



October 3, 2006

**VIA FACSIMILE and U.S. MAIL**

Richard Anthony, Interim Superintendent  
Bishop Unified Elementary School District  
301 North Fowler Street  
Bishop, California; 93514

Re: Racial Discrimination and Improper Police Activities in Bishop  
Unified Elementary School District

Dear Mr. Anthony:

The American Civil Liberties Union of Northern California ("ACLU-NC") and Morgan, Lewis & Bockius LLP ("Morgan Lewis") have reviewed the documents you provided in connection with our recent public records request. From our review of your records, we have developed a deep concern that the Bishop Union Elementary School District and Home Street Middle School (collectively, the "School") systemically discriminate against students of color, and in particular Native American students, in its disciplinary processes. This letter is sent jointly by the ACLU-NC and Morgan Lewis to discuss these concerns in order to begin a dialogue to reform the School's disciplinary activities.

Below, we discuss the bases for our concerns and our suggestions for improvement, the implementation of which we believe would establish a positive school climate for all students. Once you have had an opportunity to review this letter, we would appreciate meeting with you in person to address these important issues. We sincerely hope for the School's cooperation in resolving this matter, which will ultimately require the adoption of protective policies and practices, as well as an ongoing commitment to prevent future unlawful discrimination.

**Factual Background**

We became aware of potential problems at the School when the parents of Native American children contacted us following events occurring on October 11, 2005. On that date, School Resource Officer (SRO) Glenn McClinton physically harmed several Native American students, and threatened a number of others. We subsequently interviewed numerous eye witnesses, and have concluded that Officer McClinton caused bodily injury to Thomas Stone, an eighth grader, because Thomas wore a bandana in contravention of the School's dress code. We further understand that Officer McClinton employed excessive force on at least two Native

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American students who observed the incident, including causing one to temporarily lose consciousness. Following these events, it is our understanding that Vice Principal Carter failed to obtain input regarding the events from any person other than Officer McClinton, and ratified his conduct by, among other things, suspending the children involved in the incident. It is also our understanding that Bill Kennedy, as school principal, undertook no independent investigation of the situation.

From our review of the materials provided in response to our public records request, such conduct is not isolated. Both the disciplinary treatment imposed on Native American students and the use of excessive force appear to form part of a pattern and practice that preceded the October 11 incident and has continued since.

Excessive Force and Abuse of Police Power. Our investigation has led us to conclude that Thomas Stone has no gang affiliation. Nonetheless, in March 2006, Principal Kennedy, along with two outside police officers and several school officials, interrogated Thomas and almost twenty other students about gang membership. According to multiple sources, Principal Kennedy refused to permit the children to contact their parents during the interrogation. We understand that these students were informed that refusal to answer questions would result in suspension. As to Thomas, the police added threats of juvenile hall, probation, body searches and a statement regarding the ability to make Thomas' life "a living hell." Our sources know of no link between this interrogation session and any ongoing criminal investigation. We view this incident as demonstrating that the School sees its function as going beyond the education of its pupils to providing a forum for police activity.

Our investigation also uncovered another incident during which Officer McClinton physically assaulted a Native American student because she did not immediately stop when he called her name. Indeed, many Native American students told us that they feared Officer McClinton and tried to avoid him. Given the history of excessive force on campus, use of the School to facilitate police interrogation and other activity should be avoided absent compelling circumstances requiring police presence.

Discriminatory Discipline. Our analysis of the documents you produced demonstrates that Native American students at the School are disciplined far more frequently than white students. An examination of the School's statistics from the 2000-2001 through 2005-2006 school years indicates that the suspension of Native American students tends to occur disproportionately for discretionary offenses like "defiance", in comparison with concrete offenses such as carrying a weapon. For the school years 2000-2006, while Native American students were about 17% of the student population, they were almost 67% of those suspended for being "disrespectful/argumentative." In other words, they were suspended at roughly four times their percentage of the population. In more concrete, less discretionary categories of discipline, such as "Supply/sold/possess drugs/alcohol," Native American students were only slightly more likely than other students to be disciplined. Discretionary categories such as defiance should not operate as a catch-all to unnecessarily deprive students of color equal educational opportunities.

More broadly, for every year between 2000-2006, Native American students were disciplined at more than double their percentage in the population. So, for example, in 2002-2003, Native American students were approximately 16% of the population, yet almost 43% of the suspensions and expulsions. Indeed, in 2002-03, the only sixth graders suspended at Home Street Middle School were Native American. Statistics such as these are deeply troubling, particularly since studies show that students of color are no more likely to engage in disruptive behavior than other students. *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Discipline*, Russ Skiba et al., Policy Research Report #SRS1, June 2000 at 14-16. Instead, research suggests that students of color are often punished more severely than other students who engage in similar conduct, and that students of color are often punished for "behaviors that are at once less serious and more subjective in their interpretation." *Id.*

Violations of the California Education Code. Your records indicate that the School suspended students in violation of both the California Education Code and the School's own disciplinary policies on numerous occasions. Other than five narrowly-defined circumstances, the California Education Code flatly prohibits suspension of students on a first offense. The five situations all pose potential for great harm to other students, such as possession of a weapon on school grounds, the use or sale of drugs on campus, etc. See Cal. Educ. Code §§ 48900, 48900.5. Except in the rare instances noted above, the Education Code requires use of suspensions as a last resort. Cal. Educ. Code § 48900.5. While the School's written discipline policy comports with these requirements, its records demonstrate otherwise, and show that the School suspends students in violation of the California Education Code for a wide range of conduct, including truancy, chewing gum and eating candy.

### Legal Implications

The disparate disciplinary conduct of the School and its excessive use of force in conducting discipline pose serious constitutional and other legal violations.

Violation of Race Discrimination Laws. At a November 16, 2006 School Board meeting, Superintendent Geyer admitted that Native American students are disciplined at much higher rates than other students. It does not appear that the School has made any efforts to address this disparity, despite the School's acknowledgement of the problem and the vocal protests from Native American parents at the meeting. We view this lack of responsiveness by the School to its admitted discriminatory conduct as constituting deliberate indifference. See 42 U.S.C. § 1983; United States Constitution Amendment XIV; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*; California Constitution, Article I § 7.

The increased suspension of Native American students has caused attrition of these students at higher rates than the School's other students. According to our investigation, the cause of these departures has two sources. Some students cannot attend the School as a result of the number of suspensions they have received. The parents of other students have removed their children from the School because of either fear of or disdain for the School's treatment their children, placing the children in continuation schools instead. We have been told

that for the 2005-06 academic years, half of the Native American students in the sixth grade class were sent to the continuation school and seven of the twenty-six Native American students in the eighth grade went to the continuation school. This removes these children from the college track and places long-term limitations on their later career opportunities.

Violations of the Education Code. As noted above, your records show repeated violations of the California Education Code in connection with suspension and expulsion practices. Education Code Sections 48900 through 48927 establish the procedures that schools must follow in suspending or expelling a student. Numerous reasons given by the School for suspension of Native American students are not permitted under Section 48900. The School has inappropriately suspended students for violating its dress code, chewing gum, minor altercations, reasons denominated as "miscellaneous," and even without explanation. The School's statistics show a discriminatory practice of applying labels of "disruptive activities" or "willful defiance" without consistent application. While the California Education Code explicitly prohibits the use of suspension for truancy or tardiness, School records reflect that such conduct formed the basis for multiple suspensions. Cal Educ. Code § 48900(v).

Section 48900.5 mandates that schools use suspension only as a last resort "when other means of correction fail to bring about proper conduct." It permits suspension of a pupil for a first offense only if the student has engaged in one of the first five enumerated subdivisions in 48900, or where "the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process." The October 2005 incident with Officer McClinton exemplifies the School's excessive response to a dress code violation, which included the arrest, physical assault and suspension of one child, and the physical assault and multiple-day suspensions for others. Wearing a bandana is neither an enumerated reason appropriate for suspension, nor does it "cause a danger to persons or property or threaten[] to disrupt the educational process" and therefore is not a suspendible activity under the Education Code. Cal. Educ. Code § 48900.5.

Further, suspension should be preceded by an informal conference conducted by the principal, at which time students should be told the basis for the decision to suspend and be given an opportunity to present their version of events. Cal. Educ. Code § 48911(b). It is our understanding that the School regularly violates this requirement.

We believe the School's' conduct is actionable. However, we devote the remainder of this letter to discussing procedures that, if employed by the School, would permit it to voluntarily reform its conduct to adhere to applicable legal standards.

### **Creating a Positive School Climate: Current Policies**

Parental complaints. While we are not aware of any specific attempts to address the racial disparity in the suspension rates, we are aware that the School has attempted to address parental concerns raised at School Board meetings, including compiling statistical information requested by Shawn Bengochia, the Director of the Indian Education Center. Specifically, we attended the presentation of that information given at the November 16, 2006 Board Meeting, at

which School authorities answered questions from parents. Additionally, we recognize that the Memorandum of Understanding regarding the SRO is being re-drafted, and that Officer McClinton is no longer housed at Home Street Middle School.

Policies. We understand that the School has nondiscrimination policies in place, as well as policies regarding the role of the SRO on campus, the responsibilities the School officials have when police question or remove students from campus, and policies on student discipline.

Staff Development. We commend the School for its use of anti-bullying programs. These programs are very useful to help the School staff and students become aware of bullying in all of its forms. We encourage the continued use of such programs, particularly those programs which address issues of cultural diversity.

We note with some surprise that the School has conducted training for its staff on recognizing and handling gang activity. In responding to our Public Records Act request, the School provided no documents responsive to the request seeking documents about active gangs in the School. It therefore appears that the School may be focusing on non-existent gang activity to the detriment of giving its attention to other problems.

Student Development. We are pleased that the School has adopted the Teaching Tolerance curriculum of Rosa Parks. This sort of program is likely to provide students (and teachers) with a better understanding of and respect for diverse cultures, and the roles people from different backgrounds have played in our history. We further commend the School for its adoption of a conflict resolution program. In our view, such a program can teach children how to resolve conflicts in a healthy manner, thereby reducing the likelihood of violence at school, and increasing students' understanding of each other. We were particularly pleased to note that the advanced program addresses issues of diversity. It was unclear whether the School has utilized this advanced program, and we encourage its use in the future.

### **Creating a Positive School Climate: Assessment and Suggestions for Improvement**

It is our belief that the School should focus its efforts on eliminating discrimination, particularly discriminatory discipline, as well as ensuring that the relationship between the School and law enforcement enhances the safety of students and builds trust with their parents. As Janet Schufield, a psychology professor at the University of Pittsburgh, explains, "it has to be more than, 'We don't tolerate fights here.' It has to be, 'We really value kids from different backgrounds.'" JoAnna Natale, *Education in Black and White*, American School Board Journal, February 1998, at 8. While we reference below specific programs for your consideration, we do not endorse any program in particular, nor do we attempt to provide an exhaustive list. Rather, we hope that this letter serves as the beginning of a conversation regarding the kinds of programs that we hope can effectively redress the systemic racism at the School.

Many programs have been designed to create long-term solutions to discrimination in schools. The National Mental Health Association strongly supports "no reject, no eject" policies aimed at responding to misbehavior with appropriate resources that support behavioral change

in positive, non-punitive ways. National Mental Health Association, *Position Statement: Opposing the Blanket Application of Zero Tolerance Policies in Schools*, available at: <http://www.nmha.org/position/zerotolerance.cfm>. Schools play an important role in preparing students to live in a diverse society. Rosemary C. Henze, *Leading for Diversity: How School Leaders Achieve Racial and Ethnic Harmony*, Center for Research of Education, Diversity and Excellence (June 2000), at 4, available at <http://www.acal.org/crede/pubs/ResBrief6.htm>. In order to effectively prepare students, schools must implement strategies at all levels, from staff development, student training, changes to curriculum, changes to policies and practices, to working with both parents and community institutions such as the Indian Education Center.

Overview of Current Problems. At a global level, we are troubled that the School has focused so much on a punitive approach to discipline as evidenced by both its suspension statistics as well as the often minor reasons given for those suspensions. Our investigation did not uncover any serious efforts by the School to address Officer McClinton's excessive use of force or the School's admitted discriminatory discipline rates.

Discipline in the public schools should have at least two purposes. The first, obviously, is to punish inappropriate (and sometimes illegal) behavior. The second, however, is to educate students about why certain behaviors are inappropriate, how those behaviors can harm others, and how to respond more appropriately to similar situations in the future. Unfortunately, the School's own statistics on discipline indicate that the School seems to focus solely on the punishment prong of discipline.

We have seen little indication that the School has used assemblies or any other forum to have an educated, thoughtful and respectful discussion about *why* teachers and administrators should not discriminate against students, about the psychological harm it causes, or about the history of discrimination in this country and, in particular, in Bishop. Without proper education and an opportunity to think deeply about these issues, it is extremely unlikely that teachers and administrators will be able to respond adequately to these sorts of situations.

Many psychologists believe that one of the developmental needs of school-age children is to form trusting relationships with adults. The Civil Rights Project of Harvard University and The Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline*, A Report from the National Summit on Zero Tolerance, June 15-16, 2000, Washington, D.C., at vi. By disciplining one race of children significantly more than other children, the School is encouraging children to mistrust adults and possibly form adversarial relationships with them. On the other hand, imposing proportionate punishments for rule violations and ensuring that one race of students is not unfairly targeted for discipline would increase students' faith in authority. *Id.*

While we commend the School for having nondiscrimination policies, it is unclear if and how often these policies are disseminated to parents, administrators or teachers. On a substantive level, we recommend you clarify both the definitions of harassment and discrimination in your policies as well as the illegality of such conduct. The School's policies

should be regularly updated and disseminated. Teachers and administrators must be trained so that they understand not just the policies, but the need for them.

Accountability. The ERASE Initiative recommends that all school districts be required to keep and annually publish key statistics, disaggregated by race, ethnicity, and income. See ERASE, *Facing the Consequences: An Examination of Racism in U.S. Public Schools*, available at [http://www.arc.org/erase/FTC1intro\\_ii.html](http://www.arc.org/erase/FTC1intro_ii.html). Once these Racial Equity Report Cards are publicly released, policy makers can base decisions on research that provides a basis for projecting the likely racial outcomes of such decisions. These report cards would also help the School understand which programs or policies are beneficial, and which need to be modified. In maintaining its disciplinary records, the School should track not just the race of the students involved but also the teachers who refer students for discipline. Staff and administrators should know that their methods of disciplining students, as well as their ability to address, prevent and resolve problems, will be part of their overall performance evaluations.

Complaint Procedures. In spite of any school's best efforts, incidents of racial discrimination in school are bound to occur. Having effective and sensitive complaint procedures is a crucial component of any school equity plan. Such procedures should track the types of transgressions reported, who the participants are, how the school responded to the incidents, whether the consequences were an appropriate response to the facts of the complaint and patterns of behavior by particular individuals.

In addition, while the School has a conflict resolution program, the documents we received do not show the extent to which this program has been utilized, whether the advance training (addressing diversity issues) was completed, when it was used, or how many students were affected.

Policies Regarding Police on Campus. We do not see the basis for the School's use of a SRO. After the incident with Officer McClinton on October 11, 2005, minutes from the October 20, 2005 and November 16, 2005 Board meetings indicate a decision to modify the School's SRO policy. The only new document we received, however, is a handout answering frequently asked questions about the MOU between the School and the Bishop Police Department. Officer McClinton, while no longer housed at Home Street Middle School, remains the SRO for the School. In light of Officer McClinton's past conduct, we request his removal from the School.

In addition, we have concerns with the School's policy regarding its role in situations where the police question or remove children from school. It is unclear whether this policy is disseminated to parents, teachers and administrators, as it seems that it is not always followed. We suggest revision of the policy with an eye towards welcoming parents further into the school community. While parents do not have a right to be present when the police question their children, it is certainly better practice for school districts to make every effort to inform parents as soon as possible any time police question their children. School officials are required by law to take immediate steps to notify parents or guardians any time children are removed from

school. Cal. Ed. Code § 48906. Ensuring that schools work to inform parents as soon as the police question their children should serve to build trust between parents and the School.

Progressive Discipline Policy. We commend the School for its progressive discipline policy that includes disciplining instances of racial harassment and discrimination. However, we are disturbed to see that making racial remarks can lead to immediate suspension, referral to police, or expulsion. This policy applies a blunt instrument to a situation requiring delicacy. Moreover, it also violates Education Code Section 48900, which prohibits suspension for a first offense except for five clearly articulated reasons, none of which are relevant here.

Staff Development. The School does not appear to provide staff programs devoted to enhancing cultural sensitivity to Native American concerns, despite School Board meeting minutes reflecting that many members of the School's staff feel unprepared to handle cultural diversity issues. While the School agreed to provide relevant training, we have seen no documentation of trainings or meetings in which staff were given the opportunity to focus exclusively on these issues. We suggest the School implement programs designed to teach staff how to ensure that they are not discriminating against Native American students and how to respond appropriately when confronted with complaints of racial discrimination. Strategies that target the racial awareness and racial diversity of staff are crucial because staff is central to implementing virtually any new School effort.

The goal of any staff development program should be to develop or enhance the school climate. Teachers are essential to creating an environment in which students of all backgrounds can feel safe, welcomed, and appreciated. The School has already recognized the centrality of this principle in the student policy entitled, "Positive School Climate." That policy states, "The Governing Board desires to provide an orderly, caring, and nondiscriminatory learning environment in which all students feel comfortable and take pride in their school and their achievement... The Governing Board encourages staff to teach students the meaning of equality, human dignity, and mutual respect...." The policy encourages the School to have students take an active role in thinking about and implementing policies, and to promote non-violent conflict resolution. We absolutely applaud such goals, but, as discussed above, your documents show a failure to implement these goals.

The School's Positive School Climate policy cannot be achieved without ongoing training and commitment by all School staff. Training should provide concrete plans for implementing the policy in the day-to-day activities in classrooms. We believe a critical component of success is to include in the evaluation of all staff members whether they overly discipline Native American students (intentionally or not), and how they handle conflicts among children from different ethnic backgrounds.

While we do not have statistics on staff diversity, anecdotal information suggests that there are few, if any Native American teachers, including Native American liaisons, in the School. Increasing faculty diversity is a critical component of addressing systemic discrimination. Moreover, faculty diversity is not only crucial to kids of color: students of all races suffer when they are denied the opportunity to learn from teachers of color, and white students derive



important lessons when their role models include teachers of color. *Facing the Consequences* at 7.

Changes to Curriculum. Including issues of race and racial diversity in the School's curriculum can shift the way students perceive themselves and each other, as well as keep teachers engaged in these important issues. Curricular change integrates education about race and diversity issues into lessons' substance, rather than making it something "extra" that can be easily dismissed. School "programs that promote positive inter-group relations have the potential to help the nation's youth learn to get along with people of diverse backgrounds and become engaged and responsible citizens." Facing History and Ourselves and The Group for the Study of Interpersonal Development at Harvard University, *A Synopsis of the Research: Improving Inter-group Relations Among Youth: A Study of the Processes and Outcomes of Facing History and Ourselves*, at 2.

One example of such a program is *Facing History and Ourselves* ("FHAO"). This program trains teachers to trust that students will benefit if they "[e]xamine history in all of its complexities, including its legacies of prejudice and discrimination, resilience and courage." See <http://www.facinghistorycampus.org/campus/campus.nsf/newbieaboutus>. Indeed, a study of the effectiveness of FHAO shows "increased maturity and decreased fighting behavior, racist attitudes, and insular ethnic identity relative to comparison students." The Group for the Study of Interpersonal Development at Harvard University and Facing History and Ourselves, *A Synopsis of the Research: Improving Inter-group Relations Among Youth: A Study of the Processes and Outcomes of Facing History and Ourselves*, at 4.

Teaching Tolerance, a program founded in 1991 by the Southern Poverty Law Center to provide educators with free materials that promote respect for difference and appreciation of diversity, offers many sample classroom activities online ([tolerance.org](http://tolerance.org)). We recognize that the School has used curriculum from Teaching Tolerance at least once in the past, and encourage you to delve further into the suggested curricula by incorporating it into more classes on a regular basis.

Student Development. Student training is a critical part of any efforts to eradicate systemic discrimination in the schools. To help counteract the tendency for diversity training to go in one ear and out the other, some programs focus on fostering skills that enable the lessons promoted to be carried back to mainstream school activities. For example, the National Coalition Building Institute (NCBI) strives to teach skills that provide influential leadership to end discrimination, reduce intergroup conflict, and build multi-group coalitions. See <http://www.ncbi.org/trainingprograms>. Ideally, students (especially older students) should be involved in formulating discipline policies as well as implementing them, as suggested in the article on peer mediation provided by the School as a response to the Public Records Act requests.

Further, as noted above, one goal of any program should be to build trust both between students, and between students and adults. Punishing children proportionately and consistently for the same rule violations will enhance that trust. Children will learn that there are

consequences for their actions, but those consequences are fair, which will be empowering for them, because they will learn that by controlling their behavior, they can help control whether and how much they are punished. To that end, staff should avoid labeling individual children (or races of children) as "trouble-makers." Instead of teaching children to trust authority figures, it teaches them that no matter what they do, they will not be trusted or respected by those authority figures. This should not be countenanced.

Increase Parental Involvement: BUESD should view parents as allies in the work of educating children. To that end, policies and other documents given to parents should reflect that BUESD officials trust, support, and encourage the involvement of parents, as well as the goal of creating or enhancing a positive school climate. Thus, the tone of all documents sent out to parents should empower parents rather than disempowering them.

Increase Community Involvement: BUESD can benefit from close working relationships with local organizations. In particular, BUESD is fortunate that it has a wonderful partner in the Indian Education Center, particularly on issues of diversity and cultural awareness.

Student Handbooks: We received only one parent and student handbook, the Bishop Elementary School Handbook for academic year 2005-06. The handbook makes no reference to the School's anti-discrimination policy or complaint procedures relating to discrimination. We suggest the School's handbooks include these policies with an easy to understand explanation of the method by which complaints can be lodged, including name and phone number of the person charged with addressing such issues. The anti-discrimination policy should protect persons of any race, gender or sexual orientation, define the key terms such as discrimination and harassment, and provide a mechanism to protect those reporting alleged violations from retaliation.

### **Summary of Suggested Steps**

In summary, to address the substantial racial disparities in the School's disciplinary procedures, we recommend taking the following steps:

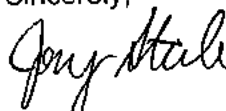
1. Remove the SRO from the School
2. Create an foster a positive and open school climate through:
  - a. Defining "success" as including school climate
  - b. Developing and emphasizing proactive and preventive measures such as:
    - i. Encouraging staff development through:
      1. Providing training to staff on the School's policies

2. Providing programs that will enhance staff's understanding of cultural diversity issues. These trainings should include:
    - discussions with staff about why it is important not to discriminate against students, particularly in the context of discipline
    - discussions about the historical context of discrimination and harassment
  3. Creating clear and consistent policies regarding responding to problems
  4. Create accountability by tying teachers' and administrators' overall evaluation to the implementation of anti-discrimination and harassment policies, including ensuring that discipline comports with all legal requirements
- ii. Encouraging student development through:
1. Integrating conflict resolution and cultural diversity training into the day-to-day lives of students, including in the curricula
  2. Empowering student groups to participate in formulating and implementing programs addressing peer harassment, bullying and other mistreatment
  3. Utilizing programs specifically designed to provide additional support to students of color
- iii. Ensuring that students and their parents know the School's policies by improved parent/student handbooks, which include:
1. A statement of the School's anti-discrimination policies and procedures
  2. Explanation of how parents or students can lodge complaints regarding discrimination or improper discipline, including contact information of those designated to resolve such complaints
  3. A statement that the School prohibits retaliation for filing complaints and that any alleged retaliation will be addressed

- iv. Maintain data regarding discipline in a form disaggregated by race and gender
- v. Building relationships between and among administrators, teachers, parents and local institutions such as the Indian Education Center

Please contact either Nicole Diller of Morgan Lewis at 415.442.1312 or the undersigned at your earliest convenience to arrange a time when we can discuss this matter further.

Sincerely,



Jory Steele

cc: Nicole A. Diller,  
Morgan Lewis & Bockius LLP