



January 17, 2008

**Via Facsimile and U.S. Mail**

Mary Bull, Ed.D  
State Administrator  
Vallejo City Unified School District  
665 Walnut Avenue  
Vallejo, California 94592

Dear Superintendent Bull,

We have been contacted by Cheri Hamilton and her daughter Rochelle, who is a freshman at Jesse Bethel High School ("Jesse Bethel"), part of the Vallejo Unified School District ("District"). This is Rochelle's first year at Jesse Bethel. Since her arrival at the school in August, she has been the victim of verbal harassment and humiliation by several school staff members and teachers at Jesse Bethel based on her sexual orientation and expression of her gender identity. It is our understanding that the District has consistently been made aware of the harassment that has been directed at Rochelle based on her sexual orientation, but that, despite being notified of the problem, both the District and the Jesse Bethel administration have failed to take adequate measures to redress this pervasive environment of targeted harassment and hostility. As a result, the District has failed to ensure a safe learning environment for her and other students who are, or are perceived to be, lesbian, gay, bisexual, transgender or questioning ("LGBTQ"), and in so doing has violated certain of its obligations under state and federal law.

**Factual Background**

In total, at least five Jesse Bethel District employees have harassed and humiliated Rochelle Hamilton because she is gay and/or because she does not adhere to gender norms, such as "dressing like a girl." This harassment began as soon as Rochelle started attending Jesse Bethel in August 2007, when [REDACTED], a campus supervisor, began harassing and verbally abusing Rochelle and her girlfriend. He repeatedly approached Rochelle during passing periods, when she was surrounded by peers, and said things such as, "Remember, you're a girl, not a boy. Put girl's clothes on. It's not right to be this way. You're a lady, not a man." [REDACTED] continued to harass Rochelle through October, telling her to "pull her pants up" so she would look more ladylike. In one incident, [REDACTED] turned on Rochelle's girlfriend and said, "You can get HIV/AIDS from being gay and messing with females." Then,

M. QUINN DELANEY, CHAIRPERSON | ROBERT CAPISTRANO, SUSAN FREIWALD, LISA HONIG, NATALIE WORMELI, VICE CHAIRPERSONS | NANCY PEMBERTON, SECRETARY/TREASURER  
MAYA HARRIS, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | ERIKA CLARK, COMMUNICATIONS DIRECTOR | JUSTINE SARVER, ORGANIZING DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR  
ANN BRICK, MARGARET C. CROSBY, TAMARA LANGE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS | NATASHA MINSKER, NICOLE A. OZER, MARK SCHLOSBERG, POLICY DIRECTORS  
STEPHEN V. BOMSE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA  
39 DRUMM STREET, SAN FRANCISCO, CA 94111 | T/415.621.2493 | F/415.255.1478 | TTY/415.863.7832 | WWW.ACLUNC.ORG



[REDACTED], another campus supervisor, started taunting Rochelle in front of her peers on a daily basis, saying things like, "Pull your pants up. That's not cute. You're a young lady." When Rochelle told her mother about the harassment she was experiencing, Ms. Hamilton called both the school and the District to complain, seek support, and to ask that they do something to make the harassment stop. To the Hamiltons' knowledge, neither the school nor the District took steps to investigate or intervene to ensure Rochelle's safety. As a result of these persistent attacks on Rochelle's identity, she started avoiding [REDACTED] and feeling on guard any time she was in the hallways.

Rochelle suffered the next incident of staff harassment in September, when her science teacher, [REDACTED], approached her during class and said: "You are so pretty. Why are you like this?" referring to her sexual orientation. Rochelle was hurt by this attack on her identity but continued to try to do her work in class. When Rochelle approached [REDACTED] desk to turn in her work, [REDACTED] refused to take it, again asking Rochelle, "Why are you like that?" This hostility finally escalated on September 25, 2007, when [REDACTED] lashed out at Rochelle, saying: "You're ignorant. What's wrong with you? What are you, a man or a woman?" In response, the whole class gasped and several fellow students told Rochelle, "Don't let her talk to you like that." Rochelle lost her temper, cursed at [REDACTED] kicked a trashcan and asked [REDACTED] to refer her to the office. When she arrived at the office, hurt, angry and confused by [REDACTED] harassing comments, [REDACTED], an acting administrator, gave Rochelle a 3-day suspension without providing her a meaningful opportunity to explain what had happened. Rochelle wrote down what [REDACTED] said to her and how upset it made her feel, but this did not change [REDACTED] response to the incident. That evening, Rochelle was very upset and was afraid to go home because she feared telling her mother she'd been suspended from school. She wandered the neighborhood crying until her Aunt came and found her. When she went home and told her mom what had happened, her mother was furious—not at Rochelle, but at the school's handling of the situation. Ms. Hamilton immediately wrote a letter to the District complaining about the harassment, which stated in part: "[Rochelle] does not go to school to be verbally attacked by a teacher [who] you have hired. ... I want you to look into this and make sure another student never has to go through what our family experienced from the staff at Jesse Bethel High School."

The next morning, Rochelle and her mother went to Jesse Bethel, to hand-deliver a copy of the letter and to discuss the fairness of Rochelle's suspension. Ms. Hamilton first tried to explain to [REDACTED] how bad it felt to see Rochelle harassed by teachers at school and then be punished for reacting. She further explained that she wants Rochelle to be protected at school, not judged. When [REDACTED] said he could not reverse the suspension, [REDACTED], the Principal of Jesse Bethel, brought the Hamiltons into her office. Ms. Hamilton explained the disturbing comments [REDACTED] had made to Rochelle, but Principal [REDACTED] seemed reluctant to address it directly. However, without clearly stating a reason, Principal [REDACTED] did offer to reverse Rochelle's suspension and to remove Rochelle from [REDACTED] class. Ms. Hamilton

agreed that Rochelle serve a detention as a consequence for losing her temper and the Hamiltons agreed that Rochelle would attend school-sponsored anger management classes to help her develop alternative ways of standing up for herself. Concerned about Rochelle's failing grades, Ms. Hamilton also requested that Rochelle undergo IEP testing to evaluate her educational needs. On their way out the door, Principal [REDACTED] made a "zip it" motion to Rochelle and her mother, saying that she did not want other parents or students to come in talking about this incident. This made Ms. Hamilton mistrust Principal [REDACTED] willingness to really deal with the problem. As a result, Ms. Hamilton called [REDACTED] at the District's student support services, and informed her of the harassment and her concerns that Principal [REDACTED] would not address the problem. [REDACTED] promised to look into it and requested a copy of the September 26 letter, which Ms. Hamilton then personally delivered to the District. Indeed, whatever actions Principal [REDACTED] took as a result of this meeting were not adequate to remedy the staff harassment Rochelle experienced, as Rochelle faced even more staff abuse after alerting Principal [REDACTED] to the problem. Likewise, no action was taken by the District.

On October 4, 2007, for example, [REDACTED] a school resource teacher, approached Rochelle, who was sitting on a school bench, shielding her girlfriend from the rain with her jacket. [REDACTED] approached the girls and said, "Why are you doing this? This is so ungodly. You're a female right?" Rochelle answered, "Yes." [REDACTED] repeated, "This is ungodly. And you're going to hell. This is a sin." That day Rochelle went home and asked her mom, "Why is this happening? I thought [REDACTED] was going to talk to everybody." When Ms. Hamilton called Principal [REDACTED] to report what [REDACTED] had said, Principal [REDACTED] promised to take care of it. Instead, Principal [REDACTED] began calling Rochelle into her office, asking Rochelle if she planned to get a lawyer and threatening to transfer Rochelle out of Jesse Bethel.

On October 19, 2007, Ms. Hamilton phoned the District and spoke to an Assistant Superintendent about the harassment Rochelle was suffering based on her sexual orientation and gender identity. She was told that the District would look into it and get back to her. She never received a return phone call from the District to follow-up on her complaint. On October 26, 2007, Ms. Hamilton wrote the District to complain about the lack of responsiveness to her repeated complaints regarding staff harassment of Rochelle and to outline, again, the pervasiveness of the harassment by multiple Jesse Bethel staff. Ms. Hamilton walked the letter to the Superintendent's office herself, to make sure it was received. After this letter was delivered, [REDACTED] began taunting Rochelle, calling her a snitch in front of peers. Once again, neither the District nor the school took steps to remedy this hostile environment or to ensure Rochelle's safety at school.

In fact, on December 6, when the District finally met the Hamiltons' request that Rochelle undergo IEP testing, she was placed alone in a room with [REDACTED] who was to conduct the relevant tests. Thus, in order to get her educational needs evaluated, Rochelle was forced by the District to sit alone in a room with the woman who called her

"ungodly," and to not let that fact affect her performance on the tests being administered. Ms. Hamilton wrote letters to the District, dated December 6 and December 7, describing how uncomfortable and confusing this experience was for Rochelle. Despite the fact that Ms. Hamilton called the school to point out this untenable situation and to request an alternative testing situation, Rochelle was placed back in the room with [REDACTED] for further testing the very next day. Ms. Hamilton's December 7 letter ends by describing how "Rochelle's safety and protection is being neglected [by] the school as well [as by] the District."

In addition to taking every possible step to alert the District to this problem and urge them to intervene, the Hamilton family has also done their part to ensure that this hostile environment does not provoke a hostile response from Rochelle. Since the first incident in September, Rochelle has attended anger management classes at Jesse Bethel. The leader of these classes, school counselor [REDACTED], told Rochelle that she wanted to start a small group for gay students. That group, which meets on Monday afternoons, has become another source of hostility and harassment. It is our understanding that [REDACTED] routinely asks questions such as "Is this really what you want to do?", "Aren't you ever attracted to boys?" and "Do you think you'll end up with a boy in the future?" Although Rochelle has tried to explain that she is gay and she does not feel like it is a decision she made or can unmake, these questions persist.

[REDACTED] has also told the students in this group that it is "hard to get a job if you're gay." Ms. Hamilton tells us that after this comment was made, Rochelle came home very upset and told her mom "I can't get a job." [REDACTED] again wrote to the District, on November 7, to request that they investigate [REDACTED] harassing behavior. In this letter, Ms. Hamilton described how [REDACTED] intimidated and embarrassed Rochelle, taunting her in front of the entire Monday group by saying: "[REDACTED] said you're thinking of getting a lawyer. That's childish and immature. You're going to get this treatment your whole life. What are you going to do, stand up every time?"

Finally, [REDACTED] a P.E. teacher, has recently started refusing to allow Rochelle into the girls' locker room during times when female students are generally permitted access. [REDACTED] has said to Rochelle and another gay friend, "You want to be a boy, so why do you want to be in the girl's locker room?" These remarks have made Rochelle feel targeted and excluded by [REDACTED] who Rochelle presumes is excluding her based on the way she looks. To test this theory, on January 9, 2008, after being denied entry to the girls' locker room because she was not "dressed out" in gym clothes, she asked two of her "girly" friends to attempt entry. They were let in without a word. As a result of this exclusion, Rochelle has begun wearing her gym clothes beneath her other clothes to ensure she is prepared for her P.E. class, in the event she is denied entry to the locker room.

As a result of this persistent harassment by District staff, Rochelle has grown extremely depressed and has even considered suicide. Her grades have dropped to a failing level. She has become ineligible for basketball, one of her joys. She has withdrawn from weight training, because [REDACTED] is often present. And she fears

that the way she has been targeted will make other students even more afraid to come out, for fear that school is not a safe place for them. This pervasive harassment has also taken a toll on the Hamilton family. Ms. Hamilton, who is a widow raising four children alone, has spent much of her personal time and energy over the last many months trying to address this situation with the Jesse Bethel Administration and the District. She has taken extensive steps to bring this problem to the District's attention, including multiple detailed letters and phone calls, and has yet to receive any official response. Her extensive efforts have not solved the problem and so, desperate for help, the Hamilton family contacted the ACLU. Rochelle has stayed in this hostile environment, where it has been nearly impossible for her to focus on her education, for as long as she can, and has finally requested a transfer back to Hogan High School, so that she can resume her education without being persistently harassed and abused by adults she looks to for guidance and support. She decided that she can no longer attend Jesse Bethel based both on the fact that the discrimination she has experienced has persisted in spite of the Hamiltons' complaints to the District, and because Principal [REDACTED] and other school staff began harassing her about her mother's attempts to address this problem and the family's involvement with the ACLU.

#### Legal Analysis

We now write to urge the District to take all steps necessary to comply with its obligations under state and federal law to end the discrimination and harassment directed at Rochelle and to take appropriate measures to remedy the anti-LGBTQ climate at Jesse Bethel High School and other District schools both for Rochelle and for all other students, regardless of their sexual orientation or gender identity.

As you are aware, the District has an affirmative duty to protect students who are or are perceived to be LGBTQ from discrimination and harassment. California Education Code §§ 200, 201, and 220, in particular, place upon the District the affirmative obligation to combat racism, sexism, and other forms of bias, including sexual orientation and gender identity bias, within its schools. In addition, both the state and federal constitutions guarantee the District's students equal protection under the law. Consequently, school administrators may be held liable, in both their official and personal capacities, if they are "deliberately indifferent" to anti-LGBTQ harassment or discrimination. See *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130, 1135 (9th Cir. 2003). Deliberate indifference specifically includes failing to investigate or failing to take adequate measures to remedy anti-LGBTQ harassment and discrimination. *Id.* at 1135-36.

When school districts fail to take appropriate steps to protect their students from such harassment, the consequences can be severe not only for the students who suffer as a result, but also for the District's financial interests. For example, in *Flores v. Morgan Hill Unified School District*, after nearly five years of litigation, the school district agreed to make extensive policy changes, to provide training for all district staff on how to avoid and appropriately respond to harassment, and to pay a total of over \$1.1 million

to settle the suit. Moreover, California Civil Code §§ 51 et seq. provide for treble damages or a minimum of \$4,000 per incident in addition to attorney fees. See *Nicole M. v. Martinez Unified Sch. Dist.*, 964 F. Supp. 1369 (N.D. Cal. 1997); *Sutta v. Acalanes Union High Sch. Dist.*, 2001 WL 1720616 (N.D. Cal. 2001). Other school districts in California and around the country also have found that the cost of ignoring anti-LGBTQ discrimination and harassment on campus is substantial.

The failure of schools to intervene and prevent discrimination and bias in California schools also has tremendous human costs. In a statewide survey, 91 percent of participating students reported hearing other students make negative comments based on sexual orientation. The consequences of such treatment are severe. Compared to peers who haven't experienced harassment, these students are more than twice as likely to seriously consider suicide, and more likely to be victimized by violence.<sup>1</sup> In response to what is a dire climate of hostility and harassment for many students in California schools, The Safe Place to Learn Act (AB 394) was just passed by the California Legislature and signed by the Governor. Beginning in January 2008, AB 394 requires the California Department of Education ("CDE") to actively monitor district compliance with anti-discrimination laws and clarifies the minimum steps districts must take to meet their obligations to keep schools free from harassment and hate violence. This accountability mechanism is much needed to prevent the kind of victimization Rochelle Hamilton and many others have suffered, but we hasten to add that long before this bill was proposed, the District was required by law to take adequate measures to prevent the harassment Rochelle has suffered – and continues to suffer.

While the District's apparent failure to investigate adequately or to take appropriate action regarding those District staff who have harassed Rochelle is itself a cause for serious concern, we hasten to add that a successful approach to harassment requires holistic measures to change the school culture. Without thoughtful and respectful discussion about *why* harassment and discrimination undermine the educative prerogative of public schools, about the psychological harm they cause, and about the history of discrimination LBBT persons and other groups have experienced, the hostile climate about which Rochelle has complained will persist. Without adequate professional development focused on developing intervention skills and an opportunity to think deeply about these issues, it is extremely unlikely that school staff will change their behavior or that administrators will be able to respond adequately to situations when they do occur.

Providing focused anti-harassment training for staff and encouraging and facilitating recognition in the mainstream curriculum of the historical, literary and scientific contributions of LGBTQ people to society are affirmative initial steps a District can take to counter anti-LGBTQ harassment in a positive manner. We would be happy to provide you or your attorneys with the names of experts who might be available to

---

<sup>1</sup> See, *Governor Signs Levine's Safe Place to Learn Act*, available at <http://www.californiachronicle.com/articles/viewArticle.asp?articleID=40265>.

help the District formulate a plan to address the hostile climate at Jesse Bethel and other District schools that may be in similar need of support.

### Remedial Measures

We hope by this letter to remind the District of its obligations under state and federal law to provide a safe campus for all of its students. To provide a systemic remedy for these harms, we urge you to take the following steps to redress the hostile climate for LGBTQ students in Vallejo Unified Schools:

1. Incorporate a new harassment-prevention program that addresses the following areas:
  - a. Ensure that all District anti-harassment policies specifically include actual or perceived sexual orientation, gender identity, and are otherwise compliant with state law.
  - b. Implement anti-discrimination and harassment policies, including ensuring that complaints do not go unaddressed.
  - c. Ensure that all students know where to go for information and support related to sexual orientation and gender identity, as well as the process for complaining about staff or peer harassment or discrimination.
    - i. Ensure that all school counselors are appropriately trained in discussing sexual orientation, gender identity and all forms of discrimination and harassment.
  - d. Implement ongoing faculty/administrator/staff professional development on the impacts of harassment and discrimination and the legal obligation to intervene when necessary to maintain safe schools. These sessions should include creating clear tools and procedures for intervening in harassment when it occurs.
  - e. Improve and clarify policies and practices, especially complaint procedures, and expectations for school conduct and behavior.
  - f. Ensure that students and their parents understand how the policies and procedures work by updating parent/student handbooks.
  - g. Provide a larger contextual framework for policies through:
    - i. Discussions about why it is important not to discriminate against students based on their identity;
    - ii. Discussions about the historical context of discrimination and harassment; and
    - iii. Framing that makes clear that such discussions are important, e.g., by making them part of curriculum as well as part of student and staff programs.
  - h. Develop and introduce curriculum that includes LGBTQ people and information about sexual orientation and gender identity.
  - i. Create accountability so that teachers, administrators and staff understand that part of their overall evaluation will be tied to their ability to implement

- anti-discrimination and harassment policies, including ensuring that complaints do not go unaddressed.
  - j. Support the establishment of a Gay-Straight Alliance in any District Middle or High school that does not already have one and provide support to existing clubs.
2. Take steps to redress the harms caused to Rochelle Hamilton, including potential damages.

We are happy to work with you on developing and implementing an appropriate long-term plan to create schools that are safe and productive for all Vallejo children.

In the meantime, we urge you to take some immediate steps to ensure the physical and emotional safety of Rochelle and other LGBTQ students in the near future.<sup>2</sup> According to the 2005 Safe Place to Learn report, students who experience harassment are more than three times as likely to skip school because they feel unsafe. To avoid this unacceptable interference with students' educational access, these immediate steps should be taken by February 1, 2008:

- a. Distribute a letter to all teachers and staff informing them of their affirmative responsibility to maintain a safe and non-discriminatory learning environment and the steps they should take to intervene and address harassment whenever it arises;
- b. Adopt a clear policy prohibiting harassment based on sexual orientation and gender identity, as required by existing law. According to materials posted on the District website, your current "Discrimination and Harassment" policy (District Administrative Regulation 5145.7(a), (b),(c)) does not explicitly mention sexual orientation or gender *identity*, as required by law. Please provide us with copies of all district and school policies, materials and correspondence regarding harassment or discrimination;<sup>3</sup>
- c. Instruct all homeroom teachers to:
  - i. go over the district anti-harassment policy (including all protected categories--i.e. race, religion, sexual orientation, gender identity, etc.);
  - ii. explain the importance of all students feeling welcome at school;

<sup>2</sup> Although Rochelle has transferred to Hogan High School for the time being, her safety and the safety of all LGBTQ students in the District is your continued responsibility.

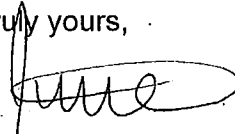
<sup>3</sup> Please consider this a formal request under the California Public Records Act. California Government Code §§ 6250 et seq.; see Cal. Const. Art. I §3(b). Though the Act provides a maximum of ten days to respond, we ask you to expedite our request according to the above timeline, because of the urgency of this situation and the fact that we are asking for limited documents that should be easily discoverable if they exist.



- iii. explain the steps students, teachers and staff are expected and encouraged to take if they overhear harassing comments or observe harassing behavior; and
- iv. explain that students can tell any school employee if they have a problem, and identify a specific person in each school who has self-identified as an LGBTQ-friendly person to whom students are encouraged to complain of harassment.
- d. Instruct teachers to consider working LGBTQ issues into their existing curricula, as appropriate;
- e. Require school administrators to document all complaints regarding discrimination or harassment by staff or students, based on sexual orientation, gender identity or any other category protected by law, including race, national origin and ethnicity, including maintaining files of all relevant written letters, notes, or records of phone calls from students, parents, or other concerned individuals;
- f. Immediately hire an academic tutor to do remedial work with Rochelle to help her catch up on her schoolwork; and
- g. Provide counseling services to Rochelle and her family, as requested by the family.

Please have your counsel contact me by January 25, 2008 about the steps the District plans to take to redress the anti-LGBTQ discrimination and harassment directed at Rochelle and other students. In addition, please send me a copy of the appropriate form for filing a claim under the California Tort Claims Act in your District.

Very truly yours,



Juniper Lesnik, Esq.

cc: Cheri Hamilton, Parent  
[REDACTED] Principal, Jesse Bethel High School  
Nancy Appel, Anti-Defamation League