

August 27, 2012

**ORANGE COUNTY
DEPARTMENT
OF EDUCATION**

200 KALMUS DRIVE
P.O. BOX 9050
COSTA MESA, CA
92628-9050

(714) 966-4000

FAX (714) 432-1916

www.ocde.us

AL MIJARES, Ph.D.
County Superintendent
of Schools

LYNN APRIL HARTLINE
Deputy Superintendent

JOHN L. NELSON
Associate Superintendent

**ORANGE COUNTY
BOARD OF EDUCATION**

JOHN W. BEDELL, Ph.D.

DAVID L. BOYD

ROBERT M. HAMMOND

ELIZABETH PARKER

KEN L. WILLIAMS, D.O.

The Honorable Thomas J. Borris
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Re: Response to 2011-12 Orange County Grand Jury Report, "Anti-Bullying Programs in Orange County"

To the Honorable Thomas J. Borris:

In accordance with California Penal Code section 933.05, the Orange County Grand Jury has requested that the Orange County Department of Education (OCDE) respond to Recommendations 4 and 5 in the Grand Jury Report entitled, "Anti-Bullying Programs in Orange County Schools."

Recommendation 4: "By January 2013, Orange County Superintendent of Schools creates an oversight committee to monitor the mandates and implementation contained in Assembly Bills, AB 1156, AB 9 and AB 746."

Response to Recommendation 4: The legislation cited in this recommendation contains suggestions and, in some cases, requirements for local educational agencies (LEAs) in regard to anti-bullying efforts. For example, AB 9 amended Education Code section 234.1 to require LEAs to adopt a policy that prohibits discrimination, harassment, intimidation and bullying based on certain protected characteristics. Section 234.1 contains additional requirements for LEAs, including the adoption of a process for receiving and investigating complaints of discrimination, harassment, intimidation and bullying. However, none of the statutes added or amended by AB 1156, AB 9, and AB 746 grant oversight authority to county superintendents of schools. In fact, Education Code section 234.1 states that it is the California Department of Education, as part of its regular monitoring and review of LEAs, that shall assess, whether LEAs have taken the actions required under section 234.1.

Aside from a few specific statutes that grant a county superintendent of schools oversight authority over the schools of his or her county (e.g., Education Code section 1240), a county superintendent of schools has no legal authority to mandate school districts to take, or refrain from taking, action. School districts are governed by locally elected governing boards. The authority to monitor and implement statutory obligations is held by those elected officials, not the county

superintendent of schools. Therefore, Recommendation 4 will not be implemented because it is not warranted and is not reasonable. Furthermore, the recommendation is not supported by state law.

Recommendation 5: “Recommend Orange County Superintendent of Schools create a committee for the purpose of standardizing a definition of bullying to be used by all schools county wide when recording a bullying incident.”

Response to Recommendation 5: The California Legislature has clarified and expanded the definition of bullying, effective July 1, 2012. AB 1156 amended Education Code section 48900, which sets forth the grounds for student suspensions and expulsions; subdivision (r) specifically defines bullying. Subdivision (r) of Section 48900 now states:

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils as defined in Section 48900.2, 48900.3, or 48900.4, directed toward one or more pupils that has or can be reasonably predicted to have the effect of one or more of the following:

(A) Placing a reasonable pupil or pupils in fear of harm to that pupil's or those pupils' person or property.

(B) Causing a reasonable pupil to experience a substantially detrimental effect on his or her physical or mental health.

(C) Causing a reasonable pupil to experience substantial interference with his or her academic performance.

(D) Causing a reasonable pupil to experience substantial interference with his or her ability to participate in or benefit from the services, activities, or privileges provided by a school.

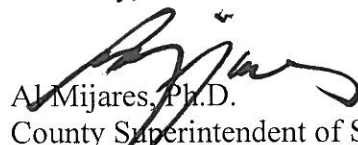
(3) "Reasonable pupil" means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

Given the effective date of this legislation (July 1, 2012), Orange County school districts were not using this definition when the 2011-12 Orange County Grand Jury was reviewing anti-bullying practices in Orange County schools. However, each Orange County school district is aware of this definition and is legally obligated to apply it when suspending or expelling students from school. This definition, which is similar to that used in cases involving sexual harassment, provides guidance for students, parents and school employees.

While the Orange County Superintendent of Schools has no authority to impose legal obligations on local districts in regard to anti-bullying, the Orange County Department of Education has polled the school districts in Orange County asking them to re-affirm their intent to abide by the definition of bullying contained in Education Code section 48900(r). This office has received responses from all school districts which are located exclusively in Orange County, each of whom has indicated its intent to abide by the definition of bullying set forth in Education Code section 48900(r). Recommendation 5 will not be implemented because it is not warranted and is not reasonable.

If you have any further questions or need additional information, please contact Dr. Arthur Cummins at (714) 327-1071.

Sincerely,


Al Mijares, Ph.D.
County Superintendent of Schools

cc: Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Orange County District Superintendents