



Via e-mail and U.S. mail

February 24, 2016

Superintendent Michelle King
Los Angeles Unified School District
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Los Angeles, CA 90017
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Re: Concerns Regarding the Language and Implementation of LAUSD Random Metal Detector Search Policy, BUL 5424.1

Dear Superintendent King:

Our coalition continues to be concerned about Los Angeles Unified School District's ("LAUSD" or the "District") Random Metal Detector Search Policy, BUL 5424.1 (the "Search Policy") and requests that you meet with us to discuss alternative means to promote school safety. Over the past year, we have corresponded with many members of LAUSD's School Operations and General Counsel Offices to discuss the Search Policy. During in person meetings and written correspondence, District staff have repeatedly committed to reconsidering and revising the policy, but we have yet to see any indication that the District has made meaningful progress on adopting a new policy. In the meantime, across the district, teachers and staff are still pulling students out of class on a daily basis and subjecting them to intrusive and potentially unconstitutional searches, robbing them of thousands of hours of class time and causing substantial harm to school climate.

We appreciate the comments you recently made about prioritizing "listening" to, and collaborating with, the community and stakeholders.¹ We are particularly encouraged by your intention to "resist one size-fits-all solutions for schools" and wholly support that approach to developing school policies. As such, we are optimistic that your appointment as Superintendent will hasten the District's efforts to reevaluate the Search Policy, which is precisely the sort of "one size-fits-all" policy that hurts students and educators. We hope we can engage in a genuine and constructive dialogue on how to improve school safety by adopting policies that support the principles set forth in BUL 6321, the School Climate Bill of Rights Resolution and District's Discipline Foundation Policy (the "SCBR") and without resorting to punitive policies that have been proven to be ineffective.

As described further below, we are asking you to rescind or substantially revise the Search Policy because it is susceptible to abuse, harms school culture, robs students of learning time, is ineffective, and leaves the District vulnerable to significant liability. As an alternative, we propose that the District only conduct random metal detector searches when school administrators have established the existence of a documented safety concern and where administrators have been unable to resolve the concern through less restrictive means, such as

¹ Howard Blume, "New. L.A. Schools Chief Favors Steady Progress and Collaboration over Drastic Change," Los Angeles Times (Jan. 15, 2016), *available at* <http://www.latimes.com/local/education/la-me-new-supe-speaks-20160115-story.html>.

through the implementation of School Wide Positive Behavior Intervention and Supports and Restorative Justice as indicated in the SCBR and which is consistent with the recommendation of the Attorney General's Opinion (75 Ops. Cal. Atty. Gen. 155) on which the Search Policy is based. We also propose that the District modify the policy in a number of other ways, which are discussed further below. For example, the District should have different rules for schools of different sizes; prohibit teachers and counselors from searching students; ensure that selection of students is truly random; limit and clarify the scope of the searches; and provide better training and reporting.

Accordingly, we request a meeting to speak with you to further discuss our concerns. We are confident that we can collaborate and develop a solution that will both promote student safety and ensure that their rights are protected.

I. The Search Policy Harms Students and Teachers and Impedes Classroom Instruction

The Search Policy requires teachers and school staff to interrupt class, choose several students at random, pull them out into the hallway or another room, and search the students and their belongings. These searches must be conducted at each of the District's more than 900 school sites every day. The Search Policy harms students and school staff for a variety of reasons. First, school administrators, staff, and teachers have no discretion over whether, or how often, to conduct the searches. The District does not consider whether the school is safe, whether the school has attempted less restrictive means of promoting safety like adopting restorative practices, or even whether implementing the Search Policy would be effective at improving safety at a particular school site. Further, there is no consideration of the size of the school, and thus students who attend smaller schools have their classes disrupted and endure searches far more frequently than students at larger schools. For example, in schools that only have one or two classrooms, students are essentially searched every day.

Second, the searches consume valuable instruction time and cause substantial and lengthy disruptions during class time. Every time a teacher or school staff member conducts a search in a classroom, instruction must stop as students are chosen and removed to be searched. This causes students to become distracted and teachers commonly report losing entire class periods because students have been unable to regain focus after their classes have been interrupted. Across the district, students are losing thousands of hours of classroom instruction per year. As recent research demonstrates, learning time is integral to student achievement and even small losses of instructional time can have very significant cumulative effects.²

Third, the Search Policy requires administrators and teachers to search their students personally, which only serves to undermine their role in furthering students' learning objectives and emotional growth. The practice erodes trust between school staff and students and significantly harms classroom culture. Fourth, the policy is dangerous because teachers are not

² John Rogers & Nicole Mirra, *It's About Time, Learning Time & Educational Opportunity in California High Schools* at 4, UCLA IDEA (2014), available at <http://idea.gseis.ucla.edu/projects/its-about-time/Its%20About%20Time.pdf>.

trained to conduct the searches or react in a safe and appropriate manner in the rare occasion that they discover weapons or contraband.

Finally, the Search Policy is being implemented in an inconsistent manner both because the language is unclear and the District has done a poor job of providing appropriate training to school staff. As discussed further below, the District's own search logs demonstrate that the searches are being conducted unfairly and potentially unconstitutionally. For instance, students are not being chosen randomly and certain student groups are being targeted; police and other people who are prohibited from conducting the searches are nonetheless regularly searching students; students are being subjected to far more invasive searches than the policy allows; and schools are not conducting the searches with a uniform frequency, with some schools searching students far too often, and some searching students infrequently, if at all.

Indeed, the Search Policy has so little credibility in the educational community that neither we nor the District have been able to identify a *single* other school district or charter school in California that requires all of its school sites to conduct mandatory, daily handheld metal detector searches at all of its school sites.³ LAUSD is out of step with the rest of the school districts in California, and we urge you to finally rescind or substantially revise the Search Policy.

II. The Search Policy Is Ineffective and Undermines School Safety

Beyond the problems with the language and implementation, the District should rescind or revise the Search Policy because the random metal detector searches are ineffective in reducing crime or violence on campus. The research on the use of metal detector searches in schools unanimously demonstrates that they do not prevent school violence or crime.⁴ To the contrary, these studies have established that the use of "metal detectors in schools negatively impacts students' perceptions of safety and even increases fear among some students."⁵ In fact, "[t]he use of metal detectors is negatively correlated with students' sense of safety at school, even when taking into account the level of violence at the schools."⁶

The students and teachers with whom we have spoken confirm these findings; they explain that the search policy makes students less safe by heightening tensions on campus and seeding fear and distrust among students and school staff. In contrast, restorative practices, which are the foundations of SCBR, focus on prevention and intervention and have proven to be

³ We have canvassed dozens of school districts and charter schools in California and have not found any district or school that has adopted a metal detector policy resembling LAUSD's broad and mandatory metal detector search policy. By way of example, the following districts have no metal detector search policies: Alhambra, Bellflower, Berkeley, Beverly Hills, Claremont, Culver City, Hermosa Beach, Lancaster, Manhattan Beach, Monrovia, Palmdale, Redondo Beach, and Torrance. The following districts have metal detector policies which are non-mandatory: Arcadia, Burbank, Centinela Valley, Compton, Downey, El Segundo, Hawthorne, Inglewood, La Canada, Lancaster, Lynwood, Montebello, Oakland, Pasadena, Santa Monica/Malibu, and Paramount. We have not encountered any charter school that has implemented a random metal detector search policy.

⁴ National Association of School Psychologists, *Research on School Security: The Impact of Security Measures on Students* (2013), available at <http://www.nasponline.org/advocacy/schoolsecurity.pdf>.

⁵ *Id.*

⁶ *Id.*

effective. For instance, a 2007 University of Wisconsin study that evaluated the success of a restorative justice program in high schools found that, five years after the program had been implemented, violent juvenile offenses decreased by nearly 49% and juvenile arrests decreased by more than 40%.⁷ Similarly, a study conducted in Oakland found that violence and expulsions were eliminated and the rate of suspensions was reduced by more than 75% when restorative justice practices were implemented at West Oakland Middle School.⁸

In fact, LAUSD's own commitment to SWPBIS has already yielded great dividends and garnered national attention, with LAUSD's model being praised by everybody from President Obama⁹ to Los Angeles School Police Chief Steven Zipperman.¹⁰ According to LAUSD, the implementation of restorative justice and SWPBIS practices has reduced crime, violence, suspensions, expulsions, and arrests across the district.¹¹ Specifically, the District's implementation of restorative practices already has reduced suspensions to between zero and ten in many LAUSD middle and high schools. There is simply no valid reason why the District should preserve this ineffective and harmful search policy when, by all measures, safety is increasing in the District's schools. Even if the Search Policy were necessary at one point in the past – which we dispute – that time has certainly passed and the Search Policy, and all of the negative consequences associated with it, must now be withdrawn.

III. Conducting Random Searches at all LAUSD Schools Is Contradictory to the SCBR and School-Wide Positive Behavior Intervention and Supports.

You should also rescind or substantially revise the Search Policy because it conflicts with other District policies and federal guidance. As you are aware, the SCBR establishes a student right to School-Wide Positive Behavior Intervention and Supports (“SWPBIS”). SWPBIS is an evidence-based approach that first and foremost relies on proactive strategies to establish a culture of mutual respect amongst students and staff and implementation of student supports and individualized interventions as a discipline model. The District acknowledges that all students have, “the right to be educated in a safe, respectful and welcoming environment,” and all educators have “the right to teach in an atmosphere free from disruption and obstacles that impede learning.” The District is furthermore responsible for ensuring that, “equitable school-based practices are implemented in a fair, non-discriminatory and culturally-responsive manner.” SCBR, BUL 6321.

The U.S. Department of Justice (“DOJ”) and Department of Education (“DOE”) have issued a Guiding Principles and Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline that addresses many of the same issues. The DOJ and DOE guidance

⁷ Oakland Unified School District, *Restorative Justice in Oakland Schools Implementation and Impacts* (2014), available at <http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/OUSD-RJ%20Report%20revised%20Final.pdf>.

⁸ *Id.*

⁹ Craig Clough, LA School Report, *LAUSD's Restorative Justice Efforts Win White House Applause* (2015), available at <http://laschoolreport.com/lausds-restorative-justice-efforts-win-white-house-applause>.

¹⁰ Craig Clough, LA School Report, *Less Handcuffing, More Counseling Is Working, Says Chief Zipperman* (2015), available at <http://laschoolreport.com/less-handcuffing-more-counseling-is-working-says-chief-zipperman-laUSD>.

¹¹ *Id.*; Associated Press, KPCC, *Policy Shift Yields Decline in Los Angeles School Suspensions* (2015), available at <http://www.scpr.org/news/2015/01/10/49202/policy-shift-yields-decline-in-los-angeles-school>.

expressly directs educators away from punitive school discipline and zero tolerance practices that “undermine efforts to create the positive school climates needed to engage students in a well-rounded and rigorous curriculum.” They instead emphasize a “focus on prevention,” “developing positive and respectful school climates,” and using, “data and analysis to continuously improve and ensure fairness and equity for all students.”¹²

The Search Policy directly contravenes both of these policies. Students and educators across the district have consistently reported that the Search Policy undermines their ability to maintain a “safe, respectful and welcoming environment.” Forcing teachers to search their students only serves to create a divide between them and encourages students to view teachers as disciplinarians. Students report feeling “criminalized” and explain that the searches create a culture that assumes they are suspects to a crime or have done something wrong. This sentiment is particularly prevalent in schools that serve high numbers of low income students, English learners, and/or students of color. In particular, many students of color have described feeling racially targeted, particularly because they have heard from their counterparts in other schools that searches are not being conducted with the same frequency at schools in more affluent areas.

IV. The Search Policy Is Susceptible to Abuse and Leaves the District Vulnerable to Liability

a. The Searches Are Not Conducted Randomly

The Search Policy also raises serious legal concerns thereby leaving the District vulnerable to liability. Generally, student searches are only justified “when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” *N.J. v. T.L.O.*, 469 U.S. 325, 341-42 (1985). “There must be articulable facts supporting that reasonable suspicion” and “a search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch.” *In re William G.*, 40 Cal. 3d 550, 564 (1985). Schools may conduct searches of students when they do not have reasonable suspicion that the student violated a rule or law, but only under extremely narrow circumstances. For instance, it is well established that such “suspicionless” searches may only be conducted if they are performed in a truly random manner.

As the District’s own search logs¹³ demonstrate, LAUSD staff have been conducting the searches in a non-random and, therefore, unconstitutional manner. The vast majority of the logs merely state that students were chosen at “random,” which does not provide any meaningful indication of how the students were selected. In the rare instances when school staff did state the methodology for how they chose the search subjects, the bases for selecting students were often non-random, with rationales including: “discipline”; “ditchers”; “student in parking lot”; “tip from student”; “kids in restricted area”; “truant”; and “tardy.” None of these methods of selecting students is random, and many are in direct conflict with settled California case law.

¹² The DOJ and DOE Guiding Principles and Dear Colleague Letter are available at <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.

¹³ We have provided examples of search logs that show district personnel are performing searches in a way that violates the Constitution and plain terms of the policy to the District on numerous occasions. For instance, we enclosed a number of logs as an attachment to our August 13, 2015 letter to District counsel, Belinda Stith.

See 75 Ops. Cal. Atty. Gen. 155, 181 (“random searches may satisfy the requirement of ‘reasonableness’ under the Fourth Amendment” only where “the opportunity for arbitrary discretion by officials in the field is purged by procedures established in an administrative policy”). For instance, the California Supreme Court has long held that searches cannot be conducted on the basis of students being tardy or truant. *See In re William G.* (1985) 40 Cal.3d 550 (knowledge that a student “was tardy or truant from class provided no reasonable basis for conducting a search of any kind”).

Further, non-random searches are susceptible to abuse and violate Cal. Gov’t Code Section 11135 if they are applied in a discriminatory manner.¹⁴ According to the U.S. Department of Education, U.S. Department of Justice, and numerous research studies, students of color are twelve times more likely and low-income students are thirteen times more likely to be searched “randomly” with a metal detector than their white and/or affluent peers.¹⁵ We have heard disturbing reports from students in LAUSD who have observed the Search Policy applied in a clearly discriminatory manner. Numerous students have reported that school personnel disproportionately conduct searches of low income students and students of color. We have also heard that administrators focus the searches on students who have had disciplinary problems and attend remedial programs and avoid conducting searches on students who are enrolled in honors classes and magnet programs. Finally, our own review of the District’s search logs reveals that certain schools with lower populations of low income students or students of color have been implementing the Search Policy far less frequently – if at all – than schools in higher income communities.

b. The Searches Are Overly Intrusive

California courts have also held that suspicionless searches must be less intrusive than searches conducted when there is reasonable suspicion that a student violated a rule or law. In particular, in *In re Latasha W.*, 60 Cal. App. 4th 1524, 1527 (1998), the case cited in the Search Policy, the court held that such searches must be “minimally intrusive” and the court there noted that a search would be permissible where “[s]tudents were not touched during the search, and were required to open pockets or jackets only if they triggered the metal detector.” *Id.* Indeed, the Search Policy itself recognizes the need to limit the intrusiveness of the searches, noting that students may be “searched only to the degree necessary to affirm that no weapons are concealed therein.”

We have heard reports that searches conducted pursuant to the Search Policy have gone well beyond the permissible limits. During the metal detector searches, students have been asked to remove clothing and are regularly physically touched by school staff, even when the metal detector did not activate. Further, school staff regularly search through students’ bags and personal effects even when and the metal detector did not alert and the search revealed no metallic object.

¹⁴ Given the lack of specificity in the reporting data from school sites and the failure of schools administrators to provide comprehensive and uniform search logs, it is impossible to assess the extent of the disparate impact at this time.

¹⁵ U.S. Department of Education, *Indicators of School Crime and Safety*: 2009, at 68-73 (2009).

The search logs confirm that school staff regularly conduct overbroad searches because the logs show that, in the rare instances when the searches uncover anything,¹⁶ they almost always merely reveal innocuous, non-metallic objects such as markers, food, medication, or school supplies. If the searches were conducted only with a metal detectors, none of these objects should have been revealed because the metal detector would not have activated. Thus, it is clear that school staff are conducting intrusive searches of students and their belongings even where the metal detectors are not activating, which is directly contrary to the Search Policy.

c. The Broad and Mandatory Nature of the Search Policy Violates the Attorney General Opinion on Which It Is Based.

LAUSD's Search Policy currently contradicts the recommendations of the Attorney General Opinion on which it is based. The Attorney General Opinion unequivocally states:

Before resorting to metal detectors in particular schools or school districts, it is strongly recommended that school administrators make a specific finding why this weapons deterrence system is being adopted. For example, school officials might point to particular incidents involving weapons by students or a developing pattern of weapon usage or presence. Such a finding would allow a court, if necessary, to review the context in which the school decided to adopt a weapons prevention program involving metal detectors. . . . *As a general rule, less restrictive alternatives should always be pursued in order to minimize the invasion of privacy interests.*

75 Ops. Cal. Atty. Gen. 155, 188-190 (emphasis added).

Despite the Attorney General's recommendation – and your own preference for not resorting to “one-size-fits-all” policies – LAUSD is mandating daily, suspicionless searches at every school in the district without regard to the circumstances of individual student populations or school sites. The Search Policy does not take into account the conditions at each school site, including salient factors such as the size of the student population; whether the site has a history of violence or crime; whether the site is employing other means to promote safety; whether students, parents, and staff are supportive of the policy; or whether the policy would have adverse effects on school climate. In other words, the Search Policy ignores the judgment of school staff and does not allow them to make common sense decisions about whether the search policy would be appropriate or effective at their schools.

V. Alternatives to Implementation of BUL 5424.1 Exist that Are Less Intrusive and Protect Against Discrimination.

We are disappointed that LAUSD has refused to engage in serious efforts to reconsider the Search Policy and has yet to make any progress in finding an alternative. It is troubling that, despite outwardly showing support for the SCBR and SWPBIS and for touting increases in

¹⁶ As one would expect, the vast majority of searches reveal nothing at all.

safety districtwide, the District has still refused to replace the Search Policy with restorative practices or other alternatives that have proven to be effective.

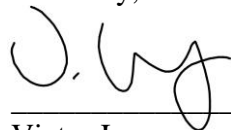
In light of the Search Policy's numerous deficiencies, we make the following recommendations:

- Random metal detector searches should be conducted only where school administrators have established the existence of a documented safety concern and where administrators have been unable to resolve the concern through less restrictive means, such as through the implementation of School Wide Positive Behavior Intervention and Supports and Restorative Justice as indicated in BUL 6321, consistent with the recommendation of the Attorney General's Opinion (75 Ops. Cal. Atty. Gen. 155) on which the Search Policy is based.
- Schools of different sizes should have different rules. For instance, smaller schools (to the extent that they have established a demonstrated safety concern and attempted less restrictive means of improving safety) should have less frequent searches.
- The search team should comprise only certificated school administrators. Teachers, counselors, or other school personnel should not be conducting student searches.
- The Search Policy should be sensitive to students' gender identities and amended to allow students to choose the gender of the administrator who conducts the searches.
- When the searches are necessary, students should be selected for searches in a truly random manner. Specifically, students should be chosen by a computerized selection process to ensure that administrators have no discretion over which students are chosen.
- The scope of the searches should be limited and clarified. For instance, students should never be required to remove clothing, and administrators should never look through a student's bags or belongings unless the metal detector activates. If the metal detector activates, then students should have an opportunity to remove any metallic items before the administrator conducts a further search of the student's person or belongings.
- Administrators should receive better training on how to properly select students and conduct the searches. Administrators should be provided with in person trainings and detailed written instructions.
- Administrators should be required to perform better reporting, including listing the gender, grade, and race of the student searched according to school records; the identity of the administrator who conducted the search; and a better description of how the student was selected.

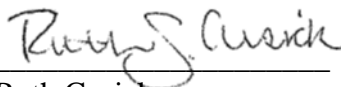
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We strongly urge the District to replace BUL 5424.1 with more effective and less harmful policies and practices that are preventative and rely on positive interventions, like counseling, professional development, reducing class size, and restorative justice practices. We share your commitment to improving school climate at all LAUSD schools and remain willing to serve as a resource as you reevaluate this policy. To that end, we request a meeting in February with you to further discuss our concerns about the Search Policy and ways to improve it.

Sincerely,



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Enclosures

cc: Dr. Earl Perkins, Assistant Superintendent School Operations
L.A. Unified Board of Education