

Good afternoon distinguished members of this Council. I am Abre' Conner, a Staff Attorney at the ACLU Foundation of Northern California. I litigate and provide technical support for a variety of issues including education, free speech, racial, environmental, and criminal justice in the Central Valley and across the state of California. I applaud the DFEH for convening this meeting in the Central Valley given the unique issues that rural and unincorporated communities face in the state. Given the data and stories we know regarding overly disciplining Black students and keeping students who are non-conforming from being their authentic selves, it is critical that DFEH explores ways to create a safer environment for youth.<sup>1</sup> Students of color and LGBTQ students face a unique set of issues here, and DFEH can be a powerful agency to help these students hold school districts accountable regarding instances of discrimination. Given my own experience facing discrimination in Fresno, it is more important than ever for DFEH to move swiftly to investigate claims of discrimination, provide a clear process regarding next steps once a claim has been filed, and hold those agencies and bad actors accountable for discrimination in the Central Valley.

### **The prevalence of discrimination among school districts in the Central Valley**

Schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and to provide an equal educational opportunity for all its students.<sup>2</sup> Yet, over the years, the ACLU continues to intervene in many cases that stem from a lack of cultural sensitivity as well as implicit and explicit biases towards students of color, LGBTQ students, and students who have been disciplined based on their religious and cultural beliefs. Indeed, data proves that students of color are disciplined at alarming rates. For example, for the 2013-2014 school year in Stockton, 42% of Native American or Alaskan Native students with disabilities received at least one out-of-school suspension.<sup>3</sup> Who gets disciplined and for what reasons are vital questions to understand how students of color and gender non-conforming students are overly disciplined.

#### *Dress codes*

Dress codes have been a major impediment in creating a welcoming environment for students because school districts disparately discipline students using their respective dress codes. Often, students of color and LGBTQ students suffer the most. Terms such as “distracting,” “exotic,” and “unusual” in a dress code lead to disparate discipline. If a school district is using that term in the way most people understand it, then it can be used to penalize students who do not look like a “typical” student in that school district. And although students of color comprise a large percentage of several school districts' student bodies, for many school districts, “typical” still means white to the administrators enforcing the rules. In practice,

---

<sup>1</sup> See Arredondo, M., Gray, C., Russell, S., Skiba, R., & Snapp, S. *Documenting disparities for LGBT students: Expanding the collection and reporting of data on sexual orientation and gender identity*, The Equity Project at Indiana University (2016), available at <http://rtpcollaborative.indiana.edu/briefing-paper/>; see also Losen, D., Hewitt, D., & Toldson, I., *Eliminating excessive and unfair exclusionary discipline in schools: Policy recommendations for reducing disparities*, The Equity Project at Indiana University (2014), available at <http://rtpcollaborative.indiana.edu/briefing-papers/>.

<sup>2</sup> See Cal. Ed. Code §§ 201(b), 32261(a).

<sup>3</sup> See *Over-Policing in Stockton Schools: A Report Card*. Stockton Education Equity Coalition (2017), available at [https://www.aclunc.org/sites/default/files/Report\\_Card\\_SEEC.pdf](https://www.aclunc.org/sites/default/files/Report_Card_SEEC.pdf).

students of color and gender non-conforming students will likely be singled out if they don't fit the mold of the school district's concept of "ordinary" students.

For example, one Central Valley school district told our client, a Black biracial student, that his afro hairstyle did not meet the requirements for a cultural exemption to their dress code. Another Central Valley school district told another client that his traditional Black haircut was "distracting" for the teacher. We also represented a Native American senior student when a Central Valley school district refused to let him wear a culturally and religiously important eagle feather in his graduation cap. It follows that this lack of clear guidance regarding the criteria that the school districts consider in assessing dress code policies perpetuates inappropriate decisions regarding student's ability to access dress code waivers and increases the likelihood of school discipline under respective dress codes. In 2018, there is no justifiable reason that school districts should attempt to enforce a white, cultural uniformity in its dress code.

### *Willful defiance*

Students of color and students with disabilities are especially vulnerable to the discriminatory application of discipline. Several years ago, we sponsored a bill to eliminate harsh punishments for what's known as "willful defiance," a catch-all term that can get students suspended for something as minor as refusing to take off their hat. Because this law is for kindergarten through third grade, students from grades 4-12, may still suffer disproportionate discipline with willful defiance violations. Moreover, some school districts use willful defiance as the reason students are suspended for arbitrary dress code policies.

In fact, there is a statewide discipline gap that illustrates students of color, LGBTQ students, and students with disabilities are disparately disciplined for willful defiance;<sup>4</sup> this is also the case in the Central Valley. In Fresno, for instance, for the 2016-2017 school year, administrators disciplined Black students for willful defiance at a rate nearly triple the enrollment percentage of Black students in the school district. Currently, the ACLU of California is working to ensure these protections are expanded for grades k-12 throughout the state.

### *School police and school funding*

Over the past several decades, there has been an uptick of permanent police presence on school campuses. Media and other narratives have led to false panic regarding student interactions on campuses. And those false narratives harm students of color and students with disabilities the most. Indeed, many police enforcement interactions on campuses are for minor offenses, such as disorderly conduct that pose no direct threat to personal safety. But the power of officers to use physical force, scare tactics, and surveil young people leads to unintentional (and in some instances, intentional) consequences regarding how society and the Central Valley

---

<sup>4</sup> See Losen, D. J., & Whitaker, A., *Lost Instruction: The Disparate Impact of the School Discipline Gap in California*, UCLA: The Civil Rights Project / Proyecto Derechos Civiles (2017), available at [https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/lost-instruction-the-disparate-impact-of-the-school-discipline-gap-in-california/UCLA\\_Lost-Instruction\\_R7-102317.pdf](https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/lost-instruction-the-disparate-impact-of-the-school-discipline-gap-in-california/UCLA_Lost-Instruction_R7-102317.pdf).

sees youth of color.<sup>5</sup> In Fresno, the police department released a report demonstrating students of color have many negative interactions with the police in Fresno.<sup>6</sup> Yet, in this same City, Fresno Unified intended to spend millions of dollars from classroom budgets to put more police in schools. Indeed, we asked the California Department of Education to investigate some of the police funds, since the school district used Local Control and Accountability Plan funding for some of their law enforcement expenditures. In Stockton, Black students were over three times more likely to be arrested or cited for the vague and subjective offense of “disturbing the peace” than every other student group in the District.<sup>7</sup>

Instead of addressing potential racial bias and discrimination that administrators may have towards youth of color, this cognitive dissonance leads many school districts to increase their number of armed police officers. Moreover, in many school districts, police officers are not required to attend any special training to interact with youth. Expanding police presence will inevitably lead to administrators viewing minor issues with students at schools with a criminal lens. We need to critically examine our use of police in schools and make sure they are only there as a last resort for genuine emergencies and serious crimes.<sup>8</sup> We need to ensure that schools can invest in resources for a quality education – like school counselors and mental health services that keep students in school.

### *Racial tension in school districts*

It has been difficult for certain school districts here to address root causes regarding racial hostility in their school districts. For example, the confederate flag symbolizes, for many Black people, a time when the law legally allowed individuals to treat Black people less than human because they were Black. These reminders of slavery, lynching, and Jim Crow are present and entrenched in daily life. In the Central Valley, Black students are reminded that racists, bigots, and individuals who hate their existence live among them as well. Recently, students in Visalia Unified School District were reminded that their school district balks at addressing a racially hostile environment. The student concerns were ignored, even though the school board was told that certain students proudly display confederacy messages that are hurtful to Black students.

Some Black students have shared with us that these openly racist and bigoted actions have led to an environment where the school district is not fostering welcoming campuses across the district. Students have brought these issues to the school district at least four times in the last several months, but have been ignored. The ACLU offered to enter into an agreement that

---

<sup>5</sup> See Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280, 280–87 (2009).

<sup>6</sup> Fresno Police Department “Winter 2015 Student Contact Analysis” at pg. 3 available at <http://www.fresno.gov/NR/rdonlyres/5A376E8E-C820-4016-9911-DE21A7E4C186/34701/StudentContractAnalysisWinter2016.pdf>. (showing that while Black students only comprise around 7% of the student population, they represented 21% of reported crime. Latino students comprise around 30% of the student population, but represent over half the reported crime.).

<sup>7</sup> See *Over-Policing in Stockton Schools: A Report Card*, Stockton Education Equity Coalition (2017), available at [https://www.aclunc.org/sites/default/files/Report\\_Card\\_SEEC.pdf](https://www.aclunc.org/sites/default/files/Report_Card_SEEC.pdf).

<sup>8</sup> Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, WASH. POST, October 20, 2014, <http://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>.

outlined concerns of parents, students, and community members. This request was eventually refused as well. As one Visalia student stated to the school district, “[we must] expose and admit our history and even the present. How do we fix problem without understanding it? Intelligent conversation can never go wrong on issues like this as long as we ignore ignorance.”<sup>9</sup> Ignoring racism will not make the issue disappear. Indeed, Black students feel the hostility and unsafe environment of having to see pictures that read, for example, “flex white power” when adults ignore student needs. And the more likely result is that a school district gives an unofficial nod of approval to those who harass students of color through the school district’s non-action.

## **Recommendations**

In sum, the Central Valley is an area with unique challenges given its geography, limited access to resources in certain areas, and perspective in addressing racial justice and traditional white norms. It is critical to engage community members in this region and listen to their stories. Next, agencies must be responsive to what they hear. DFEH could monitor and quicken its response time to complaints, particularly in the Central Valley. Holding school districts accountable is key regarding how the school district allocates funds, how the district collects discipline data, and to evaluate this data with the goal of reducing arbitrary discipline measures, as well as eradicating discriminatory dress code policies. Generally, school districts should invest funds currently used for school police to hire more staff who are trained to promote a positive school climate, including restorative justice coordinators, community school resource coordinators, counselors, additional teachers, and tutors who are trained in research-based methods to address student behavior and promote a positive, safe school climate. Given that DFEH has authority to review certain issues that involve school districts, disparate discipline and overly policing students must be at the top of the list regarding ways to expand work here.

---

<sup>9</sup> Brianna Smith, May 2017 student speech regarding Confederate flag messages at Visalia Unified School District.