



EQUAL JUSTICE SOCIETY



A Union of Educators & Classified Professionals

November 9, 2022

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State Superintendent of Public Instruction
California Department of Education
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Re: Request for California Department of Education Action to Ensure Local Education Agencies Are Not Censoring Accurate and Inclusive Education

Dear State Superintendent Thurmond:

As organizations committed to ensuring that California’s public education system is inclusive and safe for all students and respects their constitutional and statutory civil rights, we write to request your assistance to address an increase in efforts to censor accurate and inclusive education programs through broad and vaguely-worded “bans” on curricula and materials that discuss racism and bigotry, the history of racial discrimination in the U.S., and experience of LGBTQ+ people.

We are grateful for your leadership to date in addressing this rise in bias, bigotry, and racism, as demonstrated by your Education to End Hate Initiative;¹ your efforts to ensure adoption of California's first model ethnic studies curriculum; your work to guarantee and expand student access to gender-appropriate restrooms; and your support for equity for Black students by investing in anti-racism efforts and addressing root causes of racial discrimination in schools. However, school districts urgently need clearer and more streamlined guidance specific to the increasing attacks against inclusive curricula and materials. We hope the information and recommendations in this letter are useful in your ongoing work to ensure all California public schools provide accurate and inclusive education and are safe, supportive places to learn.

As detailed below, federal and state law and public policy support accurate and inclusive education in all of California's schools. The U.S. and California Constitutions protect students' rights to share ideas and beliefs, including the rights of listeners to receive information and knowledge,² and guarantee students equal protection under the law.³ Education is a fundamental right under the California Constitution.⁴ Moreover, federal and state civil rights statutes place upon school districts the affirmative obligation to combat bias against students within its schools.⁵ By law, California schools must create an equitable learning environment where LGBTQ+ students and Black, Indigenous, and other students of color feel welcome, including through honest discussions of racism and the diversity of gender and sexual orientation that reflect the lived reality of those students. Below and in the Appendix of this letter, we describe school district attempts to silence discussion of these topics, thus creating a hostile environment for marginalized students that excludes their perspectives and experiences from the classroom and sends them the message that challenging, or even speaking about, discrimination is prohibited and that their history and community experiences should be ignored.

As you know well, accurate and inclusive education is essential to ensure the educational success of LGBTQ+ students and Black, Indigenous, and other students of color. Studies consistently show that accurate and inclusive education can increase student academic outcomes and greater cultural understanding and awareness that helps to build empathy, affirm diversity, and foster greater connection among all students. You and your agency have already led the way to develop resources that affirm students' rights to freely talk and learn about race, gender, and sexual orientation; the history of all marginalized communities in California; their own identities and those of others; and honest and truthful

¹ *Antibias Education*, CAL. DEPT OF EDUC., <https://www.cde.ca.gov/eo/in/ts-antibiaseducation.asp> (last reviewed Aug. 3, 2022).

² U.S. Const. amend. I; Cal. Const. art. 1, § 2(a).

³ U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 4; *id.* art. I, § 7(A); *id.* art. IV, § 16(a); *id.* art. IX, § 5.

⁴ Cal. Const. art. IX, § 5.

⁵ 42 U.S.C. § 2000c *et seq.*; 42 U.S.C. § 2000d *et seq.*; 20 U.S.C. § 1681 *et seq.*; 42 U.S.C. § 12132 *et seq.*; 20 U.S.C. § 1400 *et seq.*; 29 U.S.C. § 794; Cal. Educ. Code §§ 200, 201, 220, 234.1; *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 632 (1999); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 668–71 (2d Cir. 2012).

depictions of the experiences of LGBTQ+ Californians and Black, Indigenous, and other Californians of color. However, the examples below and in our Appendix highlight the pernicious spread of school district actions to ban this essential education and demonstrate why your continued leadership on these issues is needed now. To address this problem, we ask that you take the following specific steps:

- Streamline and strengthen existing guidance to clarify that federal and state law and public policy require public schools to provide students comprehensive, culturally competent, and accurate instruction that allows them to discuss freely and otherwise learn about the history, experiences, and viewpoints of people from different communities in California. Local educational agencies routinely rely on guidance from the California Department of Education (“CDE”) concerning important legal and policy matters, and your direction is urgently needed for school administrators, staff, students, parents, and community members to counter efforts to censor and distort what our students are learning in schools.
- Launch a public-facing campaign, including a website and other communications materials, to be sure that all Californians can access information about educational laws and policies that safeguard the right to accurate and inclusive curriculum.
- Integrate into the Education Equity instrument of the Federal Program Monitoring process a review of local educational agency policies to ensure that school districts are not engaging in harmful and unlawful censorship.

I. Attacks Against Accurate, Inclusive Education in School Districts Are Proliferating Statewide.

Across California we have seen a growing number of school districts consider and pass policies censoring curriculum, instructional materials, books, and other resources discussing racism, the history of racial discrimination in the U.S., and the existence and experience of LGBTQ+ people. Below is a summary of such efforts (see the Appendix for full details and citations):

- **Paso Robles Joint Unified School District (PRJUSD) (San Luis Obispo County).** In Fall 2021, PRJUSD adopted a resolution banning certain concepts related to racism, racial discrimination, and the role of slavery in our country’s history—i.e., to broadly erase from PRJUSD’s curriculum accurate historical events and essential concepts necessary to understand and learn about U.S. society and racial justice including, for example, implicit bias and structural racism. More recently, in Fall 2022, PRJUSD adopted a resolution to “**not support** any mandate which replaces traditional gender-specific names such as mother and father, Mr. and Mrs., ladies and gentlemen, and boys and girls” (emphasis added). PRJUSD is also now considering revising its policies to remove several sections outlining the rights of transgender and gender-nonconforming students to be themselves at school and to limit or ban library books relating to LGBTQ+ topics.

- **Placentia-Yorba Linda Unified School District (PYLUSD) (Orange County).** In Spring 2022, PYLUSD adopted a resolution that effectively bans the questioning of the role of racism in U.S. society, discussion of the social construction of race or that “race” is not a biologically-rooted concept, and acknowledgement that society’s systems work to provide an unjust advantage to some racial/ethnic groups. Over 2,000 students and community members protested the ban but it was adopted anyway. Additionally, PYLUSD terminated the use of third-party classroom video resources after learning that one referenced the Black Lives Matter movement and another referenced the inclusive use of pronouns. The PYLUSD Board also considered the use of online monitoring “filters” to restrict content that refers to LGBTQ-related topics as well as racial justice issues. One PYLUSD student shared: “These bans really make me feel like my school doesn’t care about me, or who I am and where I come from. When they say we’re not going to talk about race or LGBTQ+ related topics, they’re denying not just me but many PYLUSD students the right to learn about ourselves, our history and our heritage, and I really worry about what that means for the future and the students who come next.”
- **Visalia Unified School District (VUSD) (Tulare County).** After the police murder of George Floyd in 2020, VUSD removed hundreds of Black Lives Matter signs placed by school community members, citing them as “disruptive” after other community members tore some of the signs down. More recently, in the 2021-2022 school year, VUSD adopted a health textbook specifically because it excluded any discussion of gender or sexual orientation, in clear conflict with the Health Education Framework; it also stripped curriculum that discusses systemic racism from the Global Learning Charter School.⁶
- **Solana Beach School District (SBSD) (San Diego County).** In April 2022, SBSBD adopted a policy requiring books with a “particular position on a debatable topic” to be taken out of general circulation and placed on a “professional bookshelf” accessible only by staff, parents and guardians. The policy did not provide any guidance on what could be considered a “debatable topic” worthy of censorship, thus creating ambiguity that invites unconstitutional viewpoint discrimination. Moreover, the policy was developed in response to backlash against a donation of LGBTQ+ related books, strongly suggesting to students and school staff that diversity in gender and sexual orientation fall under this category.
- **Ramona Unified School District (RUSD) (San Diego County).** During the 2021-2022 school year, RUSD’s school board adopted a policy banning the teaching of specific concepts related to race and gender.

⁶ One VUSD School Board Trustee was quoted by local press saying, “When they are flying banners for Black Lives Matter that tells me that curriculum is biased” to justify voting against allowing the charter school to use the educational resource which included a pictorial reference to the Black Lives Matter movement.

The UCLA School of Law maintains a website that “tracks, identifies, and analyzes measures aimed at restricting access to truthful information about race and systemic racism.”⁷ Seven districts from California are currently listed on that website.⁸ In fact, experts and observers who follow local school board policies in California report that efforts to ban discussions of race, sexual orientation, and gender are on the rise here.⁹ The American Library Association annual report documented 729 attempts to remove library and school materials in the U.S. in 2021, leading to 1,597 book challenges or removals—nearly double from the previous year.¹⁰ Another study of book bans across the country estimated that of all books banned by schools in 2022, 33% contained LGBTQ+ themes or protagonists that identified as LGBTQ+, and 22% directly addressed race or racism.¹¹ We are alarmed at the significant growth of this movement at the school district level in California.¹²

We are also deeply concerned about the impact of this growing censorship on Indigenous students for whom the exclusion of Indigenous perspectives in California school curriculum and the misrepresentation of Indigenous experiences throughout our history has been profoundly harmful. For example, the history of “missions” and the Gold Rush taught in classrooms statewide for many decades has excluded both Indigenous perspectives and discussion of how settler-colonialism caused severe damage to thriving Tribal communities and failed to accurately teach the state’s history of genocide.¹³

⁷ *UCLA Law CRT Forward Tracking Project*, UCLA SCHOOL OF LAW, <https://law.ucla.edu/academics/centers/critical-race-studies/ucla-law-crt-forward-tracking-project> (last visited Nov. 5, 2022).

⁸ *CRT Forward Tracking Project*, UCLA SCHOOL OF LAW CRITICAL RACE STUDIES, <https://crtforward.law.ucla.edu/> (last visited Nov. 5, 2022) (listing 7 school districts where bans were introduced or adopted); see also Mica Pollock et al., *The Conflict Campaign: Exploring Local Experiences of the Campaign to Ban ‘Critical Race Theory’ in Public K-12 Education in the U.S., 2020-2021*, UCLA Institute for Democracy, Education, and Access (Jan. 2022), <https://idea.gseis.ucla.edu/publications/the-conflict-campaign/publications/files/the-conflict-campaign-report>.

⁹ Ryan Kost, *From critical race theory bans to anti-LGBTQ rules: Will conservatives transform California schools?*, SAN FRANCISCO CHRONICLE, Aug. 22, 2022, <https://www.sfchronicle.com/california/article/california-crt-ban-lgbtq-17385179.php>.

¹⁰ AM. LIBR. ASS’N., STATE OF AMERICA’S LIBRARIES, SPECIAL REPORT: PANDEMIC YEAR TWO (2022), available at: <https://www.ala.org/news/sites/ala.org.news/files/content/state-of-americas-libraries-special-report-pandemic-year-two.pdf>.

¹¹ *Banned in the USA: Rising School Book Bans Threaten Free Expression and Students’ First Amendment Rights*, PEN AMERICA (Apr. 2022), <https://pen.org/banned-in-the-usa/>.

¹² One school district not listed on the UCLA School of Law website is Novato Unified School District, which directed a teacher to remove a Black Lives Matter flag on display in her classroom on the ground that the message violated Board Policy on controversial subjects, a policy that had not previously been enforced.

¹³ Nicole Quinderro Myers-Lim, *Assessing California State Curriculum and Its Impacts on K-12 Students*, in ON INDIAN GROUND: A RETURN TO INDIGENOUS KNOWLEDGE: GENERATING HOPE, LEADERSHIP, AND SOVEREIGNTY THROUGH EDUCATION 161 (Joely Proudfit & Nicole Quinderro Myers-Lim eds., Information Age Publishing 2017) (noting that bias against Indigenous Californians in curriculum “emerges in many forms, such as loaded words, stereotypes, misinformation, lack of information, myths, lies, inappropriate justifications, and culturally insensitive lesson plans, songs, and projects”).

Curriculum that fails to include Indigenous perspectives silences and minimizes Indigenous people, leading Indigenous students to internalize their experiences.¹⁴ Bias against Native Californians can be traced back to statewide curricular standards.¹⁵ These failures have only very recently begun to be addressed on the statewide and district level to more accurately depict the history of missions in California;¹⁶ but nascent efforts to remedy the harm are threatened by censorship in school districts that seeks to erase discussion of racism, racial discrimination, and the role of slavery (including of Indigenous people) in California.

These policies are also contributing to a dangerous workplace for the public-school teachers who are tasked with teaching inclusive curriculum, by mischaracterizing what is being taught in the classroom as ideological or even criminal behavior. In an increasing number of incidents, for example, teachers who teach inclusive LGBTQ+ curriculum, including basic concepts such as gender and sexual orientation, are falsely accused of engaging in sexually predatory “grooming” of children.¹⁷ These inflammatory and false accusations are leading to wholly unwarranted threats of discipline, violence, and criminal prosecution by hostile individuals against public school teachers who are merely complying with legal obligations under federal and state law, as set forth in more detail below. These types of political attacks and the stress they put on educators are also a significant reason why almost half of California’s teachers now report that they are considering leaving the profession.¹⁸

¹⁴ Kishan Lara-Cooper, *Protecting the Treasure: A History of Indigenous Education in California*, in ON INDIAN GROUND: A RETURN TO INDIGENOUS KNOWLEDGE: GENERATING HOPE, LEADERSHIP, AND SOVEREIGNTY THROUGH EDUCATION 13-14 (Joely Proudfit & Nicole Quinderro Myers-Lim eds., Information Age Publishing 2017).

¹⁵ *Supra* n.13.

¹⁶ CAL. DEP’T. OF EDUC., HISTORY-SOCIAL SCIENCE FRAMEWORK (2016), available at: <https://www.cde.ca.gov/ci/hs/cf/hssframework.asp>; Steve Dubb, *Moving beyond the Missions: California Builds Inclusive Native History Curriculum*, SAN JOSE MERCURY NEWS, Aug. 1, 2018, <https://nonprofitquarterly.org/moving-beyond-the-missions-california-builds-inclusive-native-history-curriculum/>; Sabrina Imbler, *Is the End Coming for a Problematic California Grade School Tradition?*, ATLAS OBSCURA, Sept. 12, 2019, <https://www.atlasobscura.com/articles/california-mission-models>.

¹⁷ For example, a veteran teacher in the Glendale Unified School District faced public attacks and threats of violence for sharing videos with her students about LGBTQ+ pride and identity. Howard Blume & Melissa Gomez, *Glendale third-grade teacher showed gay pride videos. A year later, furious debate erupts*, LOS ANGELES TIMES, May 11, 2022, <https://www.latimes.com/california/story/2022-05-11/glendale-unified-schools-lgbtq-curriculum>.

¹⁸ HART RSCH ASSOC., VOICES FROM THE CLASSROOM: DEVELOPING A STRATEGY FOR TEACHER RETENTION AND RECRUITMENT (2022), available at: <https://www.cta.org/wp-content/uploads/2022/09/Voices-from-the-Classroom-CTA-Survey-Report.pdf>.

II. The First Amendment, California Law, and Public Policy Support Accurate and Inclusive Education in All Public Schools.

A. California students have the right to learn and discuss race, gender, and sexual orientation, as well as the history and viewpoints of marginalized communities.

1. The U.S. and California Constitution protect free speech and access to information.

Both the First Amendment to the U.S. Constitution and Article I, section 2(a) of the California Constitution protect students' rights to share ideas and beliefs, including the right to receive information and knowledge.¹⁹ Restrictions on school curricula that impede the rights of students to receive information and ideas violate these constitutional rights.²⁰

In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*,²¹ for example, a plurality of the U.S. Supreme Court recognized that “the right to receive ideas is a necessary predicate to the recipient’s meaningful exercise of [their] own rights of speech, press, and political freedom.”²² The Court therefore held that a school could not remove certain materials from its library because of a disagreement with the ideas in the book or to impose upon the students a “political orthodoxy.”²³ Similarly, in *Monteiro v. Tempe Union High School District*,²⁴ the Ninth Circuit held that the right to receive information includes students’ right to receive information in school curriculum.²⁵ Relying in part upon the reasoning in *Monteiro*, the Ninth Circuit later held in *Arce v. Douglas* that “the state may not remove materials otherwise available in a local classroom unless its actions are reasonably related to legitimate pedagogical concerns,” noting that “[g]ranted wider discretion has the potential to substantially hinder a student’s ability to develop the individualized insight and experience needed to meaningfully exercise [their] rights of speech, press, and political freedom.”²⁶ California state courts are in accord.²⁷

¹⁹ U.S. Const. amend. I; Cal. Const. art. 1, § 2(a).

²⁰ *Arce v. Douglas*, 793 F.3d 968, 981 (9th Cir. 2015).

²¹ *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982).

²² *Id.* at 867, 875.

²³ *Id.*; see also *Kleindienst v. Mandel*, 408 U.S. 753, 762–63 (1972) (recognizing that the “right to receive information and ideas” is “nowhere more vital than in our schools and universities”).

²⁴ *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022 (9th Cir. 1998).

²⁵ *Id.* at 1027 n.5 (affirming district court dismissal of parent’s complaint requesting removal of literary works that contained explicitly racist content from school curricula).

²⁶ *Arce*, 793 F.3d at 983 (citing both *Pico* and *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988), noting that “*Kuhlmeier*’s reasoning can be read to establish that state limitations on school curricula that restrict a student’s access to materials otherwise available may be upheld only where they are reasonably related to pedagogical concerns—especially in a context such as this, where the local school board has already determined that the material at issue adds value to its local school curriculum.”).

²⁷ See, e.g., *Dibona v. Matthews*, 220 Cal. App. 3d 1329, 1338–39 (1990) (ruling that both teachers and students can sue under U.S. and California constitutions to challenge school’s decision canceling controversial student theater class).

Moreover, both federal and state courts have made it exceedingly clear that, even when a school district does have authority to restrict speech, “the power and discretion granted to school boards must be exercised in a manner which comports with the ‘transcendent imperatives’ of the First Amendment.”²⁸ First Amendment jurisprudence, in turn, commands that any lawful restriction on speech be subject to a “greater degree of specificity and clarity of laws.”²⁹ A plaintiff may, for example, establish a First Amendment violation by proving that the reasons offered by the state to restrict speech, including curricula, in fact serve to mask other illicit motivations.³⁰ Illegitimate motives include restricting students’ access to information based upon “narrowly partisan or political” interests, “racial animus,” or a desire to “deny [students] access to ideas with which [the governmental actor] disagree[s].”³¹ Governmental actors can also violate the First Amendment by restricting students’ access to information in ways that are not “reasonably related to legitimate pedagogical concerns.”³² Courts impose a heightened standard for clarity in this First Amendment context because ambiguity invites unlawful censorship and viewpoint-based discrimination, thereby violating not only free speech rights, but due process as well.³³

Accordingly, school district actions that appear to be motivated by political ideologies to bar discussion of race, ethnicity, gender, sexual orientation, or discrimination based on protected characteristics constitute unlawful classroom censorship in violation of the First Amendment. The ability to discuss and debate ideas, even those that some may find uncomfortable, is a crucial part of our democracy.

As described above and in the Appendix, at least four districts in California appear to be unlawfully engaging in classroom censorship. Paso Robles Joint USD now forbids classroom discussion of specific concepts about racism and racial discrimination, including a common definition of racism and key facts in the history of slavery in the U.S. Similarly, Placentia-Yorba Linda USD banned the questioning of race or racism in U.S. society; discussion of the social construction of race; and acknowledgement that society’s systems work in ways that provide an unjust advantage to some racial/ethnic groups. Such vaguely worded bans violate the First Amendment’s strictures, and have a tangible chilling effect on teachers’ and students’ engagement with topics such as racial equity and historical racial discrimination. Teachers, uncertain of what they may be reprimanded for, avoid curricula that may be construed as conflicting with the new Board policies, and then the students are deprived of that educational content. Visalia USD censored a charter school’s use of curricula across a broad range of subjects, including science and English Language Arts, evidently because some part of the social studies curriculum describes the Black Lives

²⁸ *McCarthy v. Fletcher*, 207 Cal. App. 3d 130, 139 (1989) (quoting *Pico*, 457 U.S. at 864).

²⁹ *Foti v. City of Menlo Park*, 146 F.3d 629, 638 (9th Cir. 1998).

³⁰ See *Pico*, 457 U.S. at 853 (recognizing that school boards cannot remove library books based on “narrowly partisan or political” interests of “racial animus”).

³¹ *Id.* at 870–72.

³² *Kuhlmeier*, 484 U.S. at 273.

³³ See, e.g., *Edge v. City of Everett*, 929 F.3d 657, 664–65 (9th Cir. 2019) (requiring “specificity and clarity of laws” when “First Amendment freedoms are at stake because uncertain rules “might have the effect of chilling protected speech or expression by discouraging participation”).

Matter movement—again, sending the message that any mention of recent political movements in support of racial equity is unacceptable in schools. And finally, although Solana Beach School District appears to no longer permit the removal of library books for taking unspecified positions on unspecified debatable topics, it continues to allow parents and guardians to unilaterally restrict entire topics and genres of books from use in classroom discussion.

2. California Education Code and guidance reflect students’ constitutional right to learn and discuss race, gender, and sexual orientation, as well as the history and viewpoints of marginalized communities.

School district actions that are not grounded in legitimate pedagogical concerns constitute unlawful classroom censorship in violation of the First Amendment. School districts that limit access to information and knowledge that focus on race, sexual orientation, and other protected characteristics are deviating from pedagogical approaches to instruction and learning reflected in California law and policy. California has led the way nationally in affirming students’ rights to accurate and inclusive educational curricula through its statutes and administrative guidance. In relevant part, the California Education Code states that, when adopting instructional materials, school districts must adopt materials that:

[A]ccurately portray the cultural and racial diversity of our society, including: (a) The contributions of both men and women in all types of roles . . . [,] (b) The role and contributions of Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups to the total development of California and the United States.³⁴

School districts are also required to provide instruction in comprehensive sexual health education and HIV-prevention education to all middle-school and high-school students in California, which requires affirmative instruction about gender and sexual orientations.³⁵ Districts must adopt and include social studies curriculum in grades 1-12 about the role and contributions of all ethnic and cultural groups “to the economic, political, and social development of California and the USA with particular emphasis on portraying the role of these groups in contemporary society.”³⁶

These statutory requirements are well supported by existing guidance from both CDE and the State Board of Education (“SBE”). For example, when California updated its History-Social Studies curriculum framework in 2016, it made it explicitly more inclusive and accurate by revising the “missions” chapter to include the perspectives of Indigenous

³⁴ Cal. Educ. Code § 60040(a)-(b).

³⁵ Cal. Educ. Code § 51933-34.

³⁶ Cal. Educ. Code § 51204.5.

Californians and the devastating impact of the missions on their communities.³⁷ Similarly, SBE required the Health Education curriculum framework to be updated in 2019 with guidance to ensure instructional materials incorporated diversity of gender identity and sexual orientation into discussions around health, development, and relationship education.³⁸ In 2021, pursuant to statute,³⁹ SBE adopted a model ethnic studies curriculum that highlights “core ethnic studies concepts such as equality and equity, justice, race and racism, ethnicity and bigotry, indigeneity” and other inclusive educational concepts.⁴⁰ And beginning in the 2025-26 school year, high schools must offer at least a one-semester course in ethnic studies; and beginning in 2029-30, students must complete a one-semester course in ethnic studies.⁴¹

In addition to curricular guidance, under your leadership, CDE has also developed numerous resources that help to ensure that California schools remain a safe, inclusive place to learn, including guidance on culturally responsive teaching⁴² and supporting LGBTQ+ students.⁴³ Your Antibias Education Grant Program is the most recent example of CDE’s efforts to provide resources and direction to districts about “prevent[ing] and address[ing] bias or prejudice toward any group of people based on race, ethnicity, religion, gender, gender identity, sexual orientation, disability, immigration status, language, or any actual or perceived characteristic.”⁴⁴

Open dialogue and transparency about the institution of slavery and its lingering deleterious effects on society and Black people in particular, represents California’s public policy, as demonstrated by the Legislature’s establishment in 2020 of the Reparations Task Force, which documented how “thoroughly...the effects of slavery [have] infected every aspect of American society over the last 400 years,” and whose report includes “a sample of government actions and the compounding harms that have resulted, organized into 12 specific areas of systemic discrimination.”⁴⁵ This effort represents California’s recognition

³⁷ CAL. DEPT. OF EDUC., *supra* note 16; *Dubb*, *supra* note 16.

³⁸ CAL. DEPT. OF EDUC., HEALTH EDUCATION FRAMEWORK (2021), available at: <https://www.cde.ca.gov/ci/he/cf/>; see also Cal. Educ. Code § 218.

³⁹ Cal. Educ. Code § 51226.7.

⁴⁰ *Ethnic Studies Model Curriculum: The Model Curriculum (Preface)*, CAL. DEPT OF EDUC., <https://www.cde.ca.gov/ci/cr/cf/esmc.asp> (last reviewed Jan. 20, 2022).

⁴¹ Cal. Educ. Code § 51225.3(a)(1)(G).

⁴² *Culturally and Linguistically Responsive Teaching*, CAL. DEPT OF EDUC., <https://www.cde.ca.gov/pd/ee/responsiveteaching.asp> (last reviewed Feb. 11, 2022).

⁴³ See *Supporting LGBTQ+ Students*, CAL. DEPT OF EDUC., <https://www.cde.ca.gov/pd/ee/supportlgbtq.asp> (last reviewed Nov. 2, 2022); *Supporting Intersex Students*, U.S. DEPT OF EDUC., OFF. OF CIV. RTS. (Oct. 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-intersex-202110.pdf>; *Confronting Anti-LGBTQI+ Harassment in Schools*, U.S. DEPT OF JUST., OFF. OF CIV. RTS & U.S. DEPT OF EDUC., OFF. OF CIV. RTS. (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>; and *Supporting Transgender Youth in Schools*, U.S. DEPT OF EDUC. (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.

⁴⁴ CAL. DEPT OF EDUC., *supra* note 1.

⁴⁵ TASK FORCE TO STUDY AND DEV. REPARATIONS PROPOSALS FOR AFR. AMS., EXECUTIVE SUMMARY, INTERIM REPORT, at 5 (2022), available at: <https://oag.ca.gov/system/files/media/ab3121-interim-report-executive-summary-2022.pdf>.

that discussion of slavery’s history in our country and its pervasive effects in our society is essential for today’s students to understand and begin to redress the “political, legal, health, financial, educational, cultural, environmental, social, and economic systems of the United States of America” in which slavery’s “badges of incidents remain embedded,” continuing to harm Black Americans physically and mentally up to the present day.⁴⁶

Collectively, California law and policy affirm that students have a right to freely talk and learn about race, gender, and sexual orientation in their classrooms; freely talk and learn about the history, experiences, and viewpoints of all marginalized communities; freely express and learn about their own identities and those of others; and access inclusive and accurate history curricula, including those with honest and truthful depictions of the experiences of LGBTQ+ students and Black, Indigenous, and other students of color. These statutes and guidance demonstrate California’s trust in students to discuss what is happening in the world around them and who they authentically are, free of censorship, in keeping with their right to receive an equitable education. These legal requirements also acknowledge that the opportunity to learn and engage with the comprehensive history of the U.S. benefits all students, equipping them to better understand our diverse history and perspectives and better appreciate how to address—and avoid repeating—past harms.

The actions and policies of Paso Robles Joint USD, Placentia-Yorba Linda USD, Visalia USD, Solana Beach SD, Ramona USD, and others contravene the requirements of the Education Code and the public policy underpinning those requirements that affirms the value of accurate and inclusive education. Districts intrude on the educational rights of their students to freely talk and learn about race, gender, sexual orientation, the history of slavery of Black and Indigenous Americans, and the experiences and viewpoints of marginalized communities when they ban discussion of:

- Specific definitions of racism or historical facts about “the preservation of slavery [as a material motive for independence from England]” (Paso Robles Joint USD);
- That “race is not biologically real but is socially constructed and socially significant” or that “racism is embedded within systems and institutions that replicate racial inequality” (Placentia-Yorba Linda USD);
- An online curriculum that discusses systemic racism (Visalia USD); and
- Discussions of “discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” (Ramona USD).

Indeed, these policies appear to preclude classroom dialogue about even the State of California’s Reparation Task Force’s interim report findings, including that:

This system of white supremacy is a persistent badge of slavery that continues to be embedded today in numerous American and Californian legal, economic, and social and political systems. Throughout American history and across the entire country, laws and policies, violence and terror have upheld white

⁴⁶ *Id.* at 6.

supremacy.⁴⁷

Or that “[t]oday, California is the sixth most segregated state in the country for Black students, who attend under-resourced schools” and “the American and California criminal justice system physically harms, imprisons, and kills African Americans more than other racial groups relative to their percentage of the population.”⁴⁸ These findings address U.S. colonial motivations to preserve slavery due to economic motivations (in conflict with the Paso Robles JUSD policy), that “racism is embedded within systems and institutions that replicate racial inequality” (in conflict with the Placentia-Yorba Linda USD policy), that systemic racism exists (in conflict with Visalia USD’s policy and practice), and may cause “discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” (in conflict with Ramona USD’s policy). To categorically disallow students from learning about these key findings is not only incompatible with California law but also a disservice to the foundational purpose of our educational system to prepare students to live in our democratic society. Our society makes progress when we are honest about our mistakes and learn from them. That is why it is essential for students to receive a thorough and accurate account of U.S. history.

B. California students have the right to receive an equitable education.

Under federal and state law, school districts have an affirmative duty to protect students from unlawful discrimination and harassment. Both the U.S. Constitution and the California Constitution guarantee students equal protection under the law.⁴⁹ Moreover, education is a fundamental right under the California Constitution,⁵⁰ thus, policies and practices negatively impacting that fundamental right are closely scrutinized by California courts and can be overruled as a matter of law.⁵¹ The U.S. Supreme Court has long recognized that education plays a “vital role in a democracy” and that “[t]eachers and students must always remain free to inquire, to study and to evaluate.”⁵² Federal and state civil rights statutes prohibit discrimination on the basis of race, ethnicity, gender, and sexual orientation, among other categories, placing upon the school district the affirmative obligation to combat bias against students within its schools.⁵³ Thus, schools in California must create an equitable learning environment where LGBTQ+ students and Black,

⁴⁷ *Id.* at 17.

⁴⁸ *Id.* at 17-18.

⁴⁹ U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 4; *id.* art. I, § 7(A); *id.* art. IV, § 16(a); *id.* art. IX, § 5.

⁵⁰ Cal. Const. art. IX, § 5.

⁵¹ See *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992) (affirming that “access to a public education is a uniquely fundamental personal interest in California”); *Serrano v. Priest*, 5 Cal. 3d 584, 605, 616–17 (1971) (describing education as “the lifeline of both the individual and society”); *Collins v. Thurmond*, 41 Cal. App. 5th 879, 896–897 (2019).

⁵² *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957).

⁵³ 42 U.S.C. § 2000c *et seq.*; 42 U.S.C. § 2000d *et seq.*; 20 U.S.C. § 1681 *et seq.*; 42 U.S.C. § 12132 *et seq.*; 20 U.S.C. § 1400 *et seq.*; 29 U.S.C. § 794; Cal. Educ. Code §§ 200, 201, 220, 234.1; *Davis v. Monroe Bd. of Educ.*, 526 U.S. 629, 632 (1999); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 668-71 (2d Cir. 2012).

Indigenous, and other students of color feel welcome, including a legal duty to eliminate bullying and harassment.

Researchers and educators recognize that a school-wide approach involving education and training is necessary to combat harassment and bullying on the basis of race, gender, and sexual orientation. For example, LGBTQ+-inclusive curricula have been shown to have a positive impact on student well-being. For LGBTQ+ students, inclusive instructional materials and resources are lifelines to safety and community. GLSEN's 2019 National School Climate Survey found that LGBTQ+ students in schools with an inclusive curriculum were more likely to thrive; and access to an inclusive curriculum was related to less frequent use of anti-LGBTQ+ language, greater school safety, and fewer absences among LGBTQ+ students.⁵⁴ Students who had access to inclusive curriculum also reported an increased sense of connection to their school community.

Policies banning conversations about such topics render this critical work impossible. Students who are ignorant to the history of discrimination in the U.S. and the roots of the inequities that persist in our society are bound to repeat those patterns in school. Further, students who are exposed to students from other cultures, races, ethnicities, and identities are less likely to engage in bullying.⁵⁵ Accordingly, the best way to prevent discrimination, bullying, and harassment against protected groups is to educate the entire school community about the differences in power imbued throughout our history and to educate students about perspectives outside of their own.

III. Research Demonstrates that Accurate and Inclusive Education Improves Student Outcomes.

Studies consistently show that accurate and inclusive education can increase greater cultural understanding and awareness that helps to build empathy, affirm diversity, and foster greater connection among all students. “[E]xposure to a multilogical perspective of historical experiences creates a space for healing and rehumanization of both Indigenous and non-Indigenous peoples Consequently, multiple historical narratives are critical to the healing process.”⁵⁶ For example, a study by Dr. Mneesha Gellman of the impact of including Yurok language classes in the curricula of two high schools in Humboldt County

⁵⁴ JOSEPH G. KOSCIW, ET AL., THE 2019 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION'S SCHOOLS (GLSEN 2020), available at: https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf.

⁵⁵ Evie Blad, *Students See Less Risk of Bullying in Racially Diverse Schools, Study Finds*, EDUCATION WEEK, Feb. 21, 2014), available at: <https://www.edweek.org/leadership/students-see-less-risk-of-bullying-in-racially-diverse-schools-study-finds/2014/02>.

⁵⁶ Kishan Lara-Cooper, *Protecting the Treasure: A History of Indigenous Education in California*, in ON INDIAN GROUND: A RETURN TO INDIGENOUS KNOWLEDGE: GENERATING HOPE, LEADERSHIP, AND SOVEREIGNTY THROUGH EDUCATION 14-15 (Joely Proudfit & Nicole Quinderro Myers-Lim eds., Information Age Publishing 2017).

demonstrates an important affirmative impact for all students.⁵⁷ For Indigenous students, the language classes acknowledged the positive identity of Yurok language and culture in addition to breaking down ignorance and bias about Yurok people (and Indigenous people more generally) by teaching more accurate history about the impact of settler-colonialism on local Indigenous communities.⁵⁸ As Dr. Gellman noted from her interviews with 79 students, “[s]tudents at both [Eureka High School] and [Hoopa Valley High School] see their Yurok language classes as challenging attempted cultural erasure,” boosting student self-esteem and confirming identity.⁵⁹ Non-Indigenous students benefited from Yurok language classes as well by having myths and stereotypes challenged, which led to increased interest and investment in Native American cultural survival.⁶⁰ On a broader scale, researcher Patricia Avery and her colleagues studied the impact of a civics curriculum that examined how respect for the rights of traditionally-marginalized groups in U.S. society is embedded in our constitutional framework.⁶¹ Compared to a control group that did not have access to the curriculum, the students who received instruction on “minority rights” developed significantly higher levels of willingness to extend civil liberties to those whose views they found objectionable.⁶²

Culturally responsive education can improve students’ academic performance as well. One recent study of the effects of an ethnic studies curriculum piloted in several high schools in San Francisco Unified School District indicated that taking the course increased ninth-grade student attendance (by 21 percentage points), grade point average (by 1.4 grade points), and credits earned toward graduation.⁶³ Another study of the relationship between anti-bias education and student academic achievement in a Florida school district found that students’ standardized reading test scores improved after anti-bias lessons were incorporated into their educational curriculum.⁶⁴

Thus, ensuring that students have access to accurate and inclusive education—as opposed to categorically censoring curricula describing diverse viewpoints—is essential for supporting the educational experience of marginalized students. It also benefits students of all backgrounds, better preparing them to contribute meaningfully to our democratic

⁵⁷ Mneesha Gellman, *Unsettling settler colonialism in words and land: A case study of far Northern California*, 15:1 INT’L J. OF CRITICAL INDIGENOUS STUD. 22 (2022), available at: <https://ijcis.gut.edu.au/article/view/2322/1223>.

⁵⁸ *Id.* at 28-29.

⁵⁹ *Id.* at 30-31.

⁶⁰ *Id.* at 29.

⁶¹ Patricia G. Avery, *Teaching tolerance: What research tells us*, 66, SOC. EDUC. 270-275 (2002), available at: <https://www.thefreelibrary.com/print/PrintArticle.aspx?id=92081394>.

⁶² *Id.*

⁶³ Thomas Dee & Emily Penner, *The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum*, 54:1 AM. EDUC. RSCH. J. 127-166 (2017), available at: <https://cepa.stanford.edu/content/causal-effects-cultural-relevance-evidence-ethnic-studies-curriculum>.

⁶⁴ Philene Harte-Weiner, *Improving Student Academic Performance through Anti-Bias Education*, (Jun. 2013) (Ph.D. Capella University) (ProQuest), available at: <https://www.proquest.com/openview/be182f909a6df7da51f8fc56d25af92b/1.pdf?pq-origsite=gscholar&cbl=18750>.

system. Students are living in a complex world. They need to be equipped with an accurate understanding of U.S. history and an appreciation for multiple perspectives, identities, experiences, and cultures.

IV. Students Deserve to Have a Free and Open Exchange About Our Communities, Our Identities, and Our History.

All of California's students deserve to have the opportunity to engage in honest discussions about our history, our identities, and our communities—not one that erases the legacy of discrimination and lived experiences of LGBTQ+ people and Black, Indigenous, and other people of color. As you stated during the launch of your Education to End Hate Initiative, “[b]y digging deeper into the complexities of our diverse and difficult histories—not denying or ignoring them . . . education can provide the pathway to healing, understanding, and racial and social justice.”⁶⁵

The history of the U.S. and California necessarily requires reflection on the role that race has had on the evolution of our state and our country and in the development of our public institutions. In California, our public schools were long premised on excluding students because of their race or national origin. In fact, state laws from the 1850s onward created a public school system built on a foundation of racial inequality and the subjugation of people of color.⁶⁶ During this time, Black students were denied integrated schooling for not being “sufficiently advanced,”⁶⁷ Native American students were forced into dangerous and family-shattering boarding schools intent on their assimilation,⁶⁸ Asian American students were sent to “Oriental schools,”⁶⁹ and Mexican-American students were sent to segregated “New Americanization schools.”⁷⁰ Indeed, California did not ban discrimination on the basis of sexual orientation in its own state-funded programs and activities—including schools—until 2006.⁷¹ Instead of hiding or erasing these and other parts of

⁶⁵ News Release, Cal. Dep't. of Educ., State Superintendent Tony Thurmond Launches New "Education to End Hate" Initiative to Combat Bias, Bigotry, and Racism, Sept. 21, 2020, <https://www.cde.ca.gov/nr/ne/yr20/yr20rel77.asp>.

⁶⁶ See U.S. DEPT. OF THE INTERIOR & NAT'L. PARK SERV., RACIAL DESEGREGATION IN PUBLIC EDUCATION IN THE UNITED STATES: THEME STUDY 16 (2000), available at: https://www.nps.gov/subjects/tellingallamericansstories/upload/CivilRights_DesegPublicEd.pdf (as of September 14, 2021) (explaining that the California Legislature passed legislation barring Black students from public schools in 1852); Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools* 5 Asian L.J. 181, 190 (1998) (highlighting that an 1855 California law authorized only white children to count for annual enrollment census and amended the law in 1864 to permit separate schools for Black, Asian, and Indian children).

⁶⁷ *Ward v. Flood*, 48 Cal. 36, 46 (1874).

⁶⁸ CHARLES M. WOLLENBERG, *ALL DELIBERATE SPEED: SEGREGATION AND EXCLUSION IN CALIFORNIA SCHOOLS, 1855-1975* 91 (1978).

⁶⁹ IRVING G. HENDRICK, *PUBLIC POLICY TOWARD THE EDUCATION OF NON-WHITE MINORITY GROUP CHILDREN IN CALIFORNIA, 1849-1970* n.10 at 79 (Nat'l. Inst. of Educ. 1975), available at: <https://files.eric.ed.gov/fulltext/ED108998.pdf> (as of Sept. 14, 2021).

⁷⁰ Robert R. Alvarez, Jr., *The Lemon Grove Incident*, 32:2 J. SAN DIEGO HIST. (1986), available at: <https://sandiegohistory.org/journal/1986/april/index-htm-104/>.

⁷¹ S.B. 1441, 2005-2006 Sess. (Cal. 2006).

California and U.S. history, we must acknowledge history as it occurred so that students can appreciate how our current society is shaped by historical discrimination and are able to interrogate, navigate, and challenge the inequitable structures that remain.

We support a public school system in California where students of all backgrounds have access to classroom instruction, particularly in social studies and history, that is grounded in truth, accuracy, and inclusiveness. There are some things every student should learn about, such as the Trail of Tears, slavery, and important figures like Martin Luther King Jr., Rosa Parks, and Anne Frank. Our children deserve to learn accurate, age-appropriate lessons about America, from our greatest triumphs to our darkest moments. Parents, too, believe that all our students deserve to learn the good and the bad about our history so we can learn from the past and come together for a better future. As explained above, accurate and inclusive education improves student outcomes. It also helps to create communities-at-large that understand and embrace diversity, enabling a brighter future for all. We support a public school system where students of all backgrounds have access to safe, supportive, and inclusive learning environments where diversity is acknowledged and honored. For all students, students of color and LGBTQ+ students in particular, it means embracing the histories and contributions of *all* communities to ensure classrooms foster inclusive learning environments where students feel safe, connected, and valued.

Because of the long history of the exclusion of diverse communities from not only the classroom but also the curricula in California's public schools, we must actively create learning environments that welcome all and support all children to learn and thrive. Schools, including school libraries, should reflect diverse cultures, identities, languages, religions and stories. To achieve equity in our public schools requires that Black, Indigenous, Latine, Asian, immigrant, LGBTQ+ students, students with disabilities, and many other identities see themselves reflected and respected in curricula and classroom discussions—in every class, every grade, every day.

V. School Districts Need Clear, Streamlined Guidance from the State.

As demonstrated by the growing patchwork of vague and inconsistent school district policies banning certain instructional materials as described herein, school districts and other local educational agencies need support from state leaders that streamlines and strengthens existing guidance to (1) explicitly address the attacks against accurate and inclusive educational curricula and (2) states unequivocally that classroom censorship of such curricula is unlawful. The absence of such coordinated guidance has led to confusion, legally problematic restrictions on broad categories of academic content and materials, and a chilling effect on students and teachers who want to engage in comprehensive and accurate discussions about racial justice, identity, equity, and our shared history. Paso Robles JUSD and Visalia USD have prohibited curricula regarding racial injustice and/or the Black Lives Matter movement. In Placentia-Yorba Linda USD, the ban on discussions of “interrogating race and racism in society” is so broad that school staff are uncertain what is allowed and what could lead to professional discipline under the School Board's resolution. In Solana Beach School District and potentially Paso Robles JUSD, parents and guardians have the ability to unilaterally preempt books from being used in the course of

instruction simply because they do not want their own student to engage with certain topics or genres.

To ensure that school districts do not abrogate California's commitment to public education that recognizes civil rights across multiple identities, including race, national origin, disability, immigration status, religion, gender, gender identity, and sexual orientation,⁷² we urge the CDE to take action. Most immediately, we urge you to issue and make available streamlined guidance for local educational agencies that bridges and builds upon existing guidance to promote accurate and inclusive education in K-12 schools and prevent further marginalization and harm to LGBTQ+ students and Black, Indigenous, and other students of color. We believe that, at a minimum, the following points must be included for the guidance to meaningfully address the rising number of attacks against accurate and inclusive education:

- State and federal law and public policy support accurate and inclusive education in all public schools. Every student has the right to equal educational opportunities to succeed in school, which includes access to honest, comprehensive, and relevant curricula.
- The California Education Code affirms that California's students have a right to freely talk and learn about race, gender, and sexual orientation in their classrooms in age-appropriate ways; freely talk and learn about the history, identities, experiences, and viewpoints of all marginalized communities in California; and access inclusive and accurate history curricula, including an honest and truthful history about Black and Indigenous Californians. Broad prohibitions against discussions of racial and LGBTQ+ equity in school violate students' rights under the Education Code.
- The U.S. and California Constitutions protect students' rights to share ideas and beliefs, including the rights of listeners to receive information and knowledge.⁷³ Courts have long found First Amendment violations where school curricula impede the rights of students to receive information and ideas.⁷⁴ Categorically banning conversations about discrimination and equity is a form of unlawful censorship. Every public-school student in California has the right to have an open and honest dialogue about America's history. The ability to discuss and debate ideas, even those that some may find uncomfortable, is a crucial part of our democracy.
- School districts should cease using online filters, such as those considered by the Placentia-Yorba Linda JUSD School Board to restrict student content that refers to LGBTQ+-related topics as well as racial justice issues. These filters disproportionately impact LGBTQ+ students and Black, Indigenous, and other

⁷² See, e.g., Cal. Educ. Code § 200, 220.

⁷³ U.S. Const. amend. I; Cal. Const. art. 1, § 2(a).

⁷⁴ *Arce*, 793 F.3d at 981; *Pico*, 457 U.S. at 866-67.

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students of color and harms all students by communicating that such topics should be censored.

Such guidance could be a keystone for a public-facing campaign from your office, including a website and other communications materials, to be sure that all Californians can access information about educational laws and policies that safeguard the right to accurate and inclusive curriculum.

In addition, Section 234.1 of the Education Code “requires the State Department of Education to assess whether local educational agencies have taken certain actions related to educational equity” as part of the Categorical Program Monitoring (now known as the Federal Program Monitoring (“FPM”)) process. Consequently, we also request that the CDE incorporate into its Education Equity FPM instrument a review of school district policies to ensure they are free of harmful and unlawful censorship.

We appreciate the actions you and the CDE have taken to date to ensure equitable and inclusive instruction in California schools. We offer our assistance for this next important action, and we would like to meet with you to discuss next steps. We will reach out to your office within the next few days to schedule a meeting at your earliest convenience, or your office may contact us through Linnea Nelson at lnelson@aclunc.org to set up a meeting.

Very truly yours,

Brandon Greene, Director, Racial & Economic Justice Program
Arneta Rogers, Director, Gender, Sexuality & Reproductive Justice Program
Angélica Salceda, Director, Democratic & Civic Engagement Program
Linnea Nelson, Senior Staff Attorney, Racial & Economic Justice Program
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APPENDIX

Paso Robles Joint Unified School District

In August 2021, the Paso Robles Joint Unified School District (PRJUSD) School Board passed a resolution forbidding specific concepts about racism and racial discrimination from being taught in PRJUSD schools. The resolution forbade educators from teaching, among other topics, that “racism is racial prejudice plus power;” that “the preservation of slavery was a material motive for independence from England” or that “an individual should feel...any other form of psychological distress on account of his or her race or sex.”⁷⁵ PRJUSD’s resolution seeks to broadly erase from PRJUSD’s curricula accurate historical events and essential concepts necessary to understand and learn about U.S. society and to support crucial discussions of racial justice, past and present, such as implicit bias and structural racism. This censorship has already had a significant chilling effect upon teachers and students. The ACLU has received complaints from members of the PRJUSD community that teachers have been told they are unable to use certain materials discussing racial equity and racism.

PRJUSD has also censored LGBTQ-related topics on several occasions. In Fall 2021, after an incident involving the destruction of a pride flag on campus, students held a forum to share their experiences as LGBTQ+ students and request increased school district support. Rather than engaging with students to identify meaningful opportunities or resources to strengthen support for LGBTQ+ students on campus, PRJUSD circulated a letter limiting flag sizes and flags with political messaging.⁷⁶

More recently, PRJUSD began considering several policy revisions that are in effect anti-LGBTQ+. ⁷⁷ In August 2022, the Board considered revising its anti-discrimination policies to remove several sections outlining the rights of intersex, nonbinary, transgender, and gender non-conforming students to be their authentic selves at school. Currently, the Board has tabled discussions regarding the policy changes pending a study session. On August 23, 2022, the Board passed “Resolution No. 23-02 Regarding the Use of Traditional Titles” stating that PRJUSD will “not support any mandate which replaces traditional gender-specific names such as mother and father, Mr. and Mrs., ladies and gentlemen, and boys and girls.”⁷⁸ As observed by many students and staff at the August 23 Board meeting,

⁷⁵ Paso Robles Joint Unified Sch. Dist. Bd., Res. 21-27A (Aug. 10, 2021), available at:

<https://www.noleftturn.us/wp-content/uploads/2021/09/Resolution-21-27-A.pdf>.

⁷⁶ See Paso Robles Joint Unified Sch. Dist., Superintendent Dubost’s Community Update – Letter from the Superintendent, Volume 2, Issue #4, (October 1, 2021), available at:

<https://drive.google.com/file/d/1eS5g1z2bBC6bmCpR1-DguOi5R-rY5kg4/view>.

⁷⁷ Letter To The Editor, *Teachers pen letter to school board addressing LGBTQ+ guidelines*, PASO ROBLES DAILY NEWS, Aug. 22, 2022, <https://pasoroblesdailynews.com/teachers-pen-letter-to-school-board-addressing-anti-lgbtg-bullying/148847/>.

⁷⁸ News Staff, *Report: Paso Robles school board votes to protect gender-specific names*, PASO ROBLES DAILY NEWS, Aug. 26, 2022, <https://pasoroblesdailynews.com/report-paso-robles-school-board-votes-to-protect-gender-specific-names/149313/>. According to comments made during the Board meeting, this action was prompted by animus toward a proposed resolution introduced at the National

this resolution sends a clear message to queer or gender non-conforming students or students with queer or gender non-conforming parents that they are not welcome at PRJUSD schools.⁷⁹ It is also our understanding based on public comments made at the August 23 Board meeting, and other complaints made to the ACLU by community members, that, among other actions targeting LGBTQ+ students, the PRJUSD Board is considering creating a policy either limiting access to, or altogether banning, library books relating to LGBTQ+ topics or reflecting LGBTQ+ people.⁸⁰ By censoring efforts to be inclusive and banning resource materials that acknowledge the existence of LGBTQ+ people, PRJUSD is attempting to overtly dismiss the lived experiences of LGBTQ+ community members and undermine critical school supports for LGBTQ+ students.

Placentia-Yorba Linda Unified School District

In April 2022, the Placentia-Yorba Linda Unified School District (“PYLUSD”) School Board voted to adopt a resolution banning the use of “Critical Race Theory as a framework in any course offerings” and stating that “other similar frameworks will not be used as a source to guide how topics related to race will be taught.”⁸¹ PYLUSD defines “Critical Race Theory” as:

[A] practice of interrogating race and racism in society. CRT recognizes that race is not biologically real but is socially constructed and socially significant. It acknowledges that racism is embedded within systems and institutions that replicate racial inequality—codified in law, embedded in structures, and woven into public policy.⁸²

Thus, by its terms, PYLUSD’s policy appears to ban questioning of race or racism in U.S. society; discussion of the social construction of race or that “race” is not a biologically-rooted concept; or acknowledgement that society’s systems and institutions work in ways that

Education Association (“NEA”) 2022 Representative Assembly that sought to create a more inclusive environment for LGBTQ+ staff and students by avoiding using binary-gendered language in teacher contracts. Ultimately, the NEA resolution was never brought to a vote. *See Paso Robles school board revives district’s gender debate with a new resolution*, THE TRIBUNE, Aug. 23, 2022, <https://www.sanluisobispo.com/news/local/education/article264815764.html>.

⁷⁹ See Paso Robles Joint Unified Sch. Dist. Bd. of Educ. Meeting, *Video*, at 3:47:12, 3:48:03 (Aug. 23, 2022) (recording community member offering public comment criticizing restrictive pronoun policy for having no conceivable purpose other than making LGBTQ+ students feel unwelcome).

⁸⁰ See Paso Robles Joint Unified Sch. Dist. Bd. of Educ. Meeting, *Video*, at 3:57:18, 3:58:26 (Aug. 9, 2022) (recording Board members considering implementing restrictions on available books in the future, with one board member describing review of acquisitions by the Board as an “appropriate step”).

⁸¹ Placentia-Yorba Linda Unified Sch. Dist., Res. 21-12 (Apr. 5, 2022), hereafter “PYLUSD Resolution 21-12”, available at: <https://4.files.edl.io/c30b/04/06/22/194827-8344512a-9061-418d-a3f9-14e0b380fdb4.pdf>; see also Placentia-Yorba Linda Unified Sch. Dist. Bd. of Educ. Meeting, *Video*, at 3:45:15, 3:49:47 (Nov. 16, 2021) (recording Board Member Youngblood listing concepts he believes should be banned in PYLUSD classrooms, including: systemic racism, colorblindness, affirmative space, microaggression, Black Lives Matter week, and the western nuclear family, to which Board Member Blades concurs).

⁸² PYLUSD Resolution 21-12.

provide an unjust advantage to some racial/ethnic groups or perpetuate an unfair disadvantage to other racial/ethnic groups. The resolution severely undermines educational equity for PYLUSD's students, censoring crucial and accurate content about the role of bias and structural racism in our society. PYLUSD appears to be trying to prevent students (and teachers) from engaging in open and equitable dialogue about our country's history—a history that acknowledges the role of racism in the U.S. and California and includes the experiences and viewpoints of people of color and other marginalized communities. Over 1,500 students, and nearly 600 adult community members, signed petitions against the policy, raising significant concerns about its chilling effect on teachers and students in the classroom.⁸³ Regardless of this community opposition, the “ban” on discussion of race and racism in PYLUSD schools went into effect anyway.⁸⁴ Community members also report that, in the 2021-22 school year, PYLUSD refused to allow previously-piloted books to be taught in high school English classes because the books were written by Black, Indigenous, or other authors of color, and/or contained critiques of the U.S. government and nationalism. We understand from at least one school community member that PYLUSD School Board also discussed censoring digital materials for students that referred to the “Black Lives Matter” movement at the July 27, 2021 Board meeting.

Similarly, PYLUSD has censored discussion and inclusion of LGBTQ+ related topics. Also, at the July 27, 2021 Board meeting, we understand that the School Board sought to terminate additional digital resources for students after learning that at least one program for students referenced “pronouns.” At least one school community member reported that Board members discussed the lack of “appropriateness” of LGBTQ-related topics and the need to monitor discussion of such topics among students. PYLUSD ultimately ended its use of a digital resource for students, “Brain Pop,” removing one of the few resources available within the district that is inclusive of the LGBTQ+ community. The PYLUSD Board also considered the use of online monitoring “filters” to restrict content that refers to LGBTQ-related topics as well as racial justice issues. PLYUSD's consideration of online monitoring and filtering programs is alarming, as it is reported that at least one of these programs, Gaggle, is often used to screen for terms like “gay” and “lesbian” that disproportionately target LGBTQ+ students for surveillance.⁸⁵

Such efforts have made students feel discouraged, frustrated and isolated. One PYLUSD student shared, “These bans really make me feel like my school doesn't care about me, or who I am and where I come from. When they say we're not going to talk about race or LGBTQ+ related topics, they're denying not just me but many PYLUSD students the

⁸³ “Oppose PYLUSD CRT Ban” Petition, <https://docs.google.com/forms/d/e/1FAIpQLSdBV2k5MTp7uP9oEhBRwt7CDgGA0jODryxhjZ5wOzClVaOXNw/closedform>; Voices for PYLUSD Update, Far-Right CRT Ban Passes: 3 to 2 (Apr. 6, 2022), on file with ACLU Foundation of Northern California (noting petitions signed by 1500 students and 600 adults).

⁸⁴ *Id.*

⁸⁵ Caroline Haskins, *Gaggle Knows Everything About Teens and Kids in School*, BUZZFEED NEWS, Nov. 1, 2019, <https://www.buzzfeednews.com/article/carolinehaskins1/gaggle-school-surveillance-technology-education>.

right to learn about ourselves, our history and our heritage, and I really worry about what that means for the future and the students who come next.”

Visalia Unified School District

Visalia Unified School District (VUSD) has long struggled with addressing anti-Black racism and has been the subject of several legal complaints related to racial hostility on its campuses.⁸⁶ Following the broad media coverage of the murder of George Floyd in 2020, tensions flared between school community members supportive of the “Black Lives Matter” movement who posted Black Lives Matter signs on a high school campus fence and community members who tore down the signs.⁸⁷ Rather than upholding what then-VUSD Superintendent Tamara Ravalín acknowledged as “student-initiated and student-led expression” in support of the Black Lives Matter movement, the school district instead chose to remove hundreds of Black Lives Matter signs from the El Diamante High School campus, claiming the signs were causing disruption.⁸⁸ To help quell tension, in July 2020 VUSD staff presented a “Resolution to Uplift Student Voice and Denounce Harassment and Racism” and also began considering integrating ethnic studies into its course offerings.⁸⁹ Since that time, however, the VUSD School Board has resisted introducing inclusive and equitable instructional materials at VUSD campuses, highlighting the need for CDE guidance on these issues. At the beginning of the 2021-22 school year, the VUSD School Board voted to strip curriculum that discusses systemic racism from the Global Learning Charter School. VUSD School Board Trustee Walta Gamoian was quoted by local press saying, “When they are flying banners for Black Lives Matter that tells me that curriculum is biased” to justify voting against allowing the school to use the educational resource Newsela.⁹⁰ The Newsela curriculum includes lessons about science, English Language Arts, and social studies.⁹¹ Apparently, as shown by Trustee Gamoian’s remark, because the Newsela content included a reference to the Black Lives Matter movement, VUSD voted to exclude it completely from the classroom. All VUSD school staff and students were thus

⁸⁶ Calley Cederlof, *Racism is the “normal” on Visalia campuses, students tell ACLU*, VISALIA TIMES DELTA, Dec. 14, 2018, <https://www.visaliatimesdelta.com/story/news/2018/12/14/racism-normal-visalia-campuses-students-tell-aclu/2306105002> (describing the lawsuit filed in 2006 on behalf of brothers Keith and Kevin Pankey).

⁸⁷ Joshua Yeager, *Visalia Unified to remove all BLM signs from El D citing student safety, property concerns*, VISALIA TIMES DELTA, June 29, 2020, <https://www.visaliatimesdelta.com/story/news/2020/06/30/vusd-remove-all-black-lives-matter-signs-el-diamante-high-school/3279585001/>.

⁸⁸ *Id.*

⁸⁹ Tony Maldonado Jr, *Visalia Unified board discusses equity policies, anti-racism resolution*, VALLEY VOICE, July 9, 2020, <https://www.ourvalleyvoice.com/2020/07/09/visalia-unified-board-discusses-equity-policies-anti-racism-resolution/>.

⁹⁰ Reggie Ellis, *VUSD takes control away from a charter school*, THE SUN-GAZETTE, Sept. 1, 2021, <https://thesungazette.com/article/education/2021/09/01/vusd-takes-control-away-from-charter-school/>; Visalia Unified School District, Minutes – Board of Education Regular Meeting (Aug. 10, 2021), available at: <https://drive.google.com/file/d/1nMouESRopPH81fWx-iT-BA2uQ7drYn-F/view>.

⁹¹ *Browse Content*, NEWSELA, <https://newsela.com/about/content/browse-content/> (last visited Nov. 7, 2022). A sample of lessons include “Issue Overview: How the U.S. elects its presidents,” “Cells and the versatile functions of their parts,” and the folktale “The Fox and the Crow.”

sent a clear message that any curricula that discusses the Black Lives Matter movement or related issues of racial justice is subject to accusations of “bias,” and to censorship.

In June 2021, VUSD also adopted a health textbook that specifically excluded any discussion of gender or sexual orientation. The school board considered two versions of the textbook, one that included a chapter on “Understanding Sexuality” and one that did not. VUSD ultimately voted to adopt the latter. VUSD Board discussion about the textbooks specifically referenced apprehensions regarding the inclusion of materials that address LGBTQ+ identity.⁹²

Solana Beach School District

In April 2022, the Solana Beach School District (SBSD) adopted a policy for the identification and reconsideration of school library books that allows school staff to unilaterally remove books that “take a particular position on a debatable topic” out of general circulation and place them instead on a “professional bookshelf” accessible only by staff, parents, and guardians.⁹³ The policy did not provide any guidance as to what could be considered a “debatable topic,” or as to what “particular position” was worthy of censorship. The timing, however, strongly suggests that diversity in gender and sexual orientation fall under the category of “debatable” and thus censorable topics: SBSB adopted the policy in response to backlash against its receipt of LGBTQ+ related books from the nonprofit organization Open Books—formerly known as Gender Nation.⁹⁴

SBSB’s policy also sets forth a process by which parents and guardians may restrict their student’s access to certain book titles, topics, or genres. If a student is not permitted to access a particular book, that book cannot be used for read-aloud opportunities in the classroom. Additionally, the policy prohibits individual students from being singled out for exclusion from a group lesson, so if one student’s parent or guardian has restricted their access to a certain book, topic, or genre that is otherwise part of a classroom instructional plan, in order for them to be assigned an alternate text, other students must be assigned the alternate text alongside them—thereby excluding multiple students from access to the more inclusive book. Thus, a parent or guardian’s action to restrict their own student’s access to certain book titles, topics, or genres during classroom instruction inescapably impacts the ability of other students to engage with that material. The policy does not address what educators must do in situations where the topic in question is mandated for instruction; for example, gender identity and gender expression are required to be taught as part of comprehensive sexual health education, which must be taught at least once in

⁹² Reggie Ellis, *Parents can still review new VUSD health textbook*, THE SUN-GAZETTE, Aug. 4, 2021, <https://thesungazette.com/article/education/2021/08/04/parents-can-still-review-new-vusd-health-textbook/>.

⁹³ Solana Beach Sch. Dist., Regular Board of Education Meeting (Apr. 14, 2022), available at: <https://go.boarddocs.com/ca/solana/Board.nsf/goto?open&id=C9VSQE736155>.

⁹⁴ Andrea Lopez-Villafañá, *Parents on Edge Over Solana Beach Plan to Vet Donated Books with ‘Debatable Topics,’* VOICE OF SAN DIEGO, Jul. 26, 2022, <https://voiceofsandiego.org/2022/07/26/library-plan-at-solana-beach-school-district-sparks-concerns/>.

middle school and once in high school.⁹⁵ Thus, the policy appears to encourage school staff to censor classroom content required by California law.

Following the adoption of this policy, on June 18, 2022, a parent submitted a formal complaint under the district's Uniform Complaint Procedures alleging that SBSB's policy discriminated against LGBTQ+ students. On June 27, SBSB amended its library policy to delete language allowing staff to remove books from general circulation because they "take a particular position on a debatable topic."⁹⁶ The provisions allowing parent/guardian restrictions to impact classroom selection of instructional materials remain. While SBSB's policy amendment removing the vague reference to "debatable topics" is a step in the right direction, the ability of parents and guardians to veto entire genres and topics for group discussions remains deeply concerning. SBSB's confused response to this issue is a perfect illustration of why CDE guidance is necessary.

Ramona Unified School District

During the 2021-22 school year, the Ramona Unified School District (RUSD) School Board adopted a policy banning specific concepts related to race and gender, including that "any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex."⁹⁷ RUSD Board Member Rodger Dohm was quoted in a local news article saying, "The last thing we want to do is offend students in any way" to justify censoring discussions about race and racism in RUSD classrooms.⁹⁸ This can be interpreted to reflect racial and gender bias because, among other things, it privileges the voices and experiences of one community over the broader school community. Since the passage of the policy, the RUSD School Board has declined to update a history textbook (2004 edition) that RUSD currently uses to a newer edition that meets the current diversity, equity, and inclusive curriculum requirements under state law.

⁹⁵ Cal. Educ. Code § 51933(b)(6).

⁹⁶ Solana Beach Sch. Dist., Solana Beach School District Selection, Reconsideration, and Maintenance Plan for School Libraries, (June 27, 2022), available at: <https://www.sbsd.k12.ca.us/cms/lib/CA01001886/Centricity/Domain/41/SBSD%20Selection%20and%20Reconsideration%20Guidelines%20for%20School%20Libraries.pdf>.

⁹⁷ Ramona Unified Sch. Dist. Bd. Pol'y., BP 6142.3 (Aug. 12, 2021), available at: [https://ca-times.brightspotedn.com/4c/d2/c443066c4ebe83524afc497c33e5/bp-6142.3%20-%20Civic%20Education%20-%20U.S.%20History%20U.S.%20Government%20\(081221\)%20\(002\).pdf](https://ca-times.brightspotedn.com/4c/d2/c443066c4ebe83524afc497c33e5/bp-6142.3%20-%20Civic%20Education%20-%20U.S.%20History%20U.S.%20Government%20(081221)%20(002).pdf).

⁹⁸ Kristen Taketa, *Ramona school board bans the teaching of race theories*, SAN DIEGO UNION-TRIBUNE, Aug. 29, 2021, <https://www.sandiegouniontribune.com/ramona-sentinel/news/story/2021-08-29/ramona-school-board-bans-the-teaching-of-race-theories>.