

January 18, 2013

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

Re: Tustin Unified School District's Response to 2011-12 Orange County Grand Jury Report,
"Anti-Bullying Programs in Orange County Schools"

To the Honorable Thomas J. Borris:

In accordance with California Penal Code section 933.05, the Orange County Grand Jury has requested that the Tustin Unified School District ("District") respond to Findings 1-4 and Recommendations 1-3, 6-7 in the 2011-12 Orange County Grand Jury Report entitled, "Anti-Bullying Programs in Orange County Schools."¹

Finding 1: Not all Orange County schools use the same technology, procedures and codes to record bullying or harassment incidents.

Response to Finding 1: The District agrees partially with this finding. The District agrees that not all Orange County schools use the same technology and procedures to record bullying or harassment incidents. Different districts use different databases and internal procedures to track bullying complaints. With regard to the codes used to record bullying or harassment incidents, prior to July 1, 2012, Education Code section 48900(r) defined bullying by reference to sexual harassment, threats, and intimidation (Education Code section 48900.4). The law did not contain a stand-alone definition of bullying. However, as of July 1, 2012, Education Code section 48900(r) provides a stand-alone definition of the term "bullying." (AB 1156) School districts throughout California are bound by this statute.

Finding 2: New legislation takes effect July 1, 2012, and broadens the definition of "Bullying."

Response to Finding 2: The District agrees that AB 1156 provides a broader definition of "bullying" than was contained in prior law.

Finding 3: Education Code section 234.1 requiring posting of anti-bullying/anti-harassment policies in prescribed areas was not evident in all schools visited.

¹The Orange County Superintendent of Schools has been directed to respond to Recommendations 4 and 5

Response to Finding 3: The District cannot comment on what policies are posted in all schools through Orange County, but can respond only on behalf of the District itself. Finding 3 combines the requirement to post anti-discrimination/anti-harassment policies in prescribed areas with the requirement to post anti-bullying policies. The requirement for school districts to post their anti-bullying policy in all schools and offices, including staff lounges and pupil government meeting rooms, is new as of July 1, 2012. Thus, the District disagrees with Finding 3 to the extent it reflects on the District's practice in regard to posting its anti-bullying policy in prescribed areas prior to July 1, 2012.

In regard to the finding that the District failed to post its anti-harassment policies in prescribed areas, the District *disagrees* with this finding. The district has provided discrimination/anti-harassment policies to all sites (schools and others) to post in classrooms and other prescribed areas.

Finding 4: Based on witness testimony, confidentiality was not maintained in a bullying incident as prescribed in California Education Code section 234.1

Response to Finding 4: The Grand Jury report does not contain sufficient information to enable the District to respond to this finding nor does it identify which school district was involved in the alleged breach of confidentiality; therefore, the District disagrees wholly with this finding.

Recommendation 1: Recommend a county-wide compatible information system for reporting incidents of bullying be explored by all school districts.

Response to Recommendation 1: This recommendation will not be implemented because it is not warranted and is not reasonable. The District tracks incidents of bullying as follows: individual sites track incidents of bullying using the discipline module in Aeries. The District's Bullying Policy (BP 5131.2) was updated in August 2012 to reflect new Education Code.¹ In addition, the District's Uniform Complaint Procedures (BP 1312.3) will be updated in February, 2013 to align with new Education Code.² Different districts use different technology and procedures that reflect the unique needs of each district. While all districts will comply with State-mandated reporting, such as the California Longitudinal Pupil Achievement Data Systems (CALPADS), it is not necessary or practical that each district use the same internal procedures and technology to track reported incidents of bullying.

Recommendation 2: Recommend all county-wide schools agree upon the same definition of bullying.

Response to Recommendation 2: The District will not implement this policy because it is not warranted and is not reasonable. The District has no legal authority to obligate other school districts. However, it should be noted that the District is required by law to apply the definition of "bullying" contained in Education Code section 48900(r) in suspending and expelling students. The District also intends to use this definition of "bullying" in tracking complaints of bullying that are sustained.

²Educ. Code § 234.1(d).

Recommendation 3: This recommendation has been implemented. As of July 1, 2012, AB 1156 and Education Code 48900(r) have been amended and broadened to define bullying as follows: "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 of 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 substantial 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.

On August 27, 2012, the District adopted updated Board policies on bullying and cyberbullying that included policy in regard to retaliation and confidentiality. Refer to Attachment Board Policy 5131.2 on Bullying.

Recommendation 6: Recommend each district explore the development of a countywide standard information system for recording incidents of bullying.

Response to Recommendation 6: This recommendation will not be implemented because it is not warranted and is not reasonable. The District tracks incidents of bullying as follows: The District utilizes Eagle Aeries software as its data information system. This software is the most commonly utilized data software system in Orange County schools. A separate, additional data information system is not a reasonable option as this will require double entry, which is not effective or necessary. Aeries software has the capability of including detailed information on bullying including information on the target, perpetrator, and bystanders. Individual districts do not have legal control over other districts in the state of California and the county superintendents would have to be involved collectively to further analyze this recommendation. In addition, CALPADS currently records suspensions and expulsions related to bullying statewide.

Different districts use different technology and procedures that reflect the unique needs of each district. While all districts will comply with State-mandated reporting, such as the California Longitudinal Pupil Achievement Data System (CALPADS), it is not necessary that each district use the same internal procedures and technology to track reported incidents of bullying.

Recommendation 7: All schools post anti-bullying/anti-harassment policy in offices, staff lounges and student government meeting areas as prescribed in Education Code section 234.1

Response to Recommendation 7: The District has implemented this recommendation. An email dated August 30, 2012, and anti-bullying posters were sent to all schools in the District to be posted in all required areas.³

If you have any further questions or need additional information, please contact Grant Litfin, Director of Secondary Education at (714) 730-7301, ext. 323.

Sincerely,



Gregory A. Franklin, Ed.D.
Superintendent

Attachments:

1. Recommendation 1: Board Policy 5131.2 Bullying
2. Recommendation 1: Board Policy 1312.3 Uniform Complaint Procedures (Draft)
3. Recommendation 7: Anti Bullying Poster

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

TUSTIN UNIFIED SCHOOL DISTRICT

POLICY
5131.2

STUDENTS

BULLYING

The Board of Education is committed to a learning environment that is free of intimidation and recognizes that student safety is important to an effective education. The Board also acknowledges the harmful effects of bullying on student learning and school attendance and desires to provide safe school environment that protects students from physical and emotional harm. District employees shall establish student safety as a high priority and shall not tolerate bullying of any student.

No student or group of students shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, cyberbully, cause bodily injury to, or commit hate violence against any other student or school personnel.

Cyberbullying includes the transmission of harassing communications, direct threats, or other harmful texts, sounds, or images on the Internet, social media, or other technologies using a telephone, computer, or any wireless communication device. Cyberbullying also includes breaking into another person's electronic account and assuming that person's identity in order to damage that person's reputation.

Strategies for bullying prevention and intervention shall be developed with involvement of key stakeholders in accordance with law, Board policy, and administrative regulation governing the development of comprehensive safety plans and shall be incorporated into such plans.

Bullying Prevention

To the extent possible, district and school strategies shall focus on prevention of bullying by establishing clear rules for student conduct and strategies to establish a positive, collaborative school climate. Students shall be informed, through student handbooks and other appropriate means, of district and school rules related to bullying, mechanisms available for reporting incidents or threats, and the consequences for perpetrators of bullying.

The Board of Education, through the Superintendent or designee, delegates to the principal of each school the authority and responsibility for developing and maintaining student behavior/conduct guidelines. These guidelines are to be developed with the staff and communicated with students and parents/guardians. The classroom teacher, through the principal, will maintain appropriate student behavior/conduct in the classroom.

The district may provide students with instruction, in the classroom or other educational settings, that promotes effective communication and conflict resolution skills, social skills, character/values education, respect for cultural and individual differences, self-esteem development, assertiveness skills, and appropriate online behavior.

TUSTIN UNIFIED SCHOOL DISTRICT

**POLICY
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STUDENTS

BULLYING

School staff shall receive related professional development, including information about early warning signs of harassing/intimidating behaviors and effective prevention and intervention strategies.

Based on an assessment of bullying incidents at school, the Superintendent or designee may increase supervision and security in areas where bullying most often occurs, such as classrooms, playgrounds, hallways, restrooms, cafeterias.

Intervention

Students are encouraged to notify school staff when they are being bullied or suspect that another student is being victimized. In addition, the Superintendent or designee shall develop means for students to report threats or incidents confidentially and anonymously.

School staff who witness bullying shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

As appropriate, the Superintendent or designee shall notify the parents/guardians of victims and perpetrators. He/she also may involve school counselors, mental health counselors, and/or law enforcement.

Complaints and Investigation

Students may submit to a teacher or administrator a verbal or written complaint of conduct they consider to be bullying. Complaints of bullying shall be investigated and resolved in accordance with site-level grievance procedures specified in AR 5145.7 - Sexual Harassment.

When a student is reported to be engaging in bullying off campus, the Superintendent or designee shall investigate and document the activity and shall identify specific facts or circumstances that explain the impact or potential impact on school activity, school attendance, or the targeted student's educational performance.

When the circumstances involve cyberbullying, individuals with information about the activity shall be encouraged to save and print any electronic or digital messages sent to them that they feel constitute cyberbullying and notify a teacher, the principal, or other employee so that the matter may be investigated.

If the student is using a social networking site or service that has terms of use that prohibit posting of harmful material, the Superintendent or designee also may file a complaint with the Internet site or service to have the material removed.

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STUDENTS

BULLYING

Discipline

Any student who engages in bullying on school premises, or off campus in a manner that causes or is likely to cause a substantial disruption of a school activity or school attendance, shall be subject to discipline, which may include suspension or expulsion, in accordance with district policies and regulations.

Legal Reference:

EDUCATION CODE

200-262.4 Prohibition of discrimination

32282 Comprehensive safety plan

35181 Governing board policy on responsibilities of students

35291-35291.5 Rules

48900-48925 Suspension or expulsion

48985 Translation of notices

PENAL CODE

647 Use of camera or other instrument to invade person's privacy; misdemeanor

647.7 Use of camera or other instrument to invade person's privacy; punishment

653.2 Electronic communication devices, threats to safety

UNITED STATES CODE, TITLE 47

254 Universal service discounts (e-rate)

COURT DECISIONS

J.C. v. Beverly Hills Unified School District, (2010) 711 F.Supp.2d 1094

Lavine v. Blaine School District, (2002) 279 F.3d 719

Date

Adopted: 7/08/02

Revised (renumbered) & Adopted: 8/27/12

TUSTIN UNIFIED SCHOOL DISTRICT

COMMUNITY RELATIONS

POLICY
1312.3

Uniform Complaint Procedures

The Board of Education recognizes the District is primarily responsible for complying with applicable state and federal laws and regulations governing educational programs. The District shall investigate any complaints alleging failure to comply with such laws and/or alleging unlawful discrimination, harassment, intimidation, or bullying and shall seek to resolve those complaints in accordance with the District's uniform complaint procedures.

The District shall use the uniform complaint procedures to resolve any complaint alleging unlawful discrimination, harassment, intimidation, or bullying against any protected group as identified under Education Code section 200 and 220 and Government Code section 11135, including those with actual or perceived characteristics such as race or ethnicity, color, ancestry, national origin, nationality, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, in any program or activity conducted by the District or that is funded directly by, or that receives or benefits from any state financial assistance.

Uniform complaint procedures shall also be used to address any complaint alleging the District's failure to comply with state and/or federal laws in adult education programs, consolidated categorical aid programs, migrant education, career technical and technical education and training programs, child care and development programs, child nutrition programs, special education programs, and the development and adoption of the school safety plan.

Uniform complaint procedures shall be used to address any complaint alleging the district's non-compliance with Article 5.5 of Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code (commencing with Section 49010) regarding pupil fees.

The Board prohibits any form of retaliation against any complainant in the complaint process. Participation in the complaint process shall not in any way affect the status, grades, or work assignments of the complainant.

The Board encourages the early, informal resolution of complaints at the site level whenever possible.

The Board recognizes that a neutral mediator can often suggest a compromise that is agreeable to all parties in a dispute. In accordance with uniform complaint procedures, whenever all parties to a complaint agree to try resolving the problem through mediation, the Superintendent or designee shall initiate that process. The Superintendent or designee shall ensure that the results are consistent with state and federal laws and regulations.

In investigating complaints, the confidentiality of the parties involved and the integrity of the process shall be protected. As appropriate, the Superintendent or designee may keep the identity

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COMMUNITY RELATIONS

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1312.3

of a complainant confidential to the extent that the investigation of the complaint is not obstructed.

The district's Williams uniform complaint procedures, AR 1312.4, shall be used to investigate and resolve any complaint related to the following:

1. Sufficiency of textbooks or instructional materials
2. Emergency or urgent facilities conditions that pose a threat to the health or safety of students or staff
3. Teacher vacancies and misassignments

Legal References:

EDUCATION CODE

200-262.4	Prohibition of discrimination
8200-8498	Child care and development programs
8500-8538	Adult basic education
18100-18203	School libraries
32289	School safety plan, uniform complaint procedures
35186	Williams uniform complaint procedures
41500-41513	Categorical education block grants
48985	Notices in language other than English
49060-49079	Student records
49490-49590	Child nutrition programs
52160-52178	Bilingual education programs
52300-52490	Career technical education
52500-52616.24	Adult schools
52800-52870	School-based program coordination
54000-54028	Economic impact aid programs
54400-54425	Compensatory education programs
54440-54445	Migrant education
54460-54529	Compensatory education programs
56000-56867	Special education programs
59000-59300	Special schools and centers
64000-64001	Consolidated application process

GOVERNMENT CODE

11135	Nondiscrimination in programs or activities funded by state
12900-12996	Fair Employment and Housing Act

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COMMUNITY RELATIONS

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1312.3

CODE OF REGULATIONS. TITLE 5

3080	Application of section
4600-4687	Uniform complaint procedures
4900-4965	Nondiscrimination in elementary and secondary education programs

UNITED STATES CODE. TITLE 20

6301-6577	Title I basic programs
6601-6777	Title II preparing and recruiting high quality teachers and principals
6801-6871	Title III language instruction for limited English proficient and immigrant students
7101-7184	Safe and Drug-Free Schools and Communities Act
7201-7283g	Title V promoting informed parental choice and innovative programs
7301-7372	Title V rural and low-income school programs

Date
Adopted: 08/10/92
Revised and Adopted: 06/10/96
Revised and Adopted: 01/26/04
Revised and Adopted: 05/12/08
Revised and Adopted: 08/27/12

Tustin Unified School District Board Policy (5131.2) Prohibits Discrimination, Harassment, Intimidation, and Bullying.*

Bullying*:

An aggressive behavior that is intentional, repeated over time and involves an imbalance of power or strength. Bullying can take many forms (both direct and indirect), such as hitting or punching, teasing or name-calling, intimidation through gestures, social exclusion and sending or posting insulting messages or pictures by cell phone or online.

Cyber-Bullying*:

The use of Modern Communication Technologies (including but not limited to E-Mail, Text Messaging, Instant Messaging, Chat Rooms, Blogs, Web-Sites, Social Networking Sites, Cell Phones, Tablets, Computers and other forms of technology) to intentionally embarrass, humiliate, threaten or intimidate an individual or group in an attempt to gain power or control.

Dr. Olweus “Test” for Bullying Behavior*:

- 1) Specific Type of Aggression
 - a. Verbal
 - b. Physical
 - c. Psychological
- 2) Behavior is Intended to Harm or Disturb
- 3) Carried Out Repeatedly and Over Time
- 4) Imbalance of Power
 - a. Physical
 - b. Psychological

How You Should Respond to Bullying Behavior*:

Student(s):

- 1) Report any instances of suspected bullying involving you or a fellow student to a teacher, counselor or school administrator as soon as possible.
- 2) If you witness bullying behavior, intervene (if it is safe to do so) or help to stop the behavior as soon as it occurs. Peer-to-Peer early intervention is proven to be effective in reducing bullying.

School Employee(s):

- 1) If you witness bullying behavior or harassment, intervene immediately and consult a supervising administrator to assure discipline and documentation are appropriately applied.

* TUSD Board Policy 5131.2 and Ed. Code 48900 address the topic of Bullying.

* Dr. Dan Olweus, Ph.D. – Expert on Bullying Prevention / Founder of OBPP.

* Bullying and Cyber-Bullying Definitions reflect OC Grand Jury recommended definitions from 2011-12 *Investigation and Recommendations for ARB AR746 and AR1156*