



December 12, 2016

Sent via electronic email

Dear Superintendent:

The ACLU of California (“ACLU”) is deeply committed to protecting the constitutional rights of all students in California. Foremost among those is the fundamental right to education guaranteed by the California Constitution, and the right to equal educational opportunity enshrined in the California and federal constitutions. Long-standing federal and state civil rights statutes additionally affirm that every student in our state must be provided with an educational environment that is safe and welcoming regardless of the student’s race, ethnicity, color, national origin, religion, age, gender, gender identity, sexual orientation, genetic information, or disability.¹ Nonetheless, immigrant students, students of color, Muslim students, and other vulnerable groups have increasingly become targets of politically-motivated bullying on campus. Relatedly, these same students, specifically immigrant students, and their families fear that school will soon become a venue for law enforcement to implement threatened immigration policies. Together, these incidents and fears establish a hostile, unwelcoming educational environment. Accordingly, we write to urge you, as a key leader in your school district, to affirm the district’s commitment to defending these rights and to ensure that school remains a safe place for immigrant students and families. We welcome the opportunity to partner with your district to advance essential safeguards for the civil rights of each of your students.

We provide recommendations that we urge you to implement immediately to create a safe, inclusive, and equitable educational environment for all students in your district. We look forward to working with you to jointly ensure such an environment moving forward. Key recommendations include the following, and are developed on page 4 of this letter.

- Send a strong message to district and school staff, students, and families in your community, affirming your district’s values of diversity and inclusion, and making clear that unlawful discrimination against students will not be tolerated.
- Take measures to ensure that district and school staff, students, and families understand that all students in your district are guaranteed equal access to school, regardless of their or their families’ immigration status. Designate your schools as sanctuary “safe zones” for students and families with irregular immigration status.

- Distribute resources to students educating them about their right to a safe and inclusive educational environment.
- Prohibit any communications with federal agencies or officials and refuse all voluntary information-sharing with federal or immigration agents across all aspects of the district to the fullest extent possible under the law.
- Prohibit staff, campus security, or campus police from divulging any information regarding immigration status or country of birth of any student or their family members. Require federal or immigration agents seeking information or access to a school site to have a warrant signed by a federal or state judge.
- Establish a space where district staff with expertise in immigrant and undocumented populations can serve as resources for impacted students and their families.
- Create partnerships with community-based organizations and legal services organizations who provide resources for families regarding immigration issues.
- Take prompt action to ensure accountability and justice through restorative justice programs and other approaches that focus on repairing the harm caused to the victim and the wider community.
- Provide focused anti-harassment trainings for staff and similar programming for students. Provide training to teachers, administrators, and staff on the district's protocols for federal or immigration agents attempting to obtain information or enter the school site.
- Compile and publicly report data on every incident of bullying, harassment, or other discrimination to raise public awareness of this problem and the importance of devoting resources to address it.

We offer these recommendations in light of the troubling, recent, and significant increase in reported incidents of fear, concern, and hateful actions such as racial slurs, taunting, and intimidation of students across the country, including a high number of incidents reported in California.ⁱⁱ Immigrant students have been told by their student peers “get out, spic,”ⁱⁱⁱ and threatened with deportation;^{iv} Muslim students have been called the epithets “ISIS,” “terrorist,” and “bomber”;^v and Black students have been threatened with serious violence by other students.^{vi} On November 16, a Black high school student in Danville went to the bathroom during fifth period and found the words ‘whites’ and ‘colored’ scrawled on the wall over different urinals.^{vii} LGBTQ students are also anxious, fearing that hate crimes will increase and occur without consequence.^{viii} We have heard that school administrators and teachers have similarly harassed students on the basis of their race, ethnicity, or perceived immigration status. For example, the NBC affiliate in Los Angeles reported on November 9 that a substitute teacher

told a Latino student that she and her family were going to be deported, and that the teacher would provide authorities with names, address, and phone numbers of the student's parents from the school's database.^{ix} Fear of deportation, detention, and separation from family members is particularly debilitating for students who have found asylum and refuge in the United States from ethnic violence and civil war in their home countries.^x The district must protect students from discrimination and harassment. Below, we lay out key points of anti-discrimination law to ensure a common understanding of the breadth and depth of civil rights protections for students in California:

I. The District Must Provide All Children Equal Access to School, Regardless of Their or Their Families' Immigration Status.

Under federal and state law, school districts must provide all children with equal access to an education, regardless of their or their parents' immigration status.^{xi} The United States Supreme Court recognized over 30 years ago that "denying [immigrant or undocumented] children a basic education" would "deny them the ability to live within the structure of our civic institutions" and deny our nation the future contributions of educated undocumented students.^{xii} Since then, federal courts have consistently struck down state and local policies that bar or otherwise prevent undocumented children from attending public schools.^{xiii}

Student enrollment practices that serve to exclude students from school based on their or their parents' or guardians' actual or perceived citizenship or immigration status are unlawful.^{xiv} Schools may not require students or parents to provide a Social Security number, U.S. passport, U.S. birth certificate, or other U.S. citizenship-related document to enroll the student or allow the student to attend school.^{xv}

Moreover, school districts may not deny English-learner students equal access to educational opportunities because of their limited English proficiency.^{xvi} The federal Equal Educational Opportunities Act of 1974 also makes clear that every school district must "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."^{xvii} Under this standard, school districts must design and implement educational programs that achieve parity of participation between English-learners and non-English-learners within a reasonable amount of time with successful results in overcoming language barriers.^{xviii}

II. The District Must Protect Students from Discrimination and Harassment.

Under federal and state law, school districts have an affirmative duty to protect students from discrimination and harassment whether perpetrated by district employees or by students. Both the United States and California Constitutions guarantee students equal protection under the law and free expression of religious faith.^{xix} Consequently, school administrators may be held liable,

in both their official and personal capacities, if they are “deliberately indifferent” to harassment or discrimination based on race, ethnicity, national origin, religion, gender, gender identity or sexual orientation, among other protected categories.^{xx} School officials are required to take reasonable action to stop harassing behavior.^{xxi} Deliberate indifference specifically includes failing to investigate or failing to take adequate measures to remedy harassment and discrimination.^{xxii} If the school district knows that its remedial action is inadequate, yet continues to use those same methods, its efforts are not reasonable.^{xxiii} The reasonableness of the response is judged in light of the known circumstances; thus, simply disciplining a student who commits harassment may be an inadequate response in light of circumstances indicating that a more comprehensive response is required.^{xxiv}

Moreover, education is a fundamental right under the California Constitution.^{xxv} Thus, policies and practices which negatively impact that fundamental right are closely scrutinized by California courts and can be overruled as a matter of law.^{xxvi} Federal and state civil rights statutes additionally prohibit discrimination on the basis of race, ethnicity, national origin, religion, gender, gender identity, sexual orientation and disability, among other categories, placing upon the school district the affirmative obligation to combat bias against students within its schools.^{xxvii} State law also prohibits schools from providing instruction that demonstrates bias against people with those same protected characteristics.^{xxviii} In fact, state law requires that school districts provide curriculum and instruction that

accurately portray the cultural and racial diversity of our society, including...[t]he 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...^{xxix}

As important as the legal standards regarding discrimination and harassment in California schools is the reality that animates them: the need to prevent and mitigate these acts. By fulfilling its legal obligations, the district can create a safe space for students to explore the root causes of racism and other forms of bigotry. Indeed, culturally competent and inclusive curriculum forces students to question biases that underlie the recent uptick in student bullying.

III. Recommendations.

A positive school climate is critical to student academic and emotional success.^{xxx} A welcoming, supportive school environment greatly benefits students, with studies consistently showing a direct relationship between positive school climate and academic achievement.^{xxxi} Furthermore, when schools are able to foster positive, healthy climates, students feel more connected to school and consequently have fewer absences and suspensions.^{xxxii} In contrast, a negative school climate compromises student academic and personal development. Academic disengagement is reported

to be a strong predictor of truancy, suggesting that some students may simply stop coming to school in response to feeling academically disengaged.^{xxxiii} Whether students feel “connected” to their peers and teachers strongly influences health and academic outcomes.^{xxxiv} Accordingly, the district has a strong interest in guaranteeing a positive school climate, especially for vulnerable students affected by the current political situation.

In establishing a positive and healthy learning environment free from discrimination and harassment, the district must be mindful to not adopt or implement policies that discipline, regulate, or chill protected student speech. Harsh “zero-tolerance” policies are not effective at combatting identity-based harassment and discrimination and can easily lead to unlawful violations of constitutional protections for student free speech and an unhealthy school environment. California Education Code sections 48907 and 48950 protect students’ rights of expression – protections stronger than those provided by the First Amendment of the United States Constitution. However, schools can prohibit speech that crosses the line into prohibited harassment when it is so severe, pervasive, or targeted at particular individuals that it hinders classmates’ ability to get an education, significantly harms their well-being, or substantially interferes with their rights. Speech can also be harassment when it intimidates students because of their identity. Thus, we strongly encourage the district to immediately address harassment and intimidation on campus, and do so thoughtfully and purposefully.^{xxxv} As we explain below, there are many steps available to the district that address bullying and help establish a positive school climate.^{xxxvi}

We strongly urge you to take the following steps to set the tone in your school district:

- A. Distribute a letter to all students and their families, and to all school and district staff, affirming your district’s values of diversity and inclusion. Make clear that prejudice on the basis of race, ethnicity, color, national origin, religion, gender, gender identity, and sexual orientation, among other categories, will not be tolerated. Let parents and guardians know that you welcome their children into your schools, and that your district wishes to actively partner with them to provide their children the best possible education. Encourage parents to participate in school activities.
- B. Take measures to ensure that district and school staff, students, and families understand that all students in your district are guaranteed equal access to school, regardless of their or their families’ immigration status, and to ensure that a student’s enrollment or attendance at school will not put them at risk of deportation.
 1. Work to pass a resolution in your school board recognizing that schools are sanctuaries, designating your schools as “safe zones” for students with irregular immigration status and directing school staff members not to allow federal

immigration agents onto school campuses unless those agents have a warrant issued by a state or federal judge.

2. Adopt policies that the district shall refuse to share information or cooperate with immigration enforcement actions to the fullest extent possible under the law, including by:
 - a. Protecting student privacy by refusing to release any personal information of students, staff, and community members to immigration agents absent a warrant signed by a federal or state judge.
 - b. Prohibiting staff from communicating with all immigration enforcement agencies or officials from those agencies, or threatening to do so.
 - c. Prohibiting law enforcement agents who are regularly stationed at school sites from inquiring into student's immigration status, communicating with immigration officials, or acting on behalf of federal agents to enforce immigration laws.
3. Create a safe and hospitable environment for immigrant students and students with immigrant family members, including by:
 - a. Protecting and caring for students who may have family members impacted by immigration raids or arrests until a guardian or other designated adult is contacted.
 - b. Establishing a space where district staff with expertise in immigrant and undocumented populations can serve as resources for impacted students and their families, including designating all K-12 schools, early education centers, adult schools, and parent centers as resource and information sites for district students and their families.
 - c. Creating a rapid response network to assist students or their family members who have been detained.
4. Train teachers, administrators and staff on district policies and protocols for protecting immigrant students.

Some districts have already adopted resolutions to address immigration enforcement on campus. For example, Los Angeles Unified School District recently passed a resolution affirming its policy directing school staff members to deny Immigration and Customs Enforcement ("ICE") agents access to school campuses unless their visit has been approved by the Superintendent and General Counsel.^{xxxvii} Similarly, San Francisco Unified School District adopted a policy in 2007 that any request by ICE to visit a school site should be forwarded to the Superintendent for review before a decision is made to

allow access to a school campus, and all requests for documents by ICE should be forwarded to the District Legal Office for review.^{xxxviii} While certainly a step in the right direction, the ACLU firmly believes that an effective resolution must prohibit immigrant agents' access to students on campus absent a properly issued judicial warrant. A broad coalition of experts recently drafted a [Model Campus Safe Zones Resolution](#), which the ACLU supports as a comprehensive policy on these issues and is available on our website.

5. Make clear in your communications to parents that they do not need to show a Social Security number, U.S. passport, U.S. birth certificate, or other U.S. citizenship-related document to enroll their child in your district's schools.
- C. Counter racial discrimination and harassment in a positive manner. Provide focused anti-harassment trainings for staff and similar programming for students. The Southern Poverty Law Center's Teaching Tolerance project (<https://www.splcenter.org/teaching-tolerance>), for example, provides useful resources and information about programs that have been effective in school districts around the country.
- D. Take prompt action to ensure accountability and justice through restorative justice programs and other approaches that focus on repairing the harm caused to the victim and the wider community.
1. Use counselors and other mental health professionals to develop a meaningful response to incidents of harassment in your schools and promote empathy by engaging in thoughtful discussion of racism and other bias in our society, while sending the message that exclusion of students based on their race, gender, perceived immigration status, and other categories will not be tolerated.
 2. Identify innovative models and best practices to increase the capacity of school staff to develop and implement strategies that reduce prejudice, address implicit bias and stereotyping, and promote positive intergroup relations.
 3. Allocate resources to ensure these programs are implemented in a meaningful and effective manner.
 4. Create an action plan to implement new programs and establish a timeline for a needs-assessment.

Oakland Unified School District ("OUSD"), for example, has implemented restorative justice circles at some of its schools to help students address racial and ethnic inequities and conflict on campus, and has found this program positively impacts school climate.^{xxxix} Students in OUSD have reported that the circles improved their relationships with students and teachers and reduced fighting on campus.^{xl} Similarly, OUSD reported overall improvements in student chronic absenteeism rates, graduation rates, and

academic performance.^{xli}

- E. Distribute resources to students educating them about their right to a safe and inclusive educational environment. The ACLU of California has such resources at www.myschoolmyrights.com. Create in-language Know Your Rights presentations for students and family members to cover their rights regarding interactions with law enforcement and immigration agents.
- F. Compile data on every incident of bullying, harassment or other discrimination on the basis of race, national origin, ethnic group identification, religion, age, gender, gender identity, sexual orientation, color, genetic information or disability and make such data public so that people are aware of this problem and understand the importance of devoting resources to address it.

It is indisputable that school and district leaders are instrumental in shaping school climate.^{xlii} As Superintendent, you are uniquely poised to address the anxieties and fears of students and parents in your district by promoting a welcoming and supportive districtwide climate that prohibits discrimination, harassment, and intimidation. It is incumbent on all California superintendents to take swift, affirmative steps towards guaranteeing a safe, inclusive and equitable educational environment, beginning with the recommendations in this letter. Although we do not yet know what new educational policies the presidential administration of Donald Trump will pursue in the next few years, we share your goal to protect students and hope to do so collaboratively.

Please to not hesitate to contact me by email at storres-guillen@aclusocal.org or by telephone at 213-977-5220 if you have questions or need additional guidance on any points raised in this letter. Further resources are also available at <https://www.aclunc.org/issue/education-equity>. We are committed to ensuring that vulnerable student groups receive the support they not only deserve and need, but that which the district is legally obligated to provide.

Sincerely,



Sylvia Torres-Guillén

ACLU of California, Director of Education Equity

ⁱ U.S. CONST. amend. XIV, § 1; CAL. CONST. art. IX, § 5, art. I, § 7(a), art. IV, § 16(a); Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.* (Title IV); Title VI of the Civil Rights Act of 1964, 42 § 2000d *et seq.* (Title VI); Title IX Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (Title IX); Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.* (Title II) (1990); Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* (2010) (IDEA); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (2015); Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (1974); CAL. EDUC. CODE §§ 200, 201, 220, 221.5, 234.1; Unruh Civil Rights Act, CAL. CIV. CODE § 51 (2015); CAL. GOV'T CODE § 11135 (2011) (prohibiting both intentional discrimination and policies or practices that have an adverse disparate impact on individuals on the basis of race, national origin, ethnic group identification, religion, age, gender, gender identity, sexual orientation, color, genetic information, or disability).

ⁱⁱ S. Poverty Law Ctr. Hatewatch, *Update: Incidents of Hateful Harassment Since Election Day Now Number 701*, SPLCENTER (Nov. 18, 2016), <https://www.splcenter.org/hatewatch/2016/11/18/update-incidents-hateful-harassment-election-day-now-number-701> (noting that the highest number of incidents were located in K-12 schools and that California reported the highest number of incidents overall).

ⁱⁱⁱ S. Poverty Law Ctr. Hatewatch, *Over 200 Incidents of Hateful Harassment and Intimidation Since Election Day*, SPLCENTER.ORG (Nov. 11, 2016), <https://www.splcenter.org/hatewatch/2016/11/11/over-200-incidents-hateful-harassment-and-intimidation-election-day>.

^{iv} MAUREEN B. COSTELLO, TEACHING THE 2016 ELECTION, THE TRUMP EFFECT: THE IMPACT OF THE PRESIDENTIAL CAMPAIGN ON OUR NATION'S SCHOOLS 10 (2016), *available at* https://www.splcenter.org/sites/default/files/splc_the_trump_effect.pdf (quoting a middle school teacher in Anaheim who reported that “kids tell other kids that soon they will be deported”).

^v *Id.* at 10.

^{vi} S. Poverty Law Ctr. Hatewatch, *Over 200 Incidents of Hateful Harassment and Intimidation Since Election Day* (reporting that a 12-year-old Black student was told by another student, “now that Trump is president, I’m going to shoot you and all the blacks I can find.”).

^{vii} Lisa Fernandez, ‘Whites’ and ‘Colored’ Scrawled on Danville High School Bathroom Wall, NBCLOSANGELES.COM (Nov. 17, 2016), <http://www.nbclosangeles.com/news/california/Whites-and-Colored-Scrawled-on-Danville-High-School-Bathroom-Wall-401673096.html>.

^{viii} Brooke McAfee, *Members of LGBT Community Share Thoughts on Election*, INDIANA DAILY STUDENT, <http://www.idsnews.com/article/2016/11/members-of-lgbt-community-share-thoughts-on-election> (last visited Dec. 1, 2016); Lucy Westcott, *LGBT Hotlines Report Spike in Calls After Trump Win*, NEWSWEEK (Nov. 11, 2016), <http://www.newsweek.com/transgender-lgbt-hotline-spike-donald-trump-win-520119> (reporting that within 24 hours of the election, a crisis and suicide prevention hotline for transgender people received an unprecedented 340 phone calls, many of whom were suicidal).

^{ix} Jane Yamamoto & Jonathan Lloyd, *Teacher Accused of Telling Students Their Parents Will Be Deported*, NBCLOSANGELES (Nov. 11, 2016), <http://www.nbclosangeles.com/news/local/Teacher-President-Election-Donald-Trump-Deportation-Immigration-400851681.html>.

^x COSTELLO, at 8 (noting recent reports from teachers that watching Americans support policies that demonize “others” has caused students to feel “hurt,” “dejected,” and believe that “everyone hates them.”).

^{xi} *Plyler v. Doe*, 457 U.S. 202, 219-230 (1982); U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER ON EQUAL ACCESS FOR ALL CHILDREN TO PUBLIC SCHOOLS, REGARDLESS OF IMMIGRATION STATUS 1-2 (May 8, 2014), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>.

^{xii} *Plyler*, 457 U.S. at 223–24.

^{xiii} *See, e.g., Hispanic Interest Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1248–49 (11th Cir. 2012) (holding that state law requiring school officials to verify citizenship and immigration status of undocumented students was unconstitutional under the equal protection clause); *League of United Latin Amer. Citizens v. Wilson*, 908 F. Supp.

755, 774 (C.D. Cal. 1995) (striking down as unconstitutional sections of California’s Proposition 187 requiring schools to verify the immigration status of school children and their parents).

^{xiv} U.S. CONST. amend XIV, § 1; CAL. CONST. art. I, § 7(a), art. IV, § 16(a); 42 U.S.C. 2000(d); *Hispanic Interest Coal. of Ala.*, 691 F.3d at 1248–49.

^{xv} U.S. CONST. amend XIV, § 1; CAL. CONST. art. I, § 7(a), art. IV, § 16(a); 42 U.S.C. 2000d; 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2) (prohibiting districts from unjustifiably using criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their national origin); U.S. DEP’T OF EDUC., at 2–3.

^{xvi} 42 U.S.C. 2000(d); 20 U.S.C. § 1703(f).

^{xvii} 20 U.S.C. § 1703(f).

^{xviii} *Castaneda v. Pickard*, 648 F.2d 989, 1009–10 (5th Cir. 1981) (articulating a three-part test to define the parameters of “appropriate action”); *Flores v. Arizona*, 172 F. Supp. 2d 1225, 1238 (D. Ariz. 2000) (adopting *Castaneda* test); *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007, 1017–18 (N.D. Cal. 1998) (same); *Teresa P. v. Berkeley Unified Sch. Dist.*, 724 F. Supp. 698, 712–13 (N.D. Cal. 1989) (same).

^{xix} U.S. CONST. amend. I, amend. XIV, § 1; CAL. CONST. art. I § 4, art. I, § 7(a), art. IV, § 16(a), art. IX, § 5.

^{xx} *See, e.g., Davis v. Monroe Bd. of Educ.*, 526 U.S. 629, 632 (1999) (holding that a school district may be liable for unlawful discrimination under Title IX if school employees are deliberately indifferent to known acts of student-to-student sexual harassment in school programs or activities); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003) (affirming that plaintiffs may establish a § 1983 equal protection violation by demonstrating that defendants acted with deliberate indifference to sexual orientation harassment).

^{xxi} *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 261 (6th Cir. 2000); *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1034 (9th Cir. 1998) (holding that “a school district ‘has a legal duty to take reasonable steps to eliminate’ a racially hostile environment” and noting that “[i]t goes without saying that being called a ‘nigger’ by your white peers (or hearing that term applied to your Black classmates) exposes Black children to a ‘risk of discrimination’ that is so substantial and obvious that a failure to act can only be the result of deliberate indifference.”).

^{xxii} *Flores*, 324 F.3d at 1135–1136 (holding that simply telling the victim to report the incident to the police, or promising to take action but failing to follow through, may be clearly unreasonable responses that support a finding of legal liability); *Monteiro*, 158 F.3d at 1034 (holding that “a school district ‘has a legal duty to take reasonable steps to eliminate’ a racially hostile environment.”).

^{xxiii} *Flores*, 324 F.3d at 1135–1136 (holding that the principal’s “failure to take any further steps once he knew his remedial measures were inadequate supports a finding of deliberate indifference”); *Vance*, 231 F.3d at 261; *Wills v. Brown Univ.*, 184 F.3d 20, 26 (1st Cir. 1999) (holding that if a school district “learns that its measures have proved inadequate, it may be required to take further steps to avoid new liability”).

^{xxiv} *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 668–71 (2d Cir. 2012) (holding that a jury could reasonably find deliberate indifference even where the school district immediately disciplined many of the students who racially harassed the plaintiff through five-day suspensions and, in one case, transfer to another school, because the district’s attempts to remediate the harassment were inadequate in at least three other respects: 1) delaying implementing anti-bias programs for students and teachers; 2) conducting “half-hearted measures” to address the racial bias and bullying in the school; and 3) failing to further investigate the incidents of bias).

^{xxv} CAL. CONST. art. IX, § 5.

^{xxvi} *Butt v. State*, 4 Cal. 4th 668, 692 (1992).

^{xxvii} 42 U.S.C. § 2000c *et seq.*; 42 U.S.C. § 2000(d) *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; 20 U.S.C. § 1703(f); EDUC. §§ 200, 201, 220, 234.1; CIV. § 51; GOV’T § 11135 (prohibiting both intentional discrimination and policies or practices that have an adverse disparate impact on

individuals on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability).

^{xxviii} EDUC. §§ 51500, 51501 (prohibiting biased instruction and programming, and use of biased instructional materials, respectively).

^{xxix} EDUC. § 60040.

^{xxx} Jonathan Cohen, Libby McCabe, Nicholas M. Michelli, & Terry Pickeral, *School Climate: Research, Policy, Practice, and Teacher Education*, 111 TCHRS. C. REC. 180, 184–85 (2009), available at <http://eric.ed.gov/?id=EJ826002>.

^{xxxi} Amrit Thapa, Jonathan Cohen, Shawn Guffey & Ann Higgins-D'Alessandro, *A Review of School Climate Research*, 83 REV. OF EDUC. RES. 357, 365 (2013), available at <http://k12engagement.unl.edu/REVIEW%20OF%20EDUCATIONAL%20RESEARCH-2013-Thapa-357-85.pdf>.

^{xxxii} Jonathan Cohen, Libby McCabe, Nicholas M. Michelli, & Terry Pickeral, at 185.

^{xxxiii} Ivory A. Toldson, Tyne McGee & Brianna P. Lemmons, *Reducing Suspensions By Improving Academic Engagement Among School-Age Black Males* 12 (Jan. 2013), available at https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-2013school-to-prison-pipeline/toldson-reducing-suspension-ccrr-conf-2013.pdf.

^{xxxiv} Jonathan Cohen, Libby McCabe, Nicholas M. Michelli, & Terry Pickeral, at 185.

^{xxxv} Not all student speech may be censored, even when it offends some students or expresses unpopular points of view. The very same rights that protect students who express political points of view that some students find offensive protect “counter-speech” by those same students that may offend others. Thus, while we strongly encourage the district to immediately address harassment and intimidation on campus, it must not do so at the expense of students’ right to freedom of expression.

^{xxxvi} Public school employees are also protected by the First Amendment. However, as a general matter, if their on-campus speech demonstrates an inability to abide by their obligations to live up to the anti-discrimination norms that protect public school students in California, the government’s interest in ensuring those norms are followed will outweigh the employee’s First Amendment rights.

^{xxxvii} L.A. CITY BD. OF EDUC. Res-032-15/16, (2016), available at <http://achieve.lausd.net/cms/lib08/CA01000043/Centricity/Domain/582/LA%20Unified%20Campuses%20as%20Safe%20Zones%20and%20Resource%20Centers%20for%20Students%20and%20Families%20Threatened%20by%20Immigration%20Enforcement.pdf>.

^{xxxviii} S.F. UNIFIED SCH. DIST. BD. OF EDUC. Res. No. 74-24A2, (2007), available at <http://www.sfusd.edu/assets/sfusd-staff/board-archive/memberreso/Mar%20%20%20IMMIGRATION%20%204%2024%202007.pdf>.

^{xxxix} Oakland Unified Sch. Dist., *Restorative Justice in Oakland Schools Implementation and Impacts* 6, 31 (2014), available at <http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf>.

^{xl} *Id.* at 6.

^{xli} *Id.* at 49–51.

^{xlii} THE WALLACE FOUND., *A BRIDGE TO SCHOOL REFORM 2* (2007), available at <http://www.wallacefoundation.org/knowledge-center/Documents/Bridge-to-School-Reform.pdf>.