



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Loren W. Soukup
Erin E. Stagg

Of Counsel
Ellie R. Austin
Robert J. Henry
Patrick C. Wilson
Frank Zotter, Jr.

MEMORANDUM

To: Jamie Hansen, Director of Communications, Sonoma County Office of Education (“SCOE”)
From: Monica D. Batanero, Sr. Assoc. General Counsel
Date: October 8, 2020
Re: Addressing Issues of Discrimination and Equity in California Schools

Local educational agencies (“LEAs”) are under a number of legal obligations to prevent and address discrimination in their programs. These legal obligations can be found in both California and Federal law. This memorandum will address the legal framework under which LEAs must address discrimination in their programs and will outline ways in which LEAs also can address issues of equity in order to help meet their annual goals that are to be achieved for all students and each student group for each state priority outlined in their Local Control and Accountability Plans.

Legal Framework

California schools have an affirmative obligation to combat racism, sexism, and other forms of bias, and have a responsibility to provide equal educational opportunities to all students.¹

In addition, California schools must ensure that all students enrolled in public elementary schools and secondary schools have equitable access to educational programs to strengthen technological skills, regardless of race, creed, color, national origin, gender, gender identity, gender expression, physical disability, geographic location, or socioeconomic background.²

Specifically, Education Code section 220 states:

“No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate

¹ Cal. Educ. Code § 201

² Cal. Educ. Code § 51007



crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.”

Federal law also requires that LEAs operate their programs in a non-discriminatory manner and obligate that LEAs affirmatively prohibit discrimination.

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance.³ Programs and activities that receive Federal financial assistance from the United States Department of Education (“DOE”) are covered by Title VI.

Title VI states that:

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Programs and activities that receive DOE funds must operate in a non-discriminatory manner. These may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment, if it affects those who are intended to benefit from the Federal funds. Also, a recipient may not retaliate against any person because he or she opposed an unlawful educational practice or policy, or made charges, testified or participated in any complaint action under Title VI. For a recipient to retaliate in any way is considered a violation of Title VI.

The Office for Civil Rights (OCR) in the DOE is responsible for enforcing Title VI as it applies to programs and activities funded by the DOE. OCR's responsibility to ensure that institutions that receive DOE funds comply with Title VI is carried out through compliance enforcement. OCR has the authority to investigate, negotiate, and resolve complaints from those who complain they were discriminated against due to their race, national origin, or color. For example, if minority students are assigned to public elementary school classes designed for special needs students, the OCR has the authority to investigate this practice. If it finds discrimination, it can require the school to change the practice or lose funding.

OCR also has the discretion to look into discrimination that was not formally reported and may choose which institutions to investigate and review. For example, if a school district fails to provide equal opportunity to learn to students of Chinese and Mexican origin with limited English-speaking abilities, OCR may investigate and work with the school to resolve the issue.

California and Federal law require that LEAs adopt, publish and implement nondiscrimination policies. CSBA has drafted the following nondiscrimination policies, which many LEAs adopt:

³ <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>



Board Policy and Administrative Regulation 4030 (Nondiscrimination in Employment) and 5145.3 (Nondiscrimination/Harassment). In addition, LEAs are also required to establish a uniform complaint procedure to process/investigate claims of discrimination (see CSBA's model BP and AR 1312.3). These policies and administrative regulations address an LEA's responsibilities to prohibit and address discrimination and outline the process by which reports and/or complaints of discrimination are processed and investigated.

In 2016, the California legislature recognized that research evidence found that well-designed and well-taught ethnic studies curricula has positive academic and social outcomes for students. This was reflected in reduced drop-out rates and increased student attendance in the at-risk student population.⁴

California law now requires that the State Board of Education (SBE) adopt a model curriculum in ethnic studies by March 31, 2021 and encourages districts to offer an elective course in ethnic studies based on that model curriculum, when available, in at least one grade level during grades 9-12.⁵

Addressing Issues of Equity

Local educational agencies have engaged in activities to address issues of equity as a means to combat discrimination in the employment and academic environments. LEAs can take proactive steps to identify class and cultural biases as well as practices, policies, and institutional barriers that negatively influence student learning, perpetuate achievement gaps, and impede equal access to opportunities for all students. LEAs can routinely review data disaggregated by race, ethnicity, and socio-economic and cultural backgrounds in order to more closely analyze if there are first any disparities in attendance, drop-out rates, student discipline, or enrollment in A-G courses, for example. Also important is building a positive school climate that promotes student engagement, safety, and academic and other supports for students. Adopting curriculum and instructional materials, such as a curriculum in ethnic studies, may also be an opportunity to positively engage students from diverse groups and promote the LEA's commitment to supporting all students from diverse backgrounds.

When an LEA is considering establishing an equity-related initiative, it is important to involve the Governing Board so that the Board can determine what steps need to be taken prior to the Board approving the initiative. For example, the Board may determine that establishing a committee to analyze data and obtain stakeholder input is crucial to determining the needs of the District and its students and staff and how to best address any issues of inequity.

Ultimately, addressing issues of inequity is an important objective and requires a collaborative effort from stakeholders who are committed to ensuring that all students have equal access to programs and activities of an LEA and are not subject to discrimination, either explicitly or implicitly.

⁴ AB 2106 Assembly Floor Analysis (August 17, 2016)

⁵ Cal. Educ. Code § 51226.7