



July 29, 2020

Sent via e-mail

Superintendent Ramon Hendrix
Greenfield Union School District
1624 Fairview Road
Bakersfield, CA 93307

Dear Superintendent Hendrix,

We are writing on behalf of a former teacher, Ms. Kei Jackson, who taught at Ollivier Middle School in your school district (the “District”). Over the past weeks, the Bakersfield community has joined the nationwide movement to demand justice for the murders of George Floyd, Brianna Taylor, and countless other Black people and to call for an end to anti-Black racism.¹ In light of this urgent movement, we are deeply concerned that the District has created a hostile environment for Black students and staff in its schools by subjecting them to differential treatment and degrading, off-handed comments. The District also has refused to investigate issues that Black womxn and other womxn of color have raised and has retaliated against them for voicing their concerns. Relatedly, the District has suppressed the First Amendment rights of teachers and students by, among other things, improperly prohibiting Ms. Jackson from wearing a shirt with the words “Phenomenally Black” and requiring students to stand for the Pledge of Allegiance.

These racist, anti-Black incidents and attempts to suppress expression on campus are deeply harmful not only to Black students and staff, but also to the entire school community. The District is at a critical juncture. It may repeat the same mistakes that have led to the oppression of Black people in this country, or it may take a stand against racism, embrace Ms. Jackson’s and other Black community members’ concerns, and serve as a thoughtful leader. Accordingly, we urge the District to take immediate action to send a strong message to staff, students, and families that it will no longer promote or tolerate such racial discrimination and will no longer attempt to suppress student and staff expression. To protect the right to equal educational opportunity and to a safe and welcoming educational environment, the District should immediately (1) publicly denounce these harmful and racist actions and reaffirm the District’s commitment to maintaining a healthy and supportive school climate; (2) affirm that it will no longer prohibit staff from wearing Black cultural clothing and force students to stand for the Pledge of Allegiance; (3) foster a community of teachers and administrators who are knowledgeable about child development and are culturally competent and sensitive; (4) dedicate LCAP funding for Black students; and (5) swiftly enact all of the other recommendations and reporting requirements described at the conclusion of this letter.

¹ Quinn Wilson, *Massive protest erupts in downtown Bakersfield*, Bakersfield.com (May 29, 2020) https://www.bakersfield.com/news/breaking/massive-protest-erupts-in-downtown-bakersfield/article_e40422ec-a224-11ea-8442-43b66143d944.html.

The District Has Fostered a Racially Hostile Environment for Black Staff and Students

Ms. Jackson, other staff members, and students have reported that the District has promoted and tolerated a school culture that is racially hostile for Black staff and students. Federal and California law protect staff from racial and other discrimination in the workplace, including in schools.² Similarly, federal and California civil rights statutes prohibit discrimination on the basis of race, ethnicity, and national origin, among other categories, placing upon the school district the affirmative obligation to combat bias against students within its schools.³ Consequently, school administrators may be liable, in both their official and personal capacities, if they are “deliberately indifferent” to harassment or discrimination based on race, ethnicity, or national origin, among other protected categories.⁴ School officials are required to take reasonable action to stop harassing behavior.⁵ Deliberate indifference specifically includes failing to investigate or failing to take adequate measures to remedy harassment and discrimination.⁶

Reports from Ms. Jackson and others suggest that the District has a culture of tolerating or promoting behavior that causes harm to Black staff and students. For example, in November 2018, Ms. Jackson’s teaching coach told her that the Principal, Ms. Johnson, said that Ms. Jackson should not eat lunch with another Black womxn staff member. Nearly five months later, in April 2019, Principal Johnson continued this harassment and prevented Ms. Jackson from wearing a shirt that read “Phenomenally Black,” alleging that, amongst other things, it ostensibly promoted a “Black Power” agenda. Similarly, in February 2019, Ms. Jackson wore a Dashiki to demonstrate her pride in her Black culture and because it was Black History Month. A non-Black staff member tugged on Ms. Jackson’s Dashiki and asked Ms. Jackson in front of students whether she was wearing the Dashiki for Kwanzaa. Ms. Jackson replied that she was wearing the Dashiki to celebrate Black History Month. The non-Black staff member replied that she already knew it was not Kwanzaa—which is in December—laughed dismissively and walked away. In that same month, Ms. Jackson discovered that a non-Black teacher referred to students as “little slaves.” In March of that year, a different non-Black teacher asked Ms. Jackson to serve as the sole voice to defend how all Black students performed at the school during a staff meeting. This teacher was critical of the school’s Black students, asking Ms. Jackson why Black students purportedly were “standoffish” and acting “too cool” to perform well in class.

² See GOV’T §12940; 42 U.S.C. § 2000e *et seq.*

³ 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).

⁴ See, e.g., *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).

⁵ *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”).

⁶ *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.”).

In response to these disturbing incidents, Ms. Jackson provided a verbal complaint to you, emphasizing how inappropriate it was for Principal Johnson to discourage Black staff members from eating lunch together. However, you ignored the complaint, condoned the behavior by Principal Johnson and other non-Black staff, and dismissed the impact the incidents had on the District's Black community. Ultimately, you failed to address the incidents in any meaningful way and advised Ms. Jackson "not to worry about it."

The District leadership ignored the complaints and proved to be in improving conditions for Black staff and students. So on May 13, 2019, Ms. Jackson filed a formal complaint alleging that the District maintained a racially hostile environment, violated staff and students' rights to free speech and expression, and failed to ensure that Black staff and students felt welcome and supported in the District. Shortly after Ms. Jackson filed the complaint, the District retaliated against her by asking her not to return to the District, supposedly due to credentialing reasons. However, before these incidents, the school had not mentioned that Ms. Jackson's credentialing was inadequate or otherwise at issue.

These racially hostile incidents against the District's Black community are both pervasive and severe. Black staff members, particularly Black womxn, have been made to feel uncomfortable, degraded, and unwelcome in the District, and Black students have had to endure statements by staff members undermining their abilities and attitudes. Still, despite being on notice about these incidents, the District has failed to address these concerns and has allowed this pattern of hostility to continue. Accordingly, to fulfil its obligations under the law, the District must take the swift, affirmative steps described at the conclusion of this letter to guarantee a safe, inclusive, and equitable environment for both Black students and staff.

The District Improperly Suppressed Teacher Expression by Prohibiting Culturally Black Clothing

Furthering its pattern of hostility towards Black staff, the District improperly suppressed Ms. Jackson's right to freedom of expression by prohibiting her from wearing a "Phenomenally Black" shirt and by criticizing Ms. Jackson for wearing other Black cultural clothing in school. As discussed above, on April 3, 2019, Principal Johnson reprimanded Ms. Jackson for showing pride in Black culture by wearing a shirt that read "Phenomenally Black" and subsequently prevented Ms. Jackson from wearing it again at school. Principal Johnson justified her ban on the shirt by speciously comparing it to a shirt that included the "Make America Great Again" ("MAGA") slogan. Shortly thereafter, Principal Johnson asked another Black staff member why Ms. Jackson always insisted on wearing Black cultural pride items to work. The principal surmised to the other staff member whether Ms. Jackson was attempting to further a "Black power" agenda.

While educators have limited rights to express themselves, particularly in the classroom, they nonetheless retain some rights to freedom of speech or expression in school.⁷ School authorities

⁷ *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years."); Indeed, the California Constitution provisions are "more protective, definitive and inclusive of rights to expression of speech than their federal counterparts." *San Diego Unified Port District v. U.S. Citizens Patrol*, 63 Cal.App.4th 964, 970 (1998).

may restrict speech that might reasonably be perceived as “associat[ing] the school with any position other than neutrality on matters of political controversy.”⁸ Principal Johnson should not have prohibited Ms. Jackson from wearing the “Phenomenally Black” shirt because showing pride in being Black is not politically controversial. Contrary to Principal Johnson’s assertion, Ms. Jackson’s shirt is not akin to a MAGA hat. The phrase “Phenomenally Black” is related to pride in Blackness and Black culture and wholly unrelated to any political movement or candidate. In contrast, MAGA is the notorious slogan of Donald Trump’s campaign and frequently has been associated with xenophobic, racist, homophobic, and transphobic views.⁹

Further evincing the positive and non-political nature of the message, Ms. Jackson previously wore a “Phenomenally Woman” shirt at school without any interference from Principal Johnson or other staff. Indeed, Ms. Jackson was praised for that shirt’s affirmative message. Given that the District has been supportive of clothing displaying a positive message related to gender, it should similarly support a positive message towards Black culture. As such, it was inappropriate for the District to prohibit Ms. Jackson from wearing the politically neutral shirt, and the District must refrain from attempting to regulate similar clothing in the future. Moreover, the inaccurate analogy between having pride in one’s culture and supporting a political candidate who has worked to systemically oppress historically marginalized communities demonstrates the urgent need for the District to implement culturally competent trainings, educate leadership within the District, and develop better curriculum across the District.

The District Violated Students’ First Amendment Rights by Requiring that They Stand for the Pledge of Allegiance

The District also has violated students’ First Amendment rights by requiring them to stand during the Pledge of Allegiance (the “Pledge”). In November 2018, Principal Johnson made a school-wide announcement over the intercom that, while students did not have to pledge allegiance to the flag, the school still required them to stand during the Pledge to show respect for the United States. Several months later, in April 2019, Principal Johnson reiterated her announcement that students must stand for the Pledge.

For many, the Pledge is a reminder of a promise that has never been realized for many Black and Indigenous people of color. The Pledge, originally written in 1892, added the flag of the United States of America only in 1923. And historically, students were expected to pledge to a flag where separate was still considered equal, for which the Civil Rights Act of 1964 had not yet been enacted, and under which the law failed to provide many basic protections for students. The Pledge did not, and for many, still does not, reflect an inclusive America for all. However, without this context, and without staff who are culturally competent to understand how traumatizing this ceremonial act is for many Black, Indigenous, Latinx, and other people of color, school staff will continue to violate the law and create an unwelcoming environment for students and staff who identify with this perspective.

⁸ *California Teachers Assn. v. Governing Bd.*, 45 Cal. App. 4th 1383, 1388 (1996) (quoting *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988)).

⁹ See, e.g., Issac Bailey, *Why Trump’s MAGA hats have become a potent symbol of racism*, CNN (Mar. 12, 2019) <https://www.cnn.com/2019/01/21/opinions/maga-hat-has-become-a-potent-racist-symbol-bailey/index.html>.

Courts have repeatedly held that school staff may not force students to participate in patriotic exercises under threat of punishment. The U.S. Supreme Court has long affirmed that a public school student has a First Amendment right not to participate in the recitation of the Pledge.¹⁰ The Court found that requiring a student to participate in the Pledge was “coerced expression” in violation of the First Amendment.¹¹ In the ensuing years, many federal courts across the U.S. have held that the First Amendment also protects a student’s choice not to stand during the Pledge or National Anthem.¹² As such, the District must make clear to Principal Johnson and all other school staff that they may not require students to stand or otherwise participate in the Pledge of Allegiance.

For the reasons stated above, the District must take swift, affirmative steps towards guaranteeing a safe, inclusive, and equitable school environment and towards safeguarding freedom of speech and expression in its schools. Accordingly, we urge you to take the following steps immediately:

1. Publicly denounce these harmful and racist actions and reaffirm the District’s commitment to maintaining a healthy and supportive school climate.
2. Conduct comprehensive and race-conscious professional development training for all District and school staff about students’ First Amendment rights and civil rights.
3. Acknowledge that students do not need to stand for the Pledge of Allegiance and train all teachers and school administrators about students’ rights not to participate in the Pledge.
4. Foster a community of teachers and administrators who are knowledgeable about child development and are culturally competent and sensitive. To accomplish this goal:
 - a. The District shall provide educators at all levels within the District with training about the unique historical and cultural experiences of Black students and effective methods for engaging Black students in the educational process.
 - b. The District shall provide professional development for teachers, staff and administrators in childhood brain development; trauma-informed responses and interventions; implicit bias; mental health issues and symptoms in children; developmental and learning disabilities; and special education procedural requirements. According to the National Child Traumatic Stress Network, when examining culturally responsive responses for Black students, the District must

¹⁰ *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”); see also EDUC. § 48907 (students may not be punished for conduct that would be protected speech off campus).

¹¹ *Id.* at 642.

¹² See *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004) (holding that punishment, including verbally chastising a student in front of the class for his constitutionally protected actions—either failing to salute the flag or silently expressing his opinion by raising his fist during the recitation of the Pledge—would violate a student’s First Amendment rights); *Sherman v. Cmty. Consol. Sch. Dist. 21 of Wheeling Twp.*, 980 F.2d 437, 442 (7th Cir. 1992) (Constitution requires that statute requiring that the Pledge “shall be recited each school day by pupils” in public schools must be interpreted to apply only to pupils who wish to participate); *Lipp v. Morris*, 579 F.2d 834 (3d Cir. 1978) (requiring a student to stand at attention while other students recite the Pledge is forbidden compulsion); *Goetz v. Ansell*, 477 F.2d 636 (2d Cir. 1973) (same); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F.Supp.2d 263 (N.D.N.Y. 2000) (“It is well established that a school may not require its students to stand for or recite the Pledge of Allegiance or punish any student for his/her failure to do so.”); *Sheldon v. Fannin*, 221 F.Supp. 766 (D. Ariz. 1963) (student may not be disciplined for choosing not to stand during the National Anthem).

“work towards ending the cycle of trauma and violence, [and] it is necessary to acknowledge both how racism and oppression are embedded in American society, and to understand how the massive historical trauma of slavery continues to shape the lives of individual children, families, communities, and the systems with which they interact.”¹³

- c. Invest in cultural programs/rallies/assemblies.
 - d. Acknowledge cultural holidays.
 - e. Provide cultural awareness trainings.
5. Correct the curriculum to teach an accurate account of U.S. and world history, including acknowledging what types of people were brought from Africa (e.g., scientists, teachers, etc.), not only enslaved people.
 6. The District shall have dedicated Local Control and Accountability Plan (LCAP) funding for programs, resources, and opportunities for Black students.
 7. The District will improve reporting practices, including developing and implementing a plan that contains strategies, objectives, and timelines to accomplish the remedies described above and to ensure that the District complies with applicable federal and state laws. The District should send a quarterly report about the status of each of the above to the ACLU for the 2020-2021 academic years, then semiannually beginning in the 2021-2022 academic school year until 2026.

The current local and national movement to eliminate anti-Black racism represents an opportunity for the District to adopt meaningful policies supporting its students, families, and Black community members and to remove the policies that perpetuate a hostile environment for Black staff, students, and parents. We trust that you share our commitment to eradicating racism and that you will provide the response that the District not only is legally obligated to provide, but that your Black students and staff need and deserve. Please contact me by email at aconner@aclunc.org and we can set up a time to talk by phone that way as well, if you have questions or need additional guidance on any points raised in this letter. We request a response to this letter by August 5, 2020.

Sincerely,



Abre' Conner
Staff Attorney
ACLU Foundation of Northern California



Peter Eliasberg
Chief Counsel/Manheim Family attorney for
First Amendment Rights
ACLU Foundation of Southern California

¹³ National Child Traumatic Stress Network Position Statement Racial Injustice and Trauma: African Americans in the U.S. (2016)

https://www.nctsn.org/sites/default/files/resources//racial_injustice_and_trauma_african_americans_in_the_us.pdf.