



VIA FACSIMILE AND ELECTRONIC MAIL

June 12, 2019

Claudia Cazares, Board President
Fresno Unified School District
2309 Tulare St.
Fresno, CA 93721
Claudia.Cazares@fresnounified.org
Fax: (559) 486-3213
(559) 457-3786

Re: Public comments in response to anti-Black incident at Bullard High School

Dear Board President Cazares,

We submit these public comments in solidarity with the Black students and parents of the Fresno Unified School District (“District”) and on behalf of the American Civil Liberties Union Foundation of Northern California (“ACLU”) regarding a recent video that a white Bullard High School student posted on social media in which she wears blackface and says the n-word. In what should be a source of shame for the District, this racist incident was reported in a major national media outlet. According to the Los Angeles Times, the student was laughing and then exclaimed ““Who said I can’t say [the N-word]?””¹ Moreover, the article said that the same student has another video circulating on social media where she used the n-word around other individuals at Bullard High School. Blackface and the n-word are historically rooted in anti-Black oppression and white supremacy². We agree that Superintendent Bob Nelson’s commitment to beginning “a comprehensive program addressing the cultural proficiency of our students” is a necessary step.³

Nevertheless, we are concerned that merely addressing cultural proficiency is insufficient for solving the systemic and structural anti-Black racism within the District given the deep racist roots within the Fresno area. Black parents and students deserve clear and tangible commitments from the District that are supported with resources, programming, training, transparency, and accountability.

¹ “Student in blackface spouting a racial slur roils Fresno high school” LA Times, June 2019, *available at* <https://www.latimes.com/local/lanow/la-me-ln-fresno-student-blackface2019-story.html>.

² “Why Blackface Endures”, NPR, Feb. 2019, *available at* <https://www.npr.org/2019/02/08/692614158/why-blackface-endures>.

³ Superintendent Bob Nelson public post on racial tensions, May 31, 2019, *available at* <https://www.facebook.com/superintendent.bob/posts/10219547428140185>.

The District violates its policies, the California Education Code, and federal civil rights mandates if it will not affirmatively combat bias and racism against Black students

By perpetuating a hostile environment for Black students, the District currently violates its non-discrimination Board Policy and the California Education Code. The 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.”⁴ Moreover, the Education Code makes clear that all school districts have a mandatory obligation to create a safe and inclusive environment for students. *See* Cal. Ed. Code §§ 201, 220, 32261(a). The Education Code further mandates that the District investigate reported instances of bullying by students and teachers. *See id.* at §§ 234.1(b), 32261(a), 32280. 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.”⁵ If the District continues to discriminate against Black students, it may be subject to legal liability and loss of federal funding.

The District has not created an environment that is welcoming for Black students. Most recently, there was the recent round of videos where the District student seems to consistently and horrifically mock Black individuals. In addition to that, the District’s African American Acceleration Task Force stated that the environment for Black students is in a “state of emergency.” 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.”⁶ Furthermore, earlier this year, news outlets reported that an Edison High School teacher said the n-word to a Black student⁷ and a substitute teacher grabbed a Black student by the neck.⁸ Within the last several years, Computech Middle School printed yearbooks that contained KKK

⁴ 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-District-Programs-and-Activities.pdf>.

⁵ 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>.

⁶ “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>.

⁷ “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-during-investigation-for-using-racial-slur-in-class/1971810509>.

⁸ “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-cell-phone/5289679/>.

symbols⁹ and the Vice President of Scandinavian Middle School was caught on camera saying, “I just don’t like the Black kids.”¹⁰

In addition to the hostile anti-Black environment, the District actively creates an educational setting that pushes Black students out by disproportionately disciplining them. The Black students at Bullard High School bear the brunt of some of the worst discriminatory discipline practices in the District. Although Bullard is 10.4% Black and Fresno Unified is 8.2% Black,¹¹ the suspension rates in the 2017-2018 school year for Black students were 21.8%¹² and 16.9%,¹³ respectively. Black students in the District received the highest percentage of “Defiance” suspensions out of any other ethnic group in the District.¹⁴ The disparate treatment gets worse as family income levels decrease. In fact, 1 in 4 low-income Black students was suspended at Bullard High School in the 2017-2018 school year.¹⁵

Based on our previous interactions with the District, conversations with community members, and data readily available to the public, the District has not taken a proactive approach regarding evidence-based solutions for protecting and including Black students for the above-mentioned points.

The District has not historically invested in Black students to create an inclusive environment

The District has missed many opportunities to rectify its disparate treatment of Black students through its Local Control Accountability Plan (LCAP), which was intended to promote equity by giving resources to high needs students. The District should confirm that its current plan contemplates what resources are for Black students and its funding allocations generally since recently the District used “millions of dollars earmarked for high-need students on police, surveillance, janitorial staffing, and building upgrades” instead of to support students who are

⁹ “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>.

¹⁰ “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/>.

¹¹ California Department of Education, “2018-19 Enrollment by Ethnicity- Bullard High School”, *available at* <https://dq.cde.ca.gov/dataquest/dqCensus/EnrEthLevels.aspx?cds=10621661030279&aggllevel=school&year=2018-19>.

¹² 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&aggllevel=School&cds=10621661030279>.

¹³ 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&aggllevel=District&cds=1062166>.

¹⁴ 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&aggllevel=District&cds=1062166>.

¹⁵ 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&aggllevel=School&cds=10621661030279>.

low-income, foster youth, or English Learners.¹⁶ This lack of transparency harmed those students who needed the funding the most.

Generally, the District's lack of transparency regarding funding must be rectified, particularly if it is unclear whether any true financial commitment is in place for Black students across the District and more specifically at schools like Bullard High School. In addition to neglecting to provide Black students with the resources they need, it is unclear whether the District is even collecting data to assess what racial harassment and bullying looks like for Black students across the District. This despite the fact that there have been multiple racist incidents just within the last couple of years where the ACLU and other community partners have had to intervene on behalf and with Black parents and students. For example, the ACLU came to the legal defense of a black student and his mother his mother just last year when Tenaya Middle School officials kicked him out of class because of his haircut. Until we resolved the matter, the school had refused to let him return until he went to a barber.¹⁷ These types of incidents are unacceptable and illustrate the widespread misunderstanding of Black students and the District's lack of cultural sensitivity.

This District prides itself on tracking data, so this should not stop when discussing its commitment to Black students and parents. The District's lack of authentic accountability to the Black community members reveals structural and systemic anti-Black racism that prevents Black students from getting the resources and education they are legally entitled to.

Moreover, the District can benefit from more general training regarding how racism and anti-Black sentiments impact a community. When issuing statements that are meant to support a historically oppressed group of individuals, it is harmful to frame any apology as though there is fault that can be attributed to the impacted individual and/or community for an incident that harmed them. Superintendent Bob Nelson described affected community members' responses to the Bullard High School students' blackface video as "hate", "ignorance" and "angry rhetoric,"¹⁸ thereby creating a false equivalence between the video's explicit racism and Black people's condemnation of that racism. Further conversations must intentionally uplift and encourage honest dialogue. District administrators must be willing to listen to community members, Black parents, and students regarding the impact of the District's anti-Black culture without minimizing structural and individual racism to appease white fragility.¹⁹

¹⁶ ACLU Foundation of Northern California "IS FUNDING FOR HIGH-NEED STUDENTS ACTUALLY REACHING THOSE STUDENTS? A REVIEW OF FRESNO UNIFIED'S LOCAL CONTROL ACCOUNTABILITY PLAN" Mar. 2018, available at <https://www.aclunc.org/sites/default/files/LCAPReport.pdf>.

¹⁷ ACLU Foundation of Northern California "Cultural Incompetence: My Son was Kicked out of Class Because of His Hair" Mar. 2018, available at <https://www.aclunc.org/blog/cultural-incompetence-my-son-was-kicked-out-class-because-his-hair>.

¹⁸ Superintendent Bob Nelson public post on racial tensions, May 31, 2019, available at <https://www.facebook.com/superintendent.bob/posts/10219547428140185>.

¹⁹ To be clear, white fragility is a term that describes how society condones and somewhat uplifts white people who live in or create environments that protects and insulates them from race-based stress. In a situation where the District must take a strong stance in support of Black students, appeasing white fragility could mean taking a stance that does not cause the individual who created a hostile environment for Black students to fully feel or understand the impact of the harm towards Black students and parents. "White Fragility" by Robin DiAngelo, available at <https://libjournal.uncg.edu/ijcp/article/viewFile/249/116>.

Conclusion and Recommendations

Because the District has not addressed the structural nature of its anti-Blackness, racist incidents like the Bullard High School student's social media post continue to recur. Based on our past client interactions and news articles regarding Black student treatment, the District is continuing to miss the mark for addressing the systemic harassment and discrimination that Black students face. The Ninth Circuit has held that school districts may be liable for racial harassment of students by their peers. *Monteiro v. The Tempe Union High School District*, 158 F.3d 1022 (9th Cir. 1998). To give Black students the safe, non-discriminatory educational experience that they are legally entitled to, the District must expand beyond its commitment to "addressing cultural proficiency" and commit to rectifying the anti-Black systems and structures that it currently has in place.

Below are some immediate next steps the District can consider. Each recommendation is just a starting point for conversation:

As an initial matter, the District and School Board should hold a special session to discuss the recommendations outlined below and all recommendations that have been raised by Black parents and students, and community-based organizations.

A. Collaboration of Stakeholders

The District should work to create a welcoming and collaborative environment for all stakeholders, in particular, for Black students and their parents, to facilitate participation in the development and implementation of meaningful solutions to educational challenges faced by Black students.

B. Complaint Process

The District should create a comprehensive and meaningful process to handle complaints by students, families, and community members about harassment, discrimination, disparate discipline, provision of services to students with disabilities, and misconduct by District staff. The District must be sure to include Black students and parents through this process.

C. Professional Development

The District should foster a community of teachers and administrators that are knowledgeable about child development and are culturally competent and sensitive. To accomplish this goal:

1. The District should 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.
2. The District should provide professional development for teachers, staff and administrators in: childhood brain development; trauma-informed responses and

3. interventions; implicit bias; mental health issues and symptoms in children; developmental and learning disabilities; and special education procedural
4. requirements.²⁰ Such acknowledgement requires self-examination, self-awareness, overcoming the challenges of open communication on these issues, and ongoing
5. dialogue”²¹ This should include training regarding effective ways to minimize blame-shifting to impacted and marginalized communities when racist incidents occur.

D. School Climate

The District should implement evidence-based practices, such as Restorative Justice and School-Wide Positive Behavior Supports (“SWPBIS”), with fidelity and with an emphasis on reducing racial and ethnic disparities in discipline and educational achievement. To accomplish this goal:

1. The District should hire an independent consultant, based on recommendations and input from community groups, Black parents and students, with expertise in implementing evidence-based educational practices and, specifically, with expertise in reducing racial and ethnic disparities in discipline, to assist in planning and implement Restorative Justice and SWPBIS programming.
2. The District should uniformly and consistently enforce a comprehensive discipline policy that clearly sets out the expected behavior and appropriate responses to student misconduct. The policy should:
 - a. be developed with input and guidance from Black students, families, and community members; and
 - b. include clear guidelines for what discipline should be handled by teachers, and what discipline should be addressed by the Principal; and
 - c. make all District, school, and classroom attendance and discipline policies and procedures accessible to students and parents through publication in the Student Handbook, any parents’ rights handbooks, and posting at District schools and on the school website. District policies must be drafted to be understandable to high school students.

E. Data Collection and Recordkeeping

The District should collect and maintain accurate data regarding school enrollment, discipline, racial harassment and bullying of Black students, and special education, which is disaggregated by race, disability, gender, grade, type of offense, discipline imposed, and referring teacher and

²⁰ 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.

²¹ 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.

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school. The District should work with community partners to hear how they can also use this information and include this input for developing the database.

We look forward to hearing of the District's next steps and would welcome a meeting, with community partners, to further explain our letter.

Sincerely,



Abre' Conner
Staff Attorney
ACLU Foundation of Northern California

Cc: Carol Mills, J.D., Clerk
carolmillsfusd@comcast.net

Valerie F. Davis, FUSD Board of Trustees
valerie.davis@fresnounified.org

Veva Islas, FUSD Board of Trustees
veva.islas@fresnounified.org

Elizabeth Jonasson Rosas, FUSD Board of Trustees
Elizabeth.Jonasson.Rosas@fresnounified.org

Major Terry Slatic USMC, FUSD Board of Trustees
terry.slatic@fresnounified.org

Keshia Thomas, FUSD Board of Trustees
keshia.thomas@fresnounified.org

Bob Nelson, FUSD Superintendent
bob.nelson@fresnounified.org

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707

TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG