment for Black students was in a "state of emergency" well before the videos were made. The Task Force cited District school officials' negative characterizations of Black male students, educators' discomfort with incorporating African American history and culture into the curriculum, a large achievement gap for Black students, and evidence that "many educators feel afraid to communicate with African American students and families."¹⁸ Furthermore, earlier this year, news outlets reported that an Edison High School teacher said the n-word to a Black student¹⁹ and a substitute teacher grabbed a Black student by the neck.²⁰ Within the last several years, Computech Middle School printed yearbooks that contained KKK symbols²¹ and the past vice principal of Scandinavian Middle School was caught on camera saying, "I just don't like the Black kids."²² Undoubtedly, the District has had notice of this environment for years and time and time again has failed to rectify the problems.

¹⁶ See Cal. Ed. Code §§ 201, 220, 32261(a).

¹⁷ See *id.* at §§ 234.1(b), 32261(a), 32280.

¹⁸ "Fresno Unified says the situation for its African American students is a state of emergency" Fresno Bee, Apr. 2019, available at <https://www.fresnobee.com/news/local/education/article227253409.html>.

¹⁹ "Edison High teacher on leave during investigation for using racial slur in class" YourCentralValley.com, May 1, 2019, available at <https://www.yourcentralvalley.com/news/local-news/edison-high-teacher-on-leave-duringinvestigation-for-using-racial-slur-in-class/1971810509>.

²⁰ "Substitute teacher caught on camera grabbing student's neck after dispute over cell phone" ABC 13, May 2019, available at <https://abc13.com/society/substitute-teacher-grabs-students-neck-after-dispute-over-cellphone/5289679/>.

²¹ "Fresno middle school forced to reprint yearbook after racist imagery discovered" SF Gate, June 2017, available at <https://www.sfgate.com/bayarea/article/KKK-symbols-Fresno-Computech-school-yearbook-11197841.php>.

²² "School official caught on camera saying: 'I don't like black kids'", ABC 7, Mar. 2015, available at <https://abc7news.com/education/school-official-caught-on-cam-saying-i-dont-like-black-kids/560777/>.

2. The District violates its policies, the California Education Code and the United States Constitution by retaliating against Black students for exercising their right to petition the school district

The District failed to properly respond to the anti-Black racist videos by affirmatively acting in opposition to its own policies, the California Education Code, and the United States Constitution. By retaliating against Black Students for exercising their rights, the District currently violates the right to petition for redress of grievances as protected by the First Amendment.²³ Every student has a constitutional right to seek redress without fear that recourse will make that student a target for retaliation.²⁴

In A'mya's case, the District and Bullard allowed retaliation against her because Administrators made it widely known that A'mya filed complaints regarding Maddie's racist and inappropriate conduct. As a result, A'mya was kicked off the cheerleading team for standing up for Black students and continued to be subjected to threats, harassment and microaggression from Bullard staff for months. Even now that A'mya is being home-schooled, she continues to face racial hostility when trying to obtain basic documents from the Bullard administration. Bullard and District staff violated A'mya's right to petition through its collective actions in punishing, retaliating against, and otherwise affirmatively trying to prevent Bullard students from making complaints.

Moreover, Trustee Terry Slatc's retaliation against the Team violated BP 5145.3, which states that the District "prohibits any form of retaliation against any student who reports or participates in the reporting of unlawful discrimination [or] files or participates in the filing of a complaint...."²⁵

A cheerleader who spoke to the The Bee asked to remain anonymous "because she feared retaliation from Slatc and that she might be kicked off the team."²⁶ Terance Frazier, an African-American parent quoted in the article from The Bee, described Slatc's behavior as "threatening," "disturbing" and "unacceptable."²⁷ Slatc's behavior reportedly caused so much anxiety and stress that at least one cheerleader filed a restraining order against Slatc and expressed feeling "physically ill."²⁸ In her petition for the restraining order, the cheerleader reportedly wrote "Terry Slatc... took advantage of his authority as a board member to harass innocent girls and women."²⁹ What's more troubling is that Fresno Superintendent Bob Nelson

²³ U.S. Const. Amend. I.

²⁴ *Powell v. Alexander*, 391 F.3d 1 (1st Cir. 2004).

²⁵ His retaliation against students who sought to address the racially hostile environment in the District also violated AR 5145.3 and Sections 201, 220 and 234.1 of the California Education Code.

²⁶ "Fresno school trustee under fire again. This time, blackface and cheerleaders are involved" Fresno Bee, July 2019, available at <https://www.fresnobee.com/news/local/article232597447.html>.

²⁷ *Id.*

²⁸ "Bullard High cheerleader denied restraining order against trustee Slatc" Fresno Bee, July 2019 available at <https://www.fresnobee.com/news/local/education/article232809597.html>.

²⁹ *Id.*

reportedly knew of Slatc’s inappropriate plans to attend the cheerleading practice.³⁰ The Fresno school board reportedly voted to condemn Slatc’s behavior toward the cheer team on July 11th and held a special school board meeting to address Slatc’s behavior on July 18.³¹ Board members reportedly accused Slatc of bullying students, board members and the Superintendent over the blackface incident. On a video of the July 18 special school board meeting, a varsity cheerleader from the team states: “What happened in practice when you walked in was not okay. I do not condone [the blackface incident], I’m not okay with it, and I don’t want [the girls who did blackface] on the team with me. Girls on our team have gotten threats. Not just from people at our school, but from [Slatc]. And I’m disgusted.”³² Slatc’s reported behavior toward the team in response to the blackface incident was inappropriate harassment meant to intimidate students out of advocating for the discrimination-free learning environment that they are legally entitled to. By bullying and intimidating students, Slatc violated the First Amendment of the United States Constitution and California Education code and created a racially hostile environment.³³ For all those reasons, the District has violated the law by retaliating against Black students for standing up against the systemic racism that plagues the District.

3. The District violated its policies and regulations by failing to “immediately intervene” and investigate the blackface videos as well as racial harassment

The District failed to address the Bullard community for weeks after the blackface video posted in violation of its policies regarding racial harassment. The District staff and administrators violate and continue to violate the California Education Code and District board policies and administrative regulations by failing to act and, in some instances, affirming racial injustice and bullying of Black students.³⁴

Our client, A’mya reported the incident on May 24, 2019, and her mother emailed the Superintendent near the end of May, giving the District additional notice that the blackface video existed. But the District did not hold a press conference for a public response until June 4, 2019, nearly ten days after the video was posted.

The District also violated its policies by failing to “immediately intervene to stop [an] incident” that interfered with Black students’ “ability to participate in or benefit from school

³⁰ “Fresno Superintendent knew of Slatc talk with cheerleaders” Fresno Bee, July 2019 *available at* <https://www.fresnobee.com/news/local/education/article232744407.html>.

³¹ “‘Not in a million years.’ School board member won’t resign after cheerleader incident” The Fresno Bee, July 2019 *available at* <https://www.fresnobee.com/news/local/education/article232806962.html>.

³² The video also showcases the following quotes from parents regarding Slatc’s retaliation: “He used fear tactics to force everybody to shut their mouths” “I’m...worried about the safety of my child” “He then threatened [the team], saying that if they or their parents talk about the [blackface] incident, they’ll be off the team” “What made me most upset about Mr. Slatc’s actions was that he tried to silence my daughter.

³³ See U.S. Const. Amend. I.; Cal. Ed. Code §§ 201, 220, 32261(a).

³⁴ (BP) 5131.2 states that “District employees shall establish student safety as a high priority and shall not tolerate bullying of any student,” *see* “Anti-Bullying” Fresno Unified School District Administrative Regulation 5131.2, June 13, 2018, *available at* <https://www.fresnounified.org/sites/board/policies/Documents/5131-2-BP-Anti-Bullying.pdf>.

services, activities or privileges.”³⁵ Indeed our client A’mya is no longer on the cheerleading team. She believes it is not a coincidence that less than a few days after reporting this incident, she was the only student who is no longer able participate in cheerleading. This is a logical deduction. Because the District failed to intervene regarding this video, she was affirmatively pushed out of the District within two months of District inaction and poor reaction by the District. Elana also does not want to attend the school anymore. Like A’mya, Elana feels the complaints she files are meaningless and that no action is taken on behalf of Black students. As expressed by the BSU students, A’mya feels that Black students are punished for doing the right thing. Overall, Black students have generally felt this interferes with their ability to gain an education and that the District refuses to intervene on their behalf.

Related, the District had notice of the first video, but the student was able to create multiple anti-Black racist videos without tangible District intervention. This failure to intervene created an environment that seemed to welcome this behavior and violated several administrative regulations by failing to “immediately investigate” the videos “in accordance with the school site level complaint process.”³⁶

4. The District’s failure to investigate the black face videos violates its policies to affirmatively investigate bullying and harassment as it relates to Black students

Based on the District’s extremely high numbers for discipline regarding Black students which can lead to suspensions and expulsion, it only perpetuates pushout by now creating an even more tense environment by failing to investigate blackface videos and photos. The Black

³⁵ (BP) 5131.2 also states that “To the extent possible, district and school strategies shall focus on prevention of bullying by establishing clear rules for student conduct and strategies to establish a positive, collaborative school climate... In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously... Complaints of bullying shall be investigated and resolved in accordance with site-level grievance procedures specified in AR 5145.7... Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.”

(BP) 5145.3 says that to prevent discrimination the superintendent should implement measures that “provide to students, employees, volunteers, and parents/guardians training and information regarding the district’s nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.” See <https://www.fresnounified.org/sites/board/policies/Documents/5145-3-AR-Nondiscrimination-Harassment.pdf>.

AR) 5145.3 says the Superintendent or designee must inform “school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required intervene... [the] principal or compliance officer shall implement immediate measures necessary to stop the discrimination and to ensure all students have access to the educational program and a safe school environment” see

“Nondiscrimination/Harassment” Fresno Unified School District Administrative Regulation 5145.3, October 2015, available at <https://www.fresnounified.org/sites/board/policies/Documents/5145-3-AR-Nondiscrimination-Harassment.pdf/>.

³⁶ See AR 5145.3 and AR 5138.1 ; see also “Anti-Bullying” Fresno Unified School District Administrative Regulation 5138.1, June 2005, available at <https://www.fresnounified.org/sites/board/policies/Documents/5138-1-AR-Anti-Bullying.pdf>.

students have repeatedly expressed that they felt bullied and harassed by the videos and the District has policies against bullying.³⁷ If the District has bullying policies in place to create a safe space for all students that prohibits “hate violence,” then the District should have immediately investigated and taken action where a white student created blackface videos and said the n-word.³⁸ Black students will continue to feel unsupported as long as the District ignores bullying and harassment against Black students.

The District also has explicit policies against racial harassment and creating blackface videos should meet the criteria.³⁹ After A’mya’s initial complaint of the blackface video was leaked, A’mya was targeted and bullied by other Bullard students and the treatment only escalated as time went on. A’mya could not take the daily harassment any longer and in July, her mother was forced to pull her out and home school her.

The blackface videos contributed to “a hostile environment” and jeopardized “equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.”⁴⁰ By failing to take prompt and appropriate action, the District violated its “affirmative obligation to combat racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity” and its mandate to “take immediate steps to intervene when safe to do so.”⁴¹

5. The District violates its own policies, the California Education Code and federal civil rights mandates by disciplining Black students at disproportionate rates

In addition to the hostile anti-Black environment, the District violates its own policies, the California Education code and federal civil rights mandates by disproportionately disciplining Black students. BP 5145.3 states that “unlawful discrimination also includes disparate treatment of students based on [a protected class].” The California Education Code makes clear that all school districts have a mandatory obligation to create a safe and inclusive environment for students.⁴² In addition to the District’s state obligations to students, the U.S. Department of Education has condemned discriminatory discipline practices, stating that they result in “serious, negative educational consequences, particularly when such students are excluded from school.”⁴³

³⁷ “Anti-Bullying” Fresno Unified School District Board Policy 5131.2, June 2018 *available at* <https://www.fresnounified.org/sites/board/policies/Documents/5131-2-BP-Anti-Bullying.pdf>.

³⁸ BP 5131.2 mandates that “no individual or group of students shall, through physical, written, verbal, or other means, harass. . . threaten, intimidate, retaliate, cyberbully. . . or commit hate violence against any other student or school personnel.”

³⁹ “Nondiscrimination/Harassment” Fresno Unified School District Board Policy 5145.3, November 2016 *available at* <https://www.fresnounified.org/sites/board/policies/Documents/5145-3-BP-Nondiscrimination-Harassment.pdf>.

“[T]he Board prohibits. . . unlawful discrimination, including discriminatory harassment, intimidation, and bullying targeted at any student by anyone, based on the student's actual or perceived . . . race . . . ethnicity. . . or the perception of one or more of such characteristics. . . .”

⁴⁰ *See* Cal. Ed. Code § 201(c).

⁴¹ *See Id.* at §§ 201(b), 234.1(b)(1).

⁴² *See* Cal. Ed. Code §§ 201, 220, 32261(a).

⁴³ US Department of Education Office of Civil Rights Discriminatory Discipline Homepage *available at* <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue02.html>.

D. Remedy Requested

For the reasons described in this UCP complaint, to comply with the law, the District must amend its policies and procedures to reflect the changes below.

1. The District will foster a community of teachers and administrators that are knowledgeable about child development and are culturally competent and sensitive. To accomplish this goal:
 - a. The District shall provide educators at all levels within the District with training about the unique historical and cultural experiences of Black students, and effective methods for engaging Black students in the educational process.
 - b. The District shall provide professional development for teachers, staff and administrators in: childhood brain development; trauma-informed responses and interventions; implicit bias; mental health issues and symptoms in children; developmental and learning disabilities; and special education procedural requirements. According to the National Child Traumatic Stress Network, when examining culturally responsive responses for Black students the District must “work towards ending the cycle of trauma and violence, [and] it is necessary to acknowledge both how racism and oppression are embedded in American society, and to understand how the massive historical trauma of slavery continues to shape the lives of individual children, families, communities, and the systems with which they interact.”⁴⁴
 - c. The District shall recruit a Black student-focused Liaison to work directly with Black parents and students at Bullard High School and recruit Black student-focused liaisons at other high schools in the District.
 - d. The District shall recruit a Black tutor for students at Bullard High School.
2. The District shall create a survey to acquire the demographics of a person when they apply for positions in the District.
3. The District should create a Black student taskforce that can help create and inform policy changes that create a safer environment for Black students.
 - a. We strongly believe that it is essential that the District prioritize the voices of students who are part of historically oppressed and marginalized communities at the District. These groups may include: students of color, students with various religious affiliations/non-affiliations, students from different gender identities and expressions, sexual orientation, and abilities and disabilities. We hope that the District will not include academic standing and/or existing involvement in student government as criteria for the taskforce, as these factors may exclude the students who do not feel welcome at school.
 - b. To ensure continuity as well as institutional knowledge, an ideal taskforce should likely have a minimum time to sit on the taskforce to be one year, and a maximum of two years. This would allow students to sit on the taskforce a second year if they would like to continue sharing ways the District can address racial hostility.

⁴⁴ National Child Traumatic Stress Network Position Statement Racial Injustice and Trauma: African Americans in the U.S. (2016), *available at* https://www.nctsn.org/sites/default/files/resources//racial_injustice_and_trauma_african_americans_in_the_us.pdf.

Selecting new students each year may seem like a way to gain various perspectives, but in our experience, it is generally not helpful in terms of continuity and long-term change.

- c. This taskforce should be further developed in consultation with Black parents and students and remain in effect for at least six years.
4. The District shall have dedicated Local Control and Accountability Plan (LCAP) funding for programs, resources, and opportunities for Black students.
5. Reporting
 - a. The District will develop and implement a plan that contains strategies, objectives, and timelines to accomplish the remedies described above, and to ensure that the District complies with applicable federal and state law. The District should send a quarterly report regarding the status of each of the above to the ACLU for the 2019-2021 academic years, then semiannually beginning in the 2021-2022 academic school year until 2026.

Sincerely,



Abre' Conner
Staff Attorney
ACLU Foundation of Northern California

Cc: Jim Yovino, Fresno County Superintendent of Schools
jyovino@fcoe.org

Johnny Alvarado, Principal of Bullard High School
john.Alvarado@fresnounified.org

EXHIBIT A



same n ga i hate white pekple too

EXHIBIT B

Nondiscrimination In District Programs And Activities

The Governing Board is committed to equal opportunity for all individuals in education. District programs, activities and practices shall be free from unlawful discrimination, including discrimination against an individual or group based on race, color, religion, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, marital, pregnancy, or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; a perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

(cf. 1240 - Volunteer Assistance)
(cf. 4030 – Nondiscrimination in Employment)
(cf. 4032 – Reasonable Accommodation)
(cf. 4033 - Lactation Accommodation)
(cf. 4119.11/4219.11/4319.11 – Sexual Harassment)
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)
(cf. 5131.8 – Anti-Bullying)
(cf. 5145.3 – Nondiscrimination/Harassment)
(cf. 5145.7 – Sexual Harassment)
(cf. 5146 – Married/Pregnant/Parenting Students)
(cf. 1240 - Volunteer Assistance)
(cf. 6145.2 – Athletic Competition)
(cf. 6164.4 – Identification and Evaluation of Individuals for Special Education)
(cf. 6164.6 – Identification and Education Under Section 504)
(cf. 6178 – Career Technical Education)
(cf. 6200 – Adult Education)

All individuals shall be treated equitably in the receipt of district and school services. Personally identifiable information collected in the implementation of any district program, including, but not limited to, student and family information for the free and reduced-price lunch program, transportation, or any other educational program, shall be used only for the purposes of the program, except when the Superintendent or designee authorizes its use for another purpose in accordance with law. Resources and data collected by the district shall not be used, directly or by others, to compile a list, registry, or database of individuals based on race, gender, sexual orientation, religion, ethnicity, national origin, or immigration status or any other category identified above.

(cf. 3540 - Transportation)
(cf. 3553 - Free and Reduced Price Meals)
(cf. 5145.13 - Response to Immigration Enforcement)

District programs and activities shall also be free of any racially derogatory or discriminatory school or athletic team names, mascots, or nicknames.

The Superintendent or designee shall review district programs and activities to ensure the removal of any derogatory or discriminatory name, image, practice, or other barrier that may unlawfully prevent an individual or group in any of the protected categories stated above from accessing district programs and activities, including the use of facilities. They shall take prompt, reasonable actions to remove any identified barrier.

(cf. 1330 - Use of Facilities)

All allegations of unlawful discrimination in district programs and activities shall be investigated and resolved in accordance with the procedures specified in AR 1312.3 - Uniform Complaint Procedures.

Pursuant to 34 Code of Federal Regulations (CFR) 104.8 and 34 CFR 106.9, the Superintendent or designee shall notify students, parents/guardians, employees, employee organizations, applicants for admissions and employment, and sources of referral for applicants about the district's policy on nondiscrimination and related complaint procedures. Such notification shall be included in the annual parental notification distributed pursuant to Education Code 48980 and, as applicable, in announcements, bulletins, catalogs, application forms, or other materials distributed by the district. As appropriate, such notification shall be posted in district schools and offices, including staff lounges, student government meeting rooms, and other prominent locations and shall be posted on the district's web site and, when available, district-supported social media.

- (cf. 1113 - District and School Web Sites)
- (cf. 1114 - District-Sponsored Social Media)
- (cf. 1312.3 Uniform Complaint Procedures)
- (cf. 4031 – Complaints Concerning Discrimination in Employment)
- (cf. 4112.91/4212.91/4312.91 – Employee Notifications)
- (cf. 5145.6 – Parental Notifications)

In addition, the annual parental notification shall inform parents/guardians of their children's right to a free public education regardless of immigration status or religious beliefs, including information on educational rights issued by the California Attorney General. Alternatively, such information may be provided through any other cost-effective means determined by the Superintendent or designee. (Education Code 234.7)

District Compliance Officers

The Governing Board designates the following compliance officer (s) to receive formal and informal complaints from constituents, including students, and investigate them to ensure district compliance with law (Title II, V, IX, Title 5, Section 504 of the Rehabilitation Act):

Title 5 Compliance Officer
Constituent Services Office
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3736

Associate Superintendent, Human Resources
Title IX Officer/AgeDA (Discrimination Act)
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3730

Section 504 Coordinator
Fresno Unified School District
4784 E. Dayton Avenue
Fresno, CA 93726
(559) 457-3308

Special Education Assistant Superintendent
Special Education Office
Fresno Unified School District
1301 M Street
Fresno, CA 93721
(559) 457-3220

Concurrently the Board reaffirms its commitment to promote diversity training, racial harmony among its students, staff and the community; and to promote education that is anti-racist and multicultural.

The district's nondiscrimination policy and related informational materials shall be published in a format that parents/guardians can understand. In addition, when 15 percent or more of a school's

students speak a single primary language other than English, those materials shall be translated into that other language.

Access for Individuals with Disabilities

District programs and facilities viewed in their entirety, shall be in compliance with the Americans with Disabilities Act (ADA) and any implementing standards and/or regulations. When structural changes to existing district facilities are needed to provide individuals with disabilities access to programs, services, activities, or facilities, the Superintendent or designee shall develop a transition plan that sets forth the steps for completing the changes.

(cf. 6163.2 – Animals At School)

(cf. 7110 – Facilities Master Plan)

(cf. 7111 – Evaluating Exiting Buildings)

The Superintendent or designee shall ensure that the district provides auxiliary aids and services when necessary to afford individuals with disabilities equal opportunity to participate in or enjoy the benefits of a service, program, or activity. These aids and services may include, but are not limited to, qualified interpreters or readers, assistive listening devices, assistive technologies or other modifications to increase accessibility to district and school web sites, note-takers, written materials, taped text, and Braille or large print materials. Individuals with disabilities shall notify the Superintendent or principal if they have a disability that requires special assistance or services. Reasonable notification should be given prior to a school-sponsored function, program, or meeting.

(cf. 6020 – Parent Involvement)

(cf. 9320 - Meetings and Notices)

(cf. 9322 - Agenda/Meeting Materials)

The individual identified in AR 1312.3 - Uniform Complaint Procedures as the employee responsible for coordinating the district's response to complaints and for complying with state and federal civil rights laws is hereby designated as the district's ADA coordinator. They shall receive and address requests for accommodation submitted by individuals with disabilities, and shall investigate and resolve complaints regarding their access to district programs, services, activities, or facilities.

Director of Benefits and Risk Management
2309 Tulare Street
Fresno, CA 93721
Phone (559) 457-3520
Fax (559) 457-3838

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, ancestry, immigration status, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

48980 Parental notifications

48985 Notices to parents in language other than English

51007 Legislative intent: state policy

GOVERNMENT CODE

8310.3 California Religious Freedom Act

11000 Definitions

11135 Nondiscrimination in programs or activities funded by state

12900-12996 Fair Employment and Housing Act

54953.2 Brown Act compliance with Americans with Disabilities Act

PENAL CODE

422.55 Definition of hate crime

422.6 Interference with constitutional right or privilege

CODE OF REGULATIONS, TITLE 5

4600-4670 Uniform complaint procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1400-1482 Individuals with Disabilities in Education Act

1681-1688 Discrimination based on sex or blindness, Title IX

2301-2415 Carl D. Perkins Vocational and Applied Technology Act

6311 State plans

6312 Local education agency plans

UNITED STATES CODE, TITLE 29

794 Section 504 of the Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000d-7 Title VI, Civil Rights Act of 1964

2000e-2000e-17 Title VII, Civil Rights Act of 1964 as amended

2000h-2000h-6 Title IX

12101-12213 Americans with Disabilities Act

CODE OF FEDERAL REGULATIONS, TITLE 28

35.101-35.190 Americans with Disabilities Act

36.303 Auxiliary aids and services

CODE OF FEDERAL REGULATIONS, TITLE 34

100.1-100.13 Nondiscrimination in federal programs, effectuating Title VI

104.1-104.39 Section 504 of the Rehabilitation Act of 1973

106.1-106.61 Discrimination on the basis of sex, effectuating Title IX, especially:

106.9 Dissemination of policy

Management Resources:

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Protecting Students from Harassment and Hate Crime, January, 1999

Notice of Non-Discrimination, January, 1999

Nondiscrimination in Employment Practices in Education, August, 1991

WEB SITES

CSBA: <http://www.csba.org>

CDE: <http://www.cde.ca.gov>

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/about/offices/list/ocr/index.html>

Policy FRESNO UNIFIED SCHOOL DISTRICT

adopted: March 12, 1992 Fresno, California

revised: November 13, 1997

revised: August 22, 2012

revised: June 19, 2013

revised: May 14, 2014

revised: May 31, 2017

revised: February 21, 2018

revised: June 13, 2018

Anti-Bullying

The Governing Board recognizes the harmful effects of bullying on student learning and school attendance and desires to provide safe school environments that protect students from physical and emotional harm. District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

No individual or group of students shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any other student or school personnel.

(cf. 5131 – Conduct)
(cf. 5136 – Gangs)
(cf. 5145.3 – Nondiscrimination/Harassment)
(cf. 5145.7 – Sexual Harassment)
(cf. 5145.9 – Hate-Motivated Behavior)

Cyberbullying includes the creation or transmission of harassing communications, direct threats, or other harmful texts, sounds, or images as defined in Education Code 48900 (Internet, social media, or other technologies using a telephone, computer, or any wireless communication device). Cyberbullying also includes breaking into another person's electronic account and assuming that person's identity in order to damage that person's reputation.

(cf. 5145.2 – Freedom of Speech/Expression)
(cf. 6163.4 - Student Use of Technology)

Strategies for addressing bullying in district schools shall be developed with involvement of key stakeholders including students, parents/guardians, and staff, and may be incorporated into the comprehensive safety plan, the local control and accountability plan, and other applicable district and school plans.

(cf. 0420 – School Plans/Site Councils)
(cf. 0450 – Comprehensive Safety Plan)
(cf. 0460 - Local Control and Accountability Plan)
(cf.1220 – Citizen Advisory Committees)
(cf. 1400 – Relations between Other Governmental Agencies and the Schools)
(cf. 6020 – Parent Involvement)

As appropriate, the Superintendent or designee may collaborate with law enforcement, courts, social services, mental health services, other agencies, and community organizations in the development and implementation of joint strategies to promote safety in schools and the community and to provide services for alleged victims and perpetrators of bullying.

(cf. 1020 - Youth Services)

Bullying Prevention

To the extent possible, district and school strategies shall focus on prevention of bullying by establishing clear rules for student conduct and strategies to establish a positive, collaborative school climate. Students shall be informed, through student handbooks and other appropriate means, of district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for perpetrators of bullying.

(cf. 5137 – Positive School Climate)

The district may provide students with instruction, in the classroom or other educational settings, that promotes effective communication and conflict resolution skills, social skills, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

(cf. 6163.4 – Student Use of Technology)
(cf. 6142.8 – Comprehensive Health Education)
(cf. 6142.94 – History-Social Science Instruction)

Such instruction shall also educate students about the negative impact of bullying, discrimination, intimidation, and harassment based on actual or perceived immigration status, religious beliefs and customs, or any other individual bias or prejudice.

The Superintendent or designee shall provide training to teachers and other school staff to raise their awareness about the legal obligation of the district and its employees to prevent discrimination, harassment, intimidation, and bullying of district students. Such training shall be designed to provide staff with the skills to:

1. Discuss the diversity of the student body and school community, including their varying immigration experiences
2. Discuss bullying prevention strategies with students, and teach students to recognize the behavior and characteristics of bullying perpetrators and victims
3. Identify the signs of bullying or harassing behavior
4. Take immediate corrective action when bullying is observed
5. Report incidents to the appropriate authorities, including law enforcement in instances of criminal behavior

(cf. 4131 – Staff Development)
(cf. 4231 – Staff Development)
(cf. 4331 – Staff Development)

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such as classrooms, playgrounds, hallways, restrooms, cafeterias.

Intervention

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

School staff who witness an act of bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When appropriate based on the severity or pervasiveness of the bullying, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators and may contact law enforcement.

The Superintendent, principal, or principal's designee may refer a victim, witness, perpetrator, or other student affected by an act of bullying to a school counselor, school psychologist, social worker, child welfare attendance personnel, school nurse, or other school support service personnel for case management, counseling, and/or participation in a restorative justice program as appropriate. (Education Code 48900.9)

(cf. 6164.2 - Guidance/Counseling Services)

Filing of Complaints and Investigation

Any student, parent/guardian, or other individual who believes that a student has been subjected to bullying or who has witnessed bullying may report the incident to a teacher, the principal, a compliance officer, or any other available school employee. Complaints of bullying shall be investigated and resolved in accordance with site-level grievance procedures specified in AR 5145.7 – Sexual Harassment.

(cf. 1312.3 – Uniform Complaint Procedure)

When a student is reported to be engaging in bullying off campus, the Superintendent or designee shall investigate and document the activity and shall identify specific facts or circumstances that explain the impact or potential impact on school activity, school attendance, or the targeted student's educational performance.

When a report of bullying is submitted, the principal or a district compliance officer shall inform the student or parent/guardian of the right to file a formal written complaint in accordance with AR 1312.3. The student who is the alleged victim of the bullying shall be given an opportunity to describe the incident, identify witnesses who may have relevant information, and provide other evidence of bullying.

When circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages that they feel constitute cyberbullying and to notify a teacher, the principal, or other employee so that the matter may be investigated.

If the student is using a social networking site or service to bully or harass another student, the Superintendent or designee also may file a request with the networking site or service to suspend the privileges of the student and to have the material removed.

If, during the investigation, it is determined that a complaint is about nondiscriminatory bullying, the principal or designee shall inform the complainant and shall take all necessary actions to resolve the complaint.

Discipline

Corrective actions for a student who commits an act of bullying of any type may include counseling, behavioral intervention and education, and, if the behavior is severe or pervasive as defined in Education Code 48900, may include suspension or expulsion in accordance with district policies and regulations.

(cf. 5138 – Conflict Resolution/Peer Mediation)

(cf. 5144 – Discipline)

(cf. 5144.1 – Suspension and Expulsion/Due Process)

(cf. 5144.2- Suspension and Expulsion/Due Process (Students with Disabilities)

(cf. 6159.4 – Behavioral Interventions for Special Education Students)

Any employee who permits or engages in bullying or retaliation related to bullying shall be subject to disciplinary action, up to and including dismissal.

(cf. 4117.3 - Dismissal)

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4119.21/4219.21/4319.21 - Professional Standards)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, immigration status, ancestry, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 Comprehensive safety plan

32283.5 Bullying; online training

35181 Governing board policy on responsibility of students

35291-35291.5 Rules

48900-48925 Suspension or expulsion

48985 Translation of Notices

52060-52077 Local control and accountability plan

PENAL CODE

422.55 Definition of hate crime

647 Use of camera or other instrument to invade person's privacy; misdemeanor

647.7 Use of camera or other instrument to invade person's privacy; punishment

653.2 Electronic communication devices, threats to safety

CODE OF REGULATIONS, TITLE 5

4600-4687 Uniform complaint procedures

UNITED STATES CODE TITLE 47

254 Universal service discounts (e-rate)

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

110.25 Notification of nondiscrimination on the basis of age

COURT DECISIONS

Wynar v. Douglas County School District, (2013) 728 F.3d 1062

J.C. v. Beverly Hills Unified School District, (2010) 711 F. Supp. 2d 1094

Lavine v. Blaine School District, (2010) 279 F.3d 719

Management Resources:

CSBA PUBLICATIONS

Safe Schools: Strategies for Governing Boards to Ensure Student Success, 2011

Providing a Safe, Nondiscriminatory School Environment for All Students, Policy Brief, April 2010

Cyberbullying: Policy Considerations for Boards, Policy Brief, July 2007

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Health Education Content Standards for California Public schools; Kindergarten Through Grade twelve, 2008

Bullying at School, 2003

U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS PUBLICATIONS

Dear Colleague letter: Harassment and Bullying, October 2010

Policy FRESNO UNIFIED SCHOOL DISTRICT

adopted: June 5, 2013 Fresno, California

revised: June 17, 2015

revised: June 13, 2018

Fresno Unified Administrative Regulation (AR) 5145.3 Nondiscrimination/Harassment

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with state and federal civil rights laws, including Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Age Discrimination Act of 1975, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints regarding unlawful discrimination, including discriminatory harassment, intimidation, or bullying, based on actual race, color, ancestry, national origin, nationality, ethnicity, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity, gender expression, or any other legally protected status; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. The coordinator/compliance officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

Executive Director
Constituent Services Office
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3736

Chief of Human Resources
Title IX Officer/Age Discrimination Act
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3730

Manager/ Section 504
Coordinator
Fresno Unified School District
1301 M Street
Fresno, CA 93721
(559) 457-3220

Special Education Assistant Superintendent
Special Education Office
Fresno Unified School District
1301 M Street
Fresno, CA 93721
(559) 457-3226

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)

Measures to Prevent Discrimination

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public posting them on the district's web site and other prominent locations and providing easy access to them through district-supported social media, when available.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 1312.3 Uniform Complaint Procedures)

2. Provide to students a handbook that contains information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior. (Education Code 234.1)

3. Annually notify all students and parents/guardians of the district's nondiscrimination policy. The notice shall inform students and parents/guardians of the possibility that students will participate in a sex-segregated school program or activity together with another student of the opposite biological sex, and that they may inform the principal/designee or compliance officer if they feel such participation would be against the student's religious beliefs and/or practices or a violation of their right to privacy. In such a case, the principal/designee or compliance officer shall meet with the student and/or parent/guardian who raises the objection to determine how best to accommodate that student. The notice shall inform students and parents/guardians that the district will not typically notify them of individual instances of transgender students participating in a program or activity.

(cf. 5145.6 - Parental Notifications)

4. The Superintendent or designee shall ensure that all students and parents/guardians, including students and parents/guardians with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.

If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

5. Provide to students, employees, volunteers, and parents/guardians training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.

(cf. 1240 - Volunteer Assistance)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

6. At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, against a student is required intervene when safe to do so. (Education Code 234.1)

7. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students' privacy rights and ensure their safety from threatened or potentially discriminatory behavior.

Enforcement of District Policy

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 - Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

(cf. 5131.5 - Vandalism and Graffiti)

2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination and how to respond

3. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating the school's response to students, parents/guardians, and the community

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)

(cf. 5125 - Student Records)

5. Taking appropriate disciplinary action against perpetrators and anyone determined to have engaged in wrongdoing, including any student who is found to have made a complaint of discrimination that the student knew was not true

(cf. 4118 - Suspension/Disciplinary Action)

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

(cf. 5144 - Discipline)

(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))

(cf. 6159.4 - Behavioral Interventions for Special Education Students)

Process for Initiating and Responding to Complaints

Any student who feels that they have been subjected to unlawful discrimination described above or in district policy is strongly encouraged to immediately contact the compliance officer, principal, or any other staff member. In addition, any student who observes any such incident is strongly encouraged to report the incident to the compliance officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the compliance officer or principal within 24 hours, whether or not the alleged victim files a complaint.

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When any report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is submitted to or received by the principal or compliance officer, they shall immediately investigate in accordance with the school site level complaint process (AR 5145.7 – Sexual Harassment) and inform the student or parent/guardian of the right to file a formal complaint pursuant to the provisions in AR 1312.3 - Uniform Complaint Procedures. Any report of unlawful discrimination involving the principal, compliance officer, or any other person to whom the complaint would ordinarily be reported or filed shall instead be submitted to the Superintendent or designee. Even if the student chooses not to file a formal complaint, the principal or compliance officer shall implement immediate measures necessary to stop the discrimination and to ensure all students have access to the educational program and a safe school environment.

(cf. 5131.2 Anti-Bullying)

(cf. 5145.7 Sexual Harassment)

Upon receiving a complaint of discrimination, the principal/designee or compliance officer shall immediately investigate the complaint in accordance with the district's uniform complaint procedures specified in AR's 1312.3/5145.7.

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Transgender and Gender-Nonconforming Students

Gender identity means a student's internal, deeply-rooted identification as male or female (or neither). All students have a gender identity, not just transgender students.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Transgender student means a student whose gender identity is different from that traditionally associated with the assigned sex at birth.

Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, regardless of whether they are sexual in nature, where the act has the purpose or effect of having a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited under state and federal law. Examples of types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with their gender identity
2. Disciplining or disparaging a transgender student because their mannerisms, hairstyle, or style of dress correspond to their gender identity, or a non-transgender student because their mannerisms, hairstyle, or style of dress do not conform to stereotypes for their gender or are perceived as indicative of the other sex
3. Blocking a student's entry to the bathroom that corresponds to their gender identity because the student is transgender or gender-nonconforming
4. Taunting a student because they participate in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information
6. Use of gender-specific slurs
7. Physical assault of a student motivated by hostility toward them because of their gender, gender identity, or gender expression

In addition to the school site level compliant process/grievance procedure (AR 5145.7 Sexual Harassment), the district's uniform complaint procedures (AR 1312.3) may be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students. Examples of basis for complaints include, but are not limited to, the above list as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's transgender or gender-nonconforming status is their private information and the district will only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In the latter instance, the district shall limit disclosure to individuals reasonably believed to be able to protect the student's well-being. Any district employee to whom a student discloses their transgender or gender-nonconforming status shall seek the student's permission to notify the principal/designee or compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless they are required to disclose or report the student's information pursuant to this procedure, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to their status as a transgender or gender-nonconforming student. If the student permits the employee to notify the principal/designee or compliance officer, the employee shall do so within three school days.

As appropriate given the physical, emotional, and other significant risks to the student, the principal/designee or compliance officer may consider discussing with the student any need to disclose the student's transgender or gender-nonconformity status to their parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

2. **Determining a Student's Gender Identity:** The principal/designee or compliance officer shall accept the student's assertion unless district personnel present a credible basis for believing that the student's assertion is for an improper purpose. In such a case, the principal/designee or compliance officer shall document the improper purpose and, within seven school days of receiving notification of the student's assertion, shall provide a written response to the student and, if appropriate, to their parents/guardians.

3. **Addressing a Student's Transition Needs:** The principal/designee or compliance officer shall arrange a meeting with the student and, if appropriate, their parents/guardians. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the principal or designee shall identify specific school site employee(s) to whom the student may report any problem related to their status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the student's arrangements are meeting their educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.

4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** The district may maintain sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with their gender identity. If available and requested by any student, regardless of the underlying reason, the district shall offer options to address privacy concerns in sex-segregated facilities, such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because they are transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with their gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with their gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

(cf. 6145 - Extracurricular and Cocurricular Activities) (cf. 6145.2 - Athletic Competition)

(cf. 6153 - School-Sponsored Trips) (cf. 7110 - Facilities Master Plan)

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, their parents/guardians, the district shall use the student's preferred name and pronouns consistent with their gender identity on all other district-related documents.

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with their gender identity, without the necessity of a court order or a change to their official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this administrative regulation or the accompanying district policy.

7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with their gender identity, subject to any dress code adopted on a school site.

(cf. 5132 - Dress Code)

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, immigration status, ancestry, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Regulation FRESNO UNIFIED SCHOOL DISTRICT

Approved: October 13, 2015

Admin Reviewed: August 15, 2019

Policy Section: 5000 Students

Nondiscrimination/Harassment

The Governing Board desires to provide a safe school environment that allows all students equal access and opportunities in the district's academic, extracurricular, and other educational support programs, services, and activities. The Board prohibits, at any district school or school activity, unlawful discrimination, including discriminatory harassment, intimidation, and bullying targeted at any student by anyone, based on the student's actual or perceived sex, sexual orientation, gender, gender identity, or gender expression, race, ancestry, national origin, ethnicity, ethnic group identification, age, religion, color, marital or parental status, physical or mental disability, age or, the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics.

This policy shall apply to all acts related to school activity or to school attendance occurring within a district school and to acts which occur off campus or outside of school-related or school-sponsored activities but which may have an impact or create a hostile environment at school. (Education Code 234.1)

(cf. 0410 - Nondiscrimination in District Programs and Activities)

(cf. 5131 - Conduct)

(cf. 5131.2 - Bullying)

(cf. 5137 - Positive School Climate)

(cf. 5145.9 - Hate-Motivated Behavior)

(cf. 5146 - Married/Pregnant/Parenting Students)

(cf. 6164.6 - Identification and Education under Section 504)

Unlawful discrimination, including discriminatory harassment, intimidation, or bullying may result from physical, verbal, nonverbal, or written conduct based on any of the categories listed above. Unlawful discrimination also includes the creation of a hostile environment through prohibited conduct that is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity; creates an intimidating, threatening, hostile, or offensive educational environment; has the effect of substantially or unreasonably interfering with a student's academic performance; or otherwise adversely affects a student's educational opportunities.

Unlawful discrimination also includes disparate treatment of students based on one of the categories above with respect to the provision of opportunities to participate in school programs or activities or the provision or receipt of educational benefits or services.

The Governing Board shall ensure equal opportunities for all students in admission and access to the educational program, guidance and counseling programs, athletic programs, testing procedures, and other activities. School staff and volunteers shall carefully guard against segregation, bias and stereotyping in instruction, guidance and supervision. The district may provide male and female students with separate shower rooms and sexual health and HIV/AIDS prevention classes in order to protect student modesty.

(cf. 6142.1 - Sexual Health and HIV/AIDS Prevention Instruction)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.2 - Guidance/Counseling Services)

The Board also prohibits any form of retaliation against any student who reports or participates in the reporting of unlawful discrimination, files or participates in the filing of a complaint or investigates or participates in the investigation of a complaint or report alleging unlawful discrimination, harassment, intimidation, or bullying. Staff shall be alert and immediately responsive to student conduct which may interfere with another student's ability to participate in or benefit from school services, activities or privileges. Retaliation complaints shall be investigated and resolved in the same manner as a discrimination complaint.

(cf. 5145.2 - Freedom of Speech/Expression)
(cf. 5145.7 - Sexual Harassment)

The Superintendent or designee shall facilitate students' access to the educational program by publicizing the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, and employees. Staff shall provide training and information on the scope and use of the policy and complaint procedures and take other measures designed to increase the school community's understanding of the requirements of law related to discrimination. The Superintendent or designee shall regularly review the implementation of the district's nondiscrimination policies and practices and, as necessary, shall take action to remove any identified barrier to student access to or participation in the district's educational program. They shall report their findings and recommendations to the Board after each review.

(cf. 1312.3 - Uniform Complaint Procedures)
(cf. 1330 - Use of Facilities)
(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)
(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6164.2 - Guidance/Counseling Services)

Students who engage in unlawful discrimination, including discriminatory harassment, intimidation, bullying, or retaliation in violation of law, Board policy, or administrative regulation shall be subject to appropriate consequence or discipline, which may include counseling, suspension and/or expulsion for behavior that is severe or pervasive as defined in Education Code 48900.4. Any employee who permits or engages in prohibited discrimination, including discriminatory harassment, intimidation, bullying, or retaliation may be subject to disciplinary action, up to and including dismissal.

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4119.21/4219.21/4319.21 - Professional Standards)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)
(cf. 5131 - Conduct)
(cf. 5144 - Discipline)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))
(cf. 5145.2 - Freedom of Speech/Expression)

Grievance Procedures

The Board hereby designates the following positions as Coordinator(s) for Nondiscrimination to handle complaints regarding discrimination, harassment, intimidation, or bullying, and to answer inquiries regarding the district's nondiscrimination policies:

Executive Director
Constituent Services Office
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3736

Chief of Human Resources
Title IX Officer/AgeDA (Discrimination Act)
Fresno Unified School District
2309 Tulare Street
Fresno, California 93721
(559) 457-3528

Special Education Manager/
Section 504 Coordinator
Fresno Unified School District
4784 E. Dayton Avenue
Fresno, CA 93726
(559) 457-3220

Special Education Assistant Superintendent
Special Education Office
Fresno Unified School District
1301 M Street
Fresno, CA 93721
(559) 457-3220

(cf. 1312.1 - Complaints Concerning District Employees)
(cf. 1312.3 - Uniform Complaint Procedures)

Any student who feels that they have been subjected to discrimination, harassment, intimidation, or bullying should immediately contact the Coordinator for Nondiscrimination, the principal or any other staff member. Any student who observes an incident should report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Regardless of whether a complainant complies with the writing, timeline, and/or other formal filing requirements, all complaints brought to the attention of staff, alleging unlawful discrimination, including discriminatory harassment, intimidation, or bullying, shall be investigated and prompt action taken to stop the discrimination, prevent recurrence, and address any continuing effect on students.

In addition, the employee shall immediately intervene when safe to do so. (Education Code 234.1)

Employees who observes an incident of discrimination, harassment, intimidation, or bullying or to whom such an incident is reported shall immediately report the incident to any of the designated Coordinators for Nondiscrimination, or principal, whether or not the victim files a complaint. Upon receiving a complaint of discrimination or harassment, intimidation, or bullying, the Coordinator shall immediately investigate the complaint in accordance with the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures. Where the Coordinator finds that harassment has occurred, they shall take prompt, appropriate action to end the harassment and address its effects on the victim.

The Superintendent or designee shall ensure that the student handbook clearly describes the district's nondiscrimination policy, procedures for filing a complaint regarding discrimination, harassment, intimidation, or bullying, and the resources that are available to students who feel that they have been the victim of any such behavior. The district's policy shall also be posted on the district web site or any other location that is easily accessible to students.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 6163.4 - Student Use of Technology)

When required pursuant to Education Code 48985, complaint forms shall be translated into the student's primary language.

Record-Keeping

The Superintendent or designee shall maintain a record of all reported cases of unlawful discrimination, including discriminatory harassment, intimidation, or bullying, to enable the district to monitor, address, and prevent repetitive prohibited behavior in district schools.

(cf. 3580 - District Records)

Fresno Unified School District does not harass, intimidate, or discriminate on the basis of race, color, ethnicity, national origin, ancestry, age, creed, religion, political affiliation, gender, gender identity or expression or genetic information, mental or physical disability, sex, sexual orientation, parental or marital status, military veteran status, or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination on the basis of sex, especially:
48900.3 Suspension or expulsion for act of hate violence
48900.4 Suspension or expulsion for threats or harassment
48904 Liability of parent/guardian for willful student misconduct
48907 Student exercise of free expression
48950 Freedom of speech
48985 Translation of notices
49020-49023 Athletic programs
51500 Prohibited instruction or activity
51501 Prohibited means of instruction
60044 Prohibited instructional materials

CIVIL CODE

1714.1 Liability of parents/guardians for willful misconduct of minor

PENAL CODE

422.55 Definition of hate crime
422.6 Crimes, harassment

CODE OF REGULATIONS, TITLE 5

432 Student record

4600-4687 Uniform Complaint Procedures

4900-4965 Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE, TITLE 20

1681-1688 Title IX of the Education Amendments of 1972

12101-12213 Title II equal opportunity for individuals with disabilities

UNITED STATES CODE, TITLE 29

794 Section 504 of Rehabilitation Act of 1973

UNITED STATES CODE, TITLE 42

2000d-2000e-17 Title VI and Title VII Civil Rights Act of 1964, as amended

2000h-2-2000h-6 Title IX of the Civil Rights Act of 1964

6101-6107 Age Discrimination Act of 1975

CODE OF FEDERAL REGULATIONS, TITLE 28

35.107 Nondiscrimination on basis of disability; complaints

CODE OF FEDERAL REGULATIONS, TITLE 34

99.31 Disclosure of personally identifiable information

100.3 Prohibition of discrimination on basis of race, color or national origin

104.7 Designation of responsible employee for Section 504

106.8 Designation of responsible employee for Title IX

106.9 Notification of nondiscrimination on basis of sex

COURT DECISIONS

Donovan v. Poway Unified School District, (2008) 167 Cal.App.4th 567

Flores v. Morgan Hill Unified School District, (2003) 324 F.3d 1130

Management Resources:

U.S. DEPARTMENT OF EDUCATION, OFFICE OF CIVIL RIGHTS PUBLICATIONS

Dear Colleague Letter: Transgender Students, May 2016

Examples of Policies and Emerging Practices for Supporting Transgender Students, May 2016

Dear Colleague Letter: Title IX Coordinators, April 2015

Dear Colleague Letter: Harassment and Bullying, October 2010

Notice of Non-Discrimination, January, 1999

WEB SITES

U.S. Department of Education, Office of Civil Rights: <http://www.ed.gov/offices/OCR>

California Department of Education: <http://www.cde.ca.gov>

Policy FRESNO UNIFIED SCHOOL DISTRICT

Adopted: August 26, 1993 Fresno, California

Revised: March 22, 2000

Revised: June 29, 2005

Revised: June 19, 2013

Revised: May 14, 2014
Revised: June 17, 2015
Revised: November 16, 2016