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August 22, 2005

Christine P. Sun
Staff Attorney
ACLU Foundation of Southern California
1616 Beverly Boulevard
Los Angeles, CA 90026-5711

Dear Ms. Sun:

This letter is the District's response to your letter dated February 18, 2005, in which you reminded us of our obligations under California Education Code Sections 200, 201, and 220, under which the district has an affirmative obligation to combat racism, sexism, and other forms of bias, including sexual orientation and gender identity bias within our schools. You reminded us, also, that both the state and federal constitutions guarantee our students equal protection under the law. You further advised us that school administrators may be liable, in their official and personal capacities, "not only if they intentionally treat LGBT students and those perceived to be LGBT differently, but also if they are 'deliberately indifferent' to LGBT discrimination."

In your letter of February 18, 2005, you made reference to having been contacted by an FUSD parent who alleges discrimination and harassment of her son because of his perceived sexual orientation, and you indicated that you are in possession of evidence, which may lend credence to that allegation.

You offered a proposed set of remedies in a subsequent letter dated April 8, 2005. That letter features a heading "FOR SETTLEMENT PURPOSES ONLY."

Subsequently, we have reviewed our legal obligations and our current policies and practices. Further, we have studied Court decisions in which school districts were found to be in violation of the law, and also the remedies required by Court-ordered settlement agreements. In addition, as you know, we met with experts recommended by you, who have assisted other districts to attain full compliance.

In reviewing your proposed settlement plan and altering it as needed, we took into consideration factors unique to our district. We have herein crafted a proposed agreement which we believe achieves the desired ends and which fits within our capabilities.

We propose that the Fresno Unified School District do the following:

I. Mandatory Staff Training Program

- A. Fresno Unified School District (“the District”) shall conduct mandatory training sessions for administrators, teachers, and classified staff – collectively called the “qualified staff.” (The FUSD defines “qualified staff” as employees who have direct supervision over students) within the District for the academic year 2005-2006 and the academic year 2006-2007, as more fully set forth below.
- B. For the academic year 2005-2006, the training shall consist of a mandatory 2.5 hours of training primarily focused on issues pertaining to actual or perceived sexual orientation and gender identity, diversity, discrimination, and harassment. **This training is in addition to current district efforts and trainings on bullying prevention/intervention/ reporting, character development, nondiscrimination/harassment, and violence prevention.** Trainings will be held at individual school sites and be scheduled on student early release days. The district will maintain records of personnel trained.
- C. For the academic year 2006-2007, the training shall consist of a mandatory training session of no less than one (1) hour on diversity, discrimination, and harassment and shall be primarily focused on issues pertaining to actual or perceived sexual orientation and gender identity, diversity, discrimination, and harassment. This one-hour mandated training will be an ongoing part of the district’s annual on-site institute day training.
- D. Within 30 calendar days of the effective date of this Agreement, the District shall retain an organization or individual mutually agreed upon by the parties (“the trainer”) whose duties will be to prepare and implement all aspects of a “train the trainer” program. The district will identify up to **20** key personnel who will be responsible for conducting school site trainings. The District’s intent is to build internal training capacity.
- E. The ratio of trainers to participants for the staff training sessions shall be no higher than 1 to 60.
- F. The goals of the staff training are to:
 - 1) Increase safety
 - 2) Promote a safe learning environment
 - 3) Prevent harassment and discrimination on the basis of actual or perceived sexual orientation and gender identity

The trainer will follow the outline of the established staff development program design. Staff training and content will be focused primarily on issues pertaining to harassment and discrimination based on actual or perceived sexual orientation and gender identity and will include the following:

- 1) Review of FUSD policies and state and federal laws regarding harassment and discrimination based on sexual orientation and gender identity
- 2) Overview of terminology.

- 3) Overview of district protocols on how to investigate, report, and remedy incidents of sexual orientation and gender identity harassment and discrimination.
 - 4) Presentation by students (either live or videotaped) who can talk about their own experiences witnessing or dealing with sexual orientation and gender identity discrimination or harassment in schools and the manner in which adults have responded to such behavior.
 - 5) Learned strategies on how to prevent sexual orientation and gender identity harassment and discrimination.
 - 6) Overview of legal obligations of District employees regarding sexual orientation and gender identity harassment and discrimination.
 - 7) Discussion on the safe school planning process in regards to sexual orientation and gender identity harassment and discrimination.
 - 8) Questions and answers.
- G. The District shall keep records of individual qualified staff that attended each of the staff training sessions. The log shall identify the individual staff who were present at the beginning of the training session and who were present at the end of the session. The District shall require any and all staff who failed to attend their scheduled training session, or whom the trainer(s) determined missed a significant portion of the training session, to attend another staff training session.
- H. While not mandatory requirement of this Agreement, the District will encourage principals and other administrators to brief or otherwise discuss the content of the staff training sessions with other District staff who are not required to attend the staff training sessions but who have contact with students (such as clerical and support staff).

II. Mandatory Student Instruction

- A. In academic year 2005-2006 the District will provide instruction for all students in grades nine through twelve of approximately fifty minutes in length, or one class period, focusing exclusively on the subject of preventing harassment and discrimination on the basis of actual or perceived sexual orientation and gender identity (Mandatory Student Instruction). For the academic year 2006-2007, the District will provide Mandatory Student Instruction to students in grade nine.
- B. Within 30 calendar days of the effective date of this Agreement, the District shall retain an organization or individual mutually agreed upon by the parties ("the trainer") whose duties will be to prepare and train District personnel in all aspects of the Mandatory Student Instruction curriculum. If at any time the trainer becomes unable to perform his/her responsibilities as provided herein, the District will retain another trainer mutually agreed upon by the parties to perform the functions set out herein.
- C. Mandatory Student Instruction will be classroom based and will not exceed a 1 to 40 teacher- student ratio.

- D. Mandatory Student Instruction will specifically address the following:
 - Recognize, respond, and prevent sexual orientation and gender identity harassment and discrimination.
- E. Mandatory Student Instruction will be designed to address in an effective manner particular racial, ethnic, cultural, and religious contexts of the students and staff within the District. Instruction shall also include information about the complaint procedures for reporting harassment and discrimination. The District agrees to make best effort to select instructors who reflect the racial and ethnic composition of the student body. The District will provide Language Support for English Learners so that all students can access the curriculum.
- F. Mandatory Student Instruction will cover topics related to harassment, discrimination, and school safety and will not cover topics requiring parental notification and/or provide for an "opt out" option, including but not limited to the topics referenced in current Education Code Sections 51201.5, 51550, 51554 or 51820 or in Chapter 5.6 of the Education Code (Sections 51930 to 51939).
- G. The District shall keep an attendance log of individual students who attended the Mandatory Student Instruction. The District shall make its best effort to require any and all students who were required to receive the Mandatory Student Instruction that academic year and who failed to attend another instructional class period. The District shall provide to the ACLU a certification form verifying the completion of the Mandatory Student Instruction by all students who were scheduled to attend in accordance with this letter.

III. School Safety Climate Surveys

- A. During the fall semester 2005 and the fall semester 2008, the District shall conduct anonymous surveys of all students in grades 9 and 11 within the District. The purpose of the survey shall be to assess the school safety climate. The District will use the State of California approved and adopted Healthy Kids Survey. To the extent legally permissible, the District agrees to include a component in the Healthy Kids, Healthy California Survey on discrimination and harassment based on actual or perceived sexual orientation and gender identity. The District shall consult ACLU regarding the focus on discrimination and harassment based on actual or perceived sexual orientation and gender identity. The District will provide the ACLU with digests of the survey results. Any and all such surveys will be in compliance with Education Code 51513 and the Protection of Pupil Rights Amendment ("PPRA"), 20 USC §1232 h.
- B. The anonymous written surveys will not cover topics referenced in Education Code Sections 51513 and 51938, and therefore will not require any form of parental notification.
- C. Based on information obtained in the anonymous surveys, the District agrees to consider implementing additional staff and/or student training not required by this Agreement, on a District-wide basis or at particular school sites.

IV. Curriculum

The District shall make available as a resource curricula and other material that address lesbian, gay, bisexual, and transgender history and tolerance. The District need not create new curricula or material but may offer curricula and material already developed and/or that are created by other entities or individuals.

Sincerely,



Michael E. Hanson
Superintendent

MEH/NR/jrm