CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.

Santa Rosa
725 Farmers Lane, Ste. 10
Santa Rosa, CA 95405
(707) 528-9941
(707) 528-0125 (fax)
www.crla.org

Jeffery Hoffman
Directing Attorney

Robert J. Lotero
Assistant Directing Attorney

Dylan Saake
Staff Attorney

Alfredo Sanchez
Lorenzo Oropeza
Community Workers

Hilda Cisneros
Administrative Legal Secretary

Dulce Leal
Clerical

Central Office
631 Howard St., #300
San Francisco, CA 94105
Telephone 415.777.2752
Fax 415.543.2752

José R. Padilla
Executive Director

Luis Jaramillo
Deputy Director

Regional Offices
Arvin
Coachella
Delano
El Centro
Fresno
Gilroy
Madera
Marysville
Modesto
Monterey
Oceanside
Oxnard
Paso Robles
Salinas
San Luis Obispo
Santa Barbara
Santa Cruz
Santa Maria
Santa Rosa
Stockton
Watsonville

LSC

August 21, 2008

Sent via certified mail

Dr. Sharon Liddell
Superintendent
Santa Rosa City Schools
District Office
211 Ridgway Avenue
Santa Rosa, CA 95401

Re: Demand Letter Regarding Santa Rosa City Schools Gang Affiliation and Activity Administrative Regulation and Notice of Concern Policy

Dear Dr. Liddel:

We write to express our concerns with the Santa Rosa City Schools' ("SRCS") Administrative Regulation 5114.16, entitled "Gang Affiliation and Activity" ("AR 5114.16") and SRCS's use of the "Notice of Concern: Gang Affiliation and Activity." Both the policy as crafted and the use of the form strip students of their federal and state constitutional and statutory rights.

The broad discretion granted by the policy allows school officials to arbitrarily identify students as gang members, and results in a disproportionate number of Latino students being so identified. The maintenance of a Notice of Concern in the student's file both stigmatizes and punishes students who have not committed any crime or violated any provision of the Education Code.

It is our hope that we may resolve this issue without resorting to legal action before the unconstitutional practice claims any victims in the 2008-2009 school year.

Under federal law, regulations proscribing speech or other activity must be sufficiently specific so as to provide notice to students of what conduct is prohibited and prevent the arbitrary and discriminatory enforcement of the regulation. *Nunez v. City of San Diego,* 114 F.3d 935, 940 (9th Cir., 1997); *Stephenson v. Davenport Community School District,* 110 F.3d 1303, 1308 (8th Cir., 1997). SRCS's enforcement of AR 5114.16 does neither.

No where does SRCS's policy define what is meant by the term "gang related." As such, the regulation is too broad as it fails to provide students with sufficient notice as to what conduct is prohibited. With little or no guidance, the policy gives school site staff unfettered discretion to determine what conduct is in their judgment "gang related" and fails to provide specific guidelines to ensure that officials base disciplinary decisions on reliable, accurate information free from conscious or unconscious discrimination. It further directs them to consider information "obtained from appropriate community agencies and resources". AR 5114.16 § (2)(A). As a

result, prohibited activity varies on a school by school basis, depending on which staff person is imposing the policy at the school site level and ~~on~~ what agency has been solicited for information. Students are unable to determine what clothing or symbols a certain school official may determine is gang related on a given day, or at given school site.[1] This section of the regulation imposes no mandates that the information solicited from appropriate agencies be communicated to the students and does nothing to rectify the regulations' due process shortcomings arising from the failure to provide adequate notice to students of what conduct is prohibited.

A review of redacted expulsion records illustrates the inevitable result of such a policy. It seems clear that the young eighth grader expelled from Rincon Valley Middle School had no idea that having a cell phone and wearing a blue knit cap could result in her expulsion, as that information is nowhere in the regulation, let alone anywhere in the Education Code. The same is true for the eighth grader from Santa Rosa Middle School who was expelled for bringing an inappropriate CD and having "gang related" doodles on her arm.

SRSC's AR 5114.16 is very similar to a "gang related" policy that was struck down in *Stephenson v. Davenport Community School District,* supra, 110 F.3d 1303. In *Stephenson*, the policy at issue read as follows, "gang related activities such as display of 'colors', symbols, signals, signs, etc., will not be tolerated on school grounds. Students in violation will be suspended from school and/or recommended to the Board for expulsion." The policy also gave broad discretion to school administrators to determine which conduct fell under the "gang related" rubric. The court found that the policy was "fatally vague" in that it failed to adequately define the term "gang." In rejecting the policy the court also noted, "The District regulation suffers from an additional defect because it allows school administrators unfettered discretion to decide what represents a gang symbol." *Id.*, 1310. SRCS' AR 5114.16 specifically grants to school officials the unfettered discretion that federal courts have determined results in a policy that is "fatally vague."

In *City of Chicago v. Morales,* 527 U.S. 41(1999), the U.S. Supreme Court struck down a city ordinance that prohibited loitering with gang members. The ordinance defined "loiter" as remaining "in one place 'with no apparent purposes.'" *Id.*, 53. The Court found that the ordinance failed to provide adequate notice to the public as to what constitutes an "apparent purpose." *Id.*, 57. This failure of specificity resulted in a law that gave too much discretion to police officers and opened the door to discriminatory enforcement. *Id.*, 61. The SRCS regulation suffers from the same absence of guidelines and granting of broad discretion that led the Court to invalidate the ordinance in *City of Chicago* and district regulation in *Stephenson.* Because it is so fatally flawed, AR 5114.16 has resulted in arbitrary and discriminatory enforcement that has directly targeted Latino youth enrolled in the District.

In addition to undermining the due process rights of students, AR 5114.67 undermines their First Amendment rights under of the U.S. Constitution. Because it is so broad, AR 5114.16 captures certain activities protected by the First Amendment and typically identified with Latino youth and

[1] In the criminal justice context, an ordinance that allows for criminal sanctions based on conduct that, "in the opinion of law enforcement is illegal" would be stricken down as a violation of the U.S. Constitutions' Due Process protections. School and the criminal justice context are not always reviewed under the same analysis; however, when school regulations limit First Amendment rights, "the doctrine demands a greater degree of specificity," than when other constitutional rights are implicated. *Smith v. Goguen,* 415 U.S. 566, 573 (1974).

culture. Anecdotal evidence strongly suggests that the drafting and enforcement of the regulation was specifically intended to target the District's Latino youth. There is ample evidence that students have been subject to "Notice of Concerns" for expressions made through art and poetry, in addition to personal expressions made through attire and speech. Students who have faced or fear suspension, expulsion, or referral to law enforcement officials are victims of a discriminatory and unconstitutional gang regulation. Such regulations are illegal. *Thornhill v. State of Alabama,* 310 U.S. 88, 97 (1940); see also *Gatto v. County of Sonoma,* 98 Cal. App. 4th 744, 776 (2002).

The Constitutional deficiencies of the regulation are apparent, but the policy also violates explicit California Education Code protections afforded to students. According to AR 5114.16 and the Notice of Concern, SRCS students are subject to severe disciplinary consequences, including suspension, expulsion, and involuntary transfer to continuation high school, if a school staff person suspects that a student has engaged in what s/he believes to be "gang related" behavior or for wearing "gang related" clothing. However, the Education Code establishes the exclusive grounds for which a student may be suspended or expelled. (See, *Slayton v. Pomona Unified School District*, 161 Cal. App.3d 538, 549 (1984)). Students can only be suspended or expelled if they are found to have committed certain enumerated acts explicitly set forth in the Education Code. (*See*, Educ. Code §§ 48900, 48900.2, 48900.3, 48900.4, 48900.7.)

No provision of the Education Code gives a school district the authority to suspend or expel a student for wearing "gang related" clothing or accessories; for exhibiting "gang related" gestures or posturing; or for even openly belonging to a gang. None of the grounds for suspension or expulsion enumerated in the Education Code are enhanced in any way if they are found to be "gang related" by a school district.[2] Nor does a school district have the authority to waive any of the notice and other procedural protections set forth in the Education Code if a student or the act in question is found to be "gang related". It appears from the review of the records, that your schools are relying upon Education Code 48900(k) to justify the discipline of students for gang related activity. However, the constitutional deficiencies of such discipline cannot be cured by characterizing the activity as "defiance" since students are not fully aware of what constitutes a prohibited activity.

The Education Code also includes specific provisions governing the involuntary transfer of students to continuation high schools. Any decision to involuntarily transfer or place any student in a continuation high school must be based on a finding that a student, "committed an act enumerated in Section 48900 [grounds for expulsion], or. . . has been habitually truant or irregular in attendance from instruction upon which he or she is lawfully required to attend." (Educ. Code § 48432.5.) The Education Code does not authorize the involuntary placement of a student in a continuation high school for wearing gang related apparel or for exhibiting gang related gestures.

In addition to undermining the Education Code provisions referenced above, AR 5114.16 fails to comport with the Education Code provisions governing the development and establishment of school safety plans. (*See*, Educ. Code §§ 32280 *et seq.*) Although school districts are authorized to establish dress codes that prohibit "gang-related apparel" pursuant to a comprehensive school safely

[2] Although AR 5114.16(2)(B) suggests that a gang related gesture must pose a threat to others, no such qualifying language applies to wearing gang-related apparel. The Notice of Concerns further reveal that students are cited for perceived "gang related" activity *per se* without finding that they, in fact, pose a threat to any one or disrupt the educational process.

plan, such a plan must "*define*" what is meant by "*gang related apparel.*" (Educ. Code § 32282(a)(2)(F))(emphasis added). As discussed above, no such definition is found in AR 5114.16; rather, such a determination is left to the sole and arbitrary discretion of school site staff.

The manner in which the records are maintained, the threats directed at students and parents regarding the signing of the Notice of Concerns, and the sharing of the information with local law enforcement in violation of the student's privacy rights are all additional concerns about AR 5114.16 that we would like addressed.

We are demanding that SRCS voluntarily agree to suspend enforcement of this regulation while we discuss a resolution that does not impede the exercise of constitutionally protected rights of SRCS students and violate independent statutory obligations.

As you know we are still awaiting the documents requested in our June 13, 2008, Public Records Act Request. Those documents will greatly assist in any discussion related to the gang-policy regulation, and we are requesting that any and all documents in your possession that are responsive to our request be produced immediately.

Because the school year has already begun we ask that you immediately send notice to each school that no discipline actions or Notices of Concern are to be taken pursuant to AR 5114.16. Please provide us with documentation of doing so by no later than August 29, 2008. Thereafter, we would welcome the opportunity to meet with you to discuss alternatives to these vague and overbroad policies.

We thank you in advance for your prompt response to our concerns. Please feel free to contact us if you have any questions.

Sincerely,

Dylan Saake
Staff Attorney
C.R.L.A

Cynthia Rice
Director of Litigation Advocacy and Training
C.R.L.A.

Deborah Escobedo
Staff Attorney
Youth Law Center

CC: George Valenzuela, SRCS
Robert Henry, SCLS