



Northern  
California



*By Electronic Mail*

December 5, 2022

San Francisco Office, Office for Civil Rights  
U.S. Department of Education  
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San Francisco, CA 94102  
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RE: Loleta Union School District's Violations of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973

Dear San Francisco Office and Mr. Lambert:

As you are aware, the U.S. Department of Education Office for Civil Rights ("OCR") opened an investigation into discriminatory conduct by the Loleta Union School District ("Loleta USD" or "District"), which operates the Loleta Elementary School ("Loleta Elementary"), in response to a complaint filed in December 2013 by the ACLU Foundation of Northern California ("ACLU"), the National Center for Youth Law, and California Indian Legal Services on behalf of the Wiyot Tribe of the Table Bluff Rancheria ("Wiyot Tribal Council") with the support of the Bear River Band of the Rohnerville Rancheria ("Bear River Band").<sup>1</sup> In November 2017, OCR released findings of significant evidence of discrimination on the basis of race/ethnicity and disability<sup>2</sup>

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<sup>1</sup> Complaint to U.S Dep't of Educ., Off. of Civ. Rts. re Loleta Union School District's violations of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973 (Dec. 18, 2013), available at: <https://www.aclunc.org/sites/default/files/2013.12.18%20Loleta%20OCR%20Complaint.pdf>.

<sup>2</sup> Letter of Resolution in Case No. 09-14-1111 from U.S Dep't of Educ., Off. of Civ. Rts. (Nov. 22, 2017), available at: [https://www.aclunc.org/docs/20171127-resolution\\_letter-case\\_14-1111-redacted.pdf](https://www.aclunc.org/docs/20171127-resolution_letter-case_14-1111-redacted.pdf).

and entered into a Voluntary Resolution Agreement (“VRA”) with the District.<sup>3</sup> Despite progress made through the VRA, Loleta USD staff continue to discriminate against Indigenous students, with and without disabilities. The Tribal Council of the Bear River Band therefore brings this new complaint to underscore the gravity of the continuing discriminatory treatment of Indigenous students, with and without disabilities, in Loleta Elementary.

As a sovereign nation, the Bear River Band formally requests a government-to-government consultation with OCR as soon as practicable to discuss this complaint and requested resolution.<sup>4</sup> Please contact the Tribal Council of the Bear River Band through its counsel, Linnea Nelson at the ACLU, to arrange that meeting.

## **INTRODUCTION**

Complainant Tribal Council of the Bear River Band brings this complaint due to continuing discrimination on the basis of race/ethnicity<sup>5</sup> and disability by Loleta USD employees, including disparate treatment and harassment of Indigenous students. Loleta Elementary is the only school in Loleta and is overseen by Superintendent and Principal Linda Row (“Superintendent Row”). Many of the complaints specifically concern the treatment of Indigenous students by two teachers in the school, Heather Nyberg (“Ms. Nyberg”) and Mary Gustaveson (“Ms. Gustaveson”).

Loleta Elementary employees have used racial slurs towards Indigenous students and have engaged in disparate discipline of Indigenous students. For example, Ms. Nyberg used the “N-word” in class last month and told students that it was permissible to use that word. Also, Indigenous students, with and without disabilities, in Ms. Gustaveson’s class are routinely sent to the office and given behavioral write-ups for small behavior infractions, while non-Indigenous students are not disciplined for the same behaviors. In November 2022, Ms. Gustaveson

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<sup>3</sup> Resolution Agreement, Loleta Union Elementary School District, Case No. 09-14-1111 (Nov. 20, 2017), available at: [https://www.aclunc.org/docs/20171120-resolution\\_agreement-case\\_09-14-1111.pdf](https://www.aclunc.org/docs/20171120-resolution_agreement-case_09-14-1111.pdf).

<sup>4</sup> CONSULTATION AND COORDINATION WITH AMERICAN INDIAN AND ALASKA NATIVE TRIBAL GOVERNMENTS (U.S. DEP’T OF EDUC.), available at: <https://www2.ed.gov/about/offices/list/oese/oie/tribalpolicyfinal.pdf> (noting that “[p]ursuant to EO 13175...and in recognition of the Federal Government’s trust responsibility, ED will further strengthen its relationship with Indian tribes by implementing a process that ensures meaningful consultation and collaboration with Indian tribes when developing ED policies and actions that have tribal implications.”); Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, COMP. PRES. DOC. DCPD-202100090 (Jan. 26, 2021), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/> (noting it is a priority of President Biden’s Administration “to make respect for Tribal sovereignty and self-governance...and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.”); Exec. Order No. 13175, 65 Fed. Reg. 218 (Nov. 6, 2000), available at: <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

<sup>5</sup> Although “Native American” and “American Indian” are used as racial categories, Tribal members are citizens as a political class; therefore, Indigenous peoples and Tribes are also political categories.

screamed so loudly at an Indigenous student that other students were afraid Ms. Gustaveson was going to hit the student.

In addition, Complainant alleges that Loleta Elementary staff fail to make reasonable modifications to avoid discriminating against Indigenous students with disabilities, target students with disabilities for harassment, and deny those students the benefits of public education. For example, a recent Loleta USD investigation into Ms. Nyberg's treatment of an Indigenous student with a disability uncovered "numerous examples of [teacher Heather Nyberg] 'screaming,' 'yelling,' and raising her voice to both students and other staff members," and found that "[a] preponderance of the evidence supports the conclusion that [Ms. Nyberg] discriminated against students with recognized disabilities" and "created a negative educational environment by demeaning and shaming students," including disabled students. Exhibit 1.

Previously, the District had a School Climate Director who was also a School Psychologist, Sandy Radic-Oshiro, who provided essential student support. Ms. Radic-Oshiro's position was paid for by the Humboldt County Office of Education ("HCOE"), which is the Administrative Unit for the Humboldt-Del Norte Special Education Local Plan Area ("SELPA"). Ms. Radic-Oshiro left her position in the District in June 2022, and HCOE has ceased funding that position in the District. As a result, discrimination against students on the basis of race/ethnicity and/or disability status has significantly increased and the District has failed to take meaningful steps to remedy the discrimination and ongoing legal violations.

This complaint alleges continuing violations under Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. By violating these federal provisions, the District has effectively denied the benefit of a public education to Indigenous students, with and without disabilities, through discriminatory treatment and harassment by Loleta Elementary employees.

## **I. COMPLAINANT**

The Bear River Band of the Rohnerville Rancheria is a federally recognized Indian Tribe with all the rights and privileges afforded thereto.<sup>6</sup> The Bear River Band is governed by a seven-member Tribal Council. The mission of the Bear River Band is to promote balance between quality of life, self-sufficiency, sustainability and cultural awareness for Bear River.<sup>7</sup> The vision of the Tribe is shaping a secure, healthy future by responsibly exercising sovereignty, investing in their people, refining and evolving as a tribal organization, and preserving and revitalizing their culture while serving the best interests of all people.<sup>8</sup> The Tribe has a membership of 664, many of whom live on the Rohnerville Rancheria in Loleta, California. The majority of Bear River Band Tribal members are from the Mattole and Wiyot tribes. Many of the Bear River Band's children attend Loleta Elementary, which is the closest school to the Rohnerville Rancheria.

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<sup>6</sup> *Our Story*, BEAR RIVER TRIBE, <https://www.bearriverrancheria.org/our-story> (last visited Nov. 30, 2022).

<sup>7</sup> BEAR RIVER TRIBE, <https://www.bearriverrancheria.org/> (last visited Nov. 30, 2022).

<sup>8</sup> *Id.*

For countless generations, Indigenous communities, including the Wiyot and Mattole people, have lived in what is now Northern California. Today, California is still home to the largest Indigenous population of any state in the United States. However, since the 1840s, when Euro-American settlers arrived in the area, Indigenous tribal communities have been ravaged by destructive government-supported policies and practices, including massacres, disease, slavery, relocation, forced enrollment in distant boarding schools, and exclusion from local public schools. Despite these staggering obstacles, Indigenous communities in Humboldt County such as the Bear River Band have demonstrated extraordinary strength and resilience to survive and overcome genocidal attempts to extinguish their people, language, culture and traditions. In 1958, the U.S. Congress tried to “terminate” the Bear River Band.<sup>9</sup> In 1983, the Tribe, along with 16 other California tribes, successfully fought in court to regain its federal recognition status.<sup>10</sup> Despite this legal victory, the U.S. government never compensated the Tribe for its land, resources, rights, and cultural heritage that were taken.<sup>11</sup> Today, due to its own zealous efforts, the Bear River Band has created education, health, social services, housing, employment, economic development and cultural rejuvenation programs to support its members.<sup>12</sup>

But Indigenous children in Humboldt County, including Bear River Band children, continue to face significant challenges in the public education system. A 2020 report authored by the ACLU found that Indigenous students in Humboldt County, including in Loleta USD, face vast disparities in academic outcomes across a range of indicators.<sup>13</sup> Patterns of discriminatory treatment and inadequate educational services for Indigenous students perpetuate this historical marginalization. The Bear River Band continues to be committed to challenging these historic inequities on behalf of its members and all Indigenous students. Remedying unlawful discrimination is essential to provide Indigenous students at Loleta USD with equal educational opportunities so they can further their educations and achieve professional success.

## **II. LEGAL VIOLATIONS AT LOLETA UNION SCHOOL DISTRICT**

### **A. The District Violates Title VI by Discriminating Against Indigenous Students on the Basis of Race.**

Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits recipients of federal financial assistance (“recipients”) from discriminating based on race, color, or national origin.<sup>14</sup> Specifically, Title VI prohibits a recipient from discriminating against a protected group either through disparate treatment of that group or through practices or policies that have a disparate

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<sup>9</sup> *Supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> THEODORA SIMON, ET AL., *Failing Grade: The Status of Native American Education in Humboldt County*, ACLU FOUND. OF N. CAL. (2020), available at: <https://www.aclunc.org/sites/default/files/ACLU%20Humboldt%20report%2010%2026%2020%20final%20web.pdf>.

<sup>14</sup> 42 U.S.C. § 2000d (2022).

impact on that group.<sup>15</sup> To enforce Title VI, OCR may investigate and bring actions against a recipient that discriminates on the basis of race. Proving disparate treatment requires that a recipient was motivated, at least partially, by discriminatory intent.<sup>16</sup> Discriminatory intent can be proven through either direct or circumstantial evidence.<sup>17</sup> Circumstantial evidence of discriminatory intent includes such factors as:

- substantial disparate impact to a protected group;
- a history of discriminatory official actions against a protected group;
- procedural and substantive departures from the norms generally followed by the decisionmaker;
- discriminatory statements in the administrative history of the decision;<sup>18</sup> and
- deliberate indifference to known discrimination.<sup>19</sup>

These principles also may be used to analyze claims that a defendant has engaged in a “pattern or practice” of unlawful discrimination.<sup>20</sup>

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<sup>15</sup> 34 C.F.R. § 100.3(b)(1)-(2) (2022). The regulations promulgated by the U.S. Department of Education to implement Title VI prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.” See also *Earl v. Fresno Unified Sch. Dist. Bd. of Educ.*, No. F CV 11-1568-LJO-GSA, 2012 WL 2798806, at \*4 (E.D. Cal. July 9, 2012); *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994), *overruled on other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir. 2001). Courts analyze disparate treatment discrimination similarly to intentional discrimination under the Equal Protection Clause of the Fourteenth Amendment. *Elston v. Talladega Cnty. Bd. of Educ.*, 997 F.2d 1394, 1405 (11th Cir. 1993) n. 11; *Georgia State Conf. of Branches of NAACP v. State of Ga.*, 775 F.2d 1403, 1417 (11th Cir. 1985).

<sup>16</sup> *Elston*, 997 F.2d at 1406.

<sup>17</sup> See, e.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-69 (1977); *Elston*, 997 F.2d at 1406 (noting that the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient.]”); *Epileptic Found. v. City and Cnty. of Maui*, 300 F. Supp. 2d 1003, 1013–14 (D. Haw. 2003) (noting that evidence that 1) a decision-making official was of a different race than the plaintiff; 2) other racial groups were treated better by the defendant; and 3) the defendant used a racial slur against the group is sufficient to move forward on a Title VI claim).

<sup>18</sup> *Williams v. City of Dothan, Ala.*, 745 F.2d 1406, 1414 (11th Cir. 1984) (holding that discriminatory intent may be found “even where the record contains no direct evidence of bad faith, ill will or any evil motive on the part of public officials.”); *Village of Arlington Heights*, 429 U.S. 252.

<sup>19</sup> *Gant v. Wallingford Bd. of Educ.*, 195 F.3d 134, 137–38 (2d Cir. 1999) (defining deliberate indifference as circumstantial evidence permitting an inference of intentional race discrimination).

<sup>20</sup> See *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336, 362 (1977) (plaintiff must show that a pattern of discrimination based on race, color, or national origin was the recipient’s “standard operating procedure” rather than “isolated” or “sporadic” incidents; once a discriminatory pattern has been proven, it may be presumed that every disadvantaged member of the protected class was a victim, unless the recipient can show that individual decisions were not based on its discriminatory policy).

Loleta USD is a recipient of federal funding.<sup>21</sup> In violation of Title VI, Loleta USD discriminates against Indigenous students by treating them differently based on their race.

**i. Loleta’s Disparate Treatment of Indigenous Students Shows Discriminatory Intent Towards Indigenous Students.**

**a. Verbal Harassment by Loleta Employees Directly Reflects Discriminatory Racial Intent.**

Loleta Elementary staff members’ racial hostility is directly reflected in verbal harassment of Indigenous students. On multiple occasions over the last year, Loleta Elementary staff have used racial slurs, racially-coded language, and have otherwise verbally harassed Indigenous students.

**1. Teacher Heather Nyberg**

Most egregiously, on October 3, 2022, Ms. Nyberg used the “N-word”<sup>22</sup> with the students in her classroom. When challenged by an Indigenous student, Elana O.,<sup>23</sup> who was offended and upset by the racial slur, Ms. Nyberg then insisted that it was appropriate to use the word in some circumstances. According to another Indigenous student who witnessed the incident, Penny M., the incident began when two Indigenous students in the class called each other “Indian giver,” which is a slur against Indigenous people. Ms. Nyberg told the class that it was okay for those students to use the phrase because they were both Indigenous, but that it would not be okay for her to use the phrase because she is white. She then went on to provide more examples: Ms. Nyberg said that it would be racist for someone to call her a “cracker,” and it would be racist if she called someone the “N-word.” She went on to tell the students that it was okay to use words such as “cracker” and “N-word,” but not okay to use the word towards someone unless the person using the word and the one to whom it is directed are both of the race or culture to which the term refers. Multiple students in the class then replied to Ms. Nyberg that the “N-word” was a bad word and always racist. Ms. Nyberg stated that her use of the “N-word” in that conversation was not racist because no one in the classroom was Black and she was not directing the word at anyone. Ms. Nyberg went on to state that it is okay to say a racial slur when reading it in a book. Elana O. told Ms. Nyberg that “if the B-word is a bad word, then the N-word is definitely a bad word.” Ms. Nyberg did not respond to this statement and ended the conversation by moving on to another topic.

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<sup>21</sup> For its 2022-23 school year budget, Loleta USD’s projected revenue from federal funds is \$417, 653. *2022-23 Local Control and Accountability Plan*, LOLETA UNION ELEMENTARY SCH. DIST. (2022), <https://loletaschool.org/wp-content/uploads/LCAP-2022-2023.pdf>.

<sup>22</sup> Ms. Nyberg used the word “nigger” multiple times during this incident. Since this word is one of the most offensive racial slurs in the English language, this complaint instead refers to it as the “N-word,” but Ms. Nyberg used the full word throughout this exchange.

<sup>23</sup> Given the ease of identifying individual Indigenous students by their initials in a school as small as Loleta Elementary, all names of children and parents contained in this complaint are pseudonyms.

Numerous students in Ms. Nyberg’s class were extremely upset by this incident. Elana O. told her mother, Sandra O., about the incident after school. Sandra O. then sent an email to Superintendent Row complaining that Ms. Nyberg used the N-word in class. Superintendent Row said she would look into the situation but failed to follow up with Sandra O. about that complaint. Hank Brenard, a staff member at the Bear River Band, received complaints from two Bear River Band students about the incident. Mr. Brenard then notified several other people in the Bear River Band about the incident. Bear River Band Tribal Chairwoman Josefina Frank, Tribal Administrator Teresa Ballew, and Education Director Sarah Sand, in addition to other Tribal members, attended the District School Board meeting on October 13, 2022, and complained about Ms. Nyberg using the N-word in her class. The School Board members failed to offer any meaningful remedy to the situation beyond a brief discussion about possibly asking Ms. Nyberg to attend a “training” at some point before the end of the school year.

Ms. Nyberg has also used racially-coded, derogatory language to refer to Indigenous students in her classroom. On numerous occasions during the 2021-2022 school year, Ms. Nyberg referred to Acsa and his friends, who are all Indigenous students, as a “gang.” Ms. Nyberg referred to other groups of non-Indigenous students in the classroom as “friends.” At one point, Acsa wrote his name on a door at school, and Ms. Nyberg accused Acsa of “tagging” the door, stating that gangs engage in “tagging.”

Additionally, on multiple occasions in Fall 2022, Ms. Nyberg prohibited Indigenous students from sitting in the seat closest to her desk, which many students view as a “privileged seat.” For example, when Penny M., an Indigenous student, tried to sit in the seat, Ms. Nyberg told Penny M. she could not sit there. This has happened to other Indigenous students as well. Penny M. and other Indigenous students have observed that only non-Indigenous students are allowed by Ms. Nyberg to sit in the “privileged seat.” This has the impact of making Indigenous students feel devalued by Ms. Nyberg.

Ms. Nyberg has expressed hostility to Indigenous people and culture in other ways as well. In late September or early October 2022, Ms. Nyberg was engaged in a music lesson with her students where they were listening to a variety of different music genres, including country-western, hip-hop, classical, and pop music. At one point during the lesson, an Indigenous powwow song came on and Penny M. happily exclaimed “yeah!” when she heard the song. Ms. Nyberg stopped the music and refused to play the powwow song, flatly stating words to the effect that “no one wants to listen to that music.” On multiple occasions in Fall 2022, Ms. Nyberg also made statements to her students (including Elana O.) during lessons about “God,” that “the Creator” and “God” are the same, thereby incorrectly and offensively subsuming the concept of “the Creator” in Indigenous cultures under the concept of “God” in Christian religions.<sup>24</sup>

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<sup>24</sup> Prejudice against Indigenous spiritual beliefs—and their deep interconnectedness to every facet of Indigenous life and land—have long posed an existential threat to Indigenous peoples. Forced conversion to Christianity and the suppression of Indigenous religions and spiritualities were central components of assimilation and genocide dating back to time of contact with Europeans and Euro-Americans. In the recent past, the practice of Indigenous religious and spiritual practices and ceremonies were outlawed and

Ms. Nyberg’s hostility toward local Indigenous culture stretches back over multiple years. For example, at one point in the 2017-2018 or 2018-2019 school year, District administrators held an all-school meeting to acknowledge that Loleta is on ancestral Wiyot land and that everyone at Loleta Elementary should respect that history and culture. Sandra O., an Indigenous parent and then-employee of Loleta Elementary, was present at this meeting. Immediately after the person leading the discussion, Meredith Oram, stated that everyone should respect that Loleta is on Wiyot land, Ms. Nyberg spoke up in a very oppositional tone and said, “I’m a fifth-generation Ferndalian,” minimizing the Wiyot peoples’ connection to and centuries-long stewardship of that land while strongly implying that her family has as much right to the land as the Wiyot people and obviating the history of the community. Bear River Band Education Director Sarah Sand has also witnessed Ms. Nyberg repeatedly state how proud she is to have “fifth-generation Ferndale roots,” which is deeply disturbing given that, approximately five generations ago, white settlers in Humboldt County engaged in massacres and other genocidal acts against local Indigenous communities, including the Wiyot people.<sup>25</sup>

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punishable by law in the United States, including under the 1883 Code of Indian Offenses. American Indian “religious” practices were not protected by federal law until 1978 with the American Indian Religious Freedom Act. The reduction of complex and diverse Indigenous belief systems into the Christian notion of “God” demonstrates a deep misunderstanding and misrepresentation of Indigenous spirituality and belief systems—a misrepresentation that continues to threaten Indigenous peoples’ ability to practice their traditional dances and ceremonies. This is particularly salient on ancestral Wiyot land, where it was during their most central and important ceremony, the World Renewal Ceremony, that the Wiyot people were almost erased in 1860. See: David Helvarg, *Island of Resilience: The Wiyot Reclaim Their Land and Culture from a Dark Past*, MAG. OF SMITHSONIAN’S NAT’L MUSEUM OF THE AMERICAN INDIAN, Spring 2020, available at: <https://www.americanindianmagazine.org/story/wiyot>; Michael D. McNally, *From Substantial Burden on Religion to Diminished Spiritual Fulfillment: The San Francisco Peaks Case and the Misunderstanding of Native American Religion*, 30 J. OF L. AND RELIGION 36 (2015), available at: <https://www.cambridge.org/core/journals/journal-of-law-and-religion/article/from-substantial-burden-on-religion-to-diminished-spiritual-fulfillment-the-san-francisco-peaks-case-and-the-misunderstanding-of-native-american-religion/79A44593EA1D40090FF90149DD4143C5>; Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 HARVARD L. REV. 1294 (2021), available at: <https://harvardlawreview.org/wp-content/uploads/2021/02/134-Harv.-L.-Rev.-1294.pdf>; Martin C. Loesch, *The First Americans and the “Free” Exercise of Religion*, 18 AM. INDIAN L. REV. 313, 315 (1993); Allison M. Dussias, *Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases*, 49 STANFORD L. REV. 773, 773 (1997).

<sup>25</sup> BENJAMIN MADLEY, AN AMERICAN GENOCIDE: THE UNITED STATES AND THE CALIFORNIA INDIAN CATASTROPHE, 1846-1873 (THE LAMAR SERIES IN WESTERN HISTORY) (2016); Cutcha Risling Baldy & Kayla Begay, *Xo’ch Na:nahsde’tl-te Survivance, Resilience and Unbroken Traditions in Northwest California*, in KA’M-T’EM: A JOURNEY TOWARD HEALING (2019); CUTCHA RISLING BALDY, WE ARE DANCING FOR YOU: NATIVE FEMINISMS AND THE REVITALIZATION OF WOMEN’S COMING-OF AGE CEREMONIES (Coll Thrush & Charlotte Coté eds., 2018); *History*, WIYOT TRIBE, <https://www.wiyot.us/148/Cultural> (last visited Nov. 30, 2022) (describing the 1860 massacre of 80-250 Wiyot elders, women and children known as the “Indian Island Massacre,” during the Tribe’s annual World Renewal Ceremony); Jerry Rohde, *Genocide and Extortion*, N. COAST J. OF POL., PEOPLE & ART (Feb. 25, 2010), <https://www.northcoastjournal.com/humboldt/genocide-and-extortion/Content?oid=2130748>; Gold Chains Podcast, *Episode 3: Indigenous Injustice*, ACLU FOUND.



Ms. Nyberg has also targeted Indigenous students in her classroom for other forms of verbal harassment. For example, on October 4, 2022, Ms. Nyberg told the class to be quiet during a lesson. Penny M., an Indigenous student, noticed another Indigenous student ask a third Indigenous student for an eraser, pencil, or similar item so she could work on the lesson. Ms. Nyberg heard the verbal exchange between the two Indigenous students, stopped the lesson, and said to the students, “I don’t know who the hell you are.” Ms. Nyberg also regularly cursed at Acsa, an Indigenous student in Ms. Nyberg’s class during the 2021-2022 school year. Ms. Nyberg also used curse words to describe Acsa to other people at Loleta Elementary, at one point saying she “does not have to deal with this shit” after sending him out of the classroom for perceived misbehavior, as reported to Acsa and his mother by other students who heard Ms. Nyberg make that statement.

Ms. Nyberg’s verbal harassment of students is further documented in Superintendent Row’s November 14, 2022, letter to Acsa’s mother, Sasa, summarizing the District’s investigation of Sasa’s administrative Uniform Complaint Procedure (“UCP”) complaints against Ms. Nyberg filed in June 2022.<sup>26</sup> Superintendent Row’s letter states that “[f]ive witnesses provided numerous examples of Respondent [Nyberg] ‘screaming,’ ‘yelling,’ and raising her voice to both students and other staff members... The school psychologist and several other witnesses observed negative impacts on students such as crying, saying Respondent didn’t like them, and avoiding Respondent’s class.”<sup>27</sup> Indigenous students and families are deeply concerned about the negative impact of this language being used against and around students, particularly around younger students in the school. On multiple occasions, Penny M. has told Ms. Nyberg she should not use that language.

Ms. Nyberg has also targeted Indigenous students for wrongful accusations of more serious infractions. For example, in Spring 2022, while Acsa was in Ms. Nyberg’s class, school staff accused Acsa of taking part in the sale of marijuana edible gummies at school even though there was no evidence that he was involved. After Sasa filed a UCP complaint on June 2, 2022, regarding this and other pervasive discrimination by Ms. Nyberg, Sasa received a call from the Sheriff’s Office stating that Ms. Nyberg had named Acsa as a suspect in a bomb threat written on the bathroom wall in school. Shortly thereafter, then-Principal Jen Fairbanks informed Sasa that Acsa was no longer a suspect. While Acsa was never found to have any involvement with marijuana edibles or the bomb threat, in both instances Acsa was subject to the trauma of being accused of serious wrongdoing and having the police contact him as a suspect.

## **2. Instructional Aide Deborah Fogle**

On January 28, 2022, two Indigenous students, Acsa and his friend, decided to go out to the playground rather than finishing their lunch time in the cafeteria. It happened to be recess time for a group of students in younger grades. Instructional aide Deborah Fogle then asked the two

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OF N. CAL., <https://www.aclunc.org/sites/goldchains/podcast/episodes/ep03-indigenous-injustice.html> (last visited Nov. 30, 2022).

<sup>26</sup> Exhibit 1.

<sup>27</sup> *Id.* at 5.

students, “Don’t you think it’s a little creepy that big kids like you want to hang out with little kids?” and called Acsa a “Homie Hopper.” “Homie Hopper” is racially coded language that constitutes verbal harassment regardless of the intent behind its use.<sup>28</sup> Acsa, his friend, and their families were offended and upset by Ms. Fogle’s comments and sexualized characterizations of them as “creepy” and “Homie Hopper” when they were simply wanting to play on the playground—a perfectly normal activity for fifth-grade boys. Acsa’s mother, Sasa, filed a UCP complaint in June 2022 with the District regarding this incident.

**b. Excessive and Disparate Discipline of Indigenous Students  
Directly Reflects Discriminatory Intent.**

Indigenous children are also disciplined more often and more severely than non-Indigenous students in Loleta USD even when they engage in similar behavior.

**1. Teacher Mary Gustaveson**

On multiple occasions over the last 3 months, Indigenous students in Ms. Gustaveson’s class have routinely been punished for minor behavior infractions, such as talking in class, using their phones, or getting up to grab items during class time. Non-Indigenous students in the class are rarely, if ever, punished for similar behavior. At times, Indigenous students have been the only ones punished for this kind of minor misbehavior even when a non-Indigenous student instigates the situation. At least three Indigenous students have witnessed this discriminatory treatment.

For example, a group of non-Indigenous students in Ms. Gustaveson’s class are often rowdy during class. On multiple occasions in Fall 2022, Jane M., an Indigenous student, asked these students to be quieter in class. Rather than addressing or stopping the misbehavior of the non-Indigenous students, Ms. Gustaveson has instead consistently disciplined Jane M. for asking the non-Indigenous students to be quiet. In another example, on November 3, 2022, a non-Indigenous student pulled Jane M.’s hair in class. When Jane M. tried to make the other student stop pulling her hair, Ms. Gustaveson sent Jane M. (but not the other student) to the office. Jane M. explained that she was only responding to stop the student who pulled her hair, but Ms. Gustaveson stated that she would not do anything about the other student because she did not see that student pull Jane M.’s hair. In mid-November 2022, Ms. Gustaveson screamed so loudly at Jane M. that other students were afraid Ms. Gustaveson was going to hit Jane M.

Another Indigenous student, Charles W., has also been targeted for discipline by Ms. Gustaveson more often and more severely than the non-Indigenous students in his classroom. For example, in Fall 2022, Charles W. was quietly sitting in his classroom while many students around him were talking. However, as soon as Charles W. started talking, Ms. Gustaveson told him to be quiet. She did not tell the non-Indigenous students to be quiet. Charles W. often comes home frustrated

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<sup>28</sup> The term “Homie” has African American roots and is often used by and towards people of color. Urban Dictionary defines “homie hopper” as “A girl or guy that hops (hooks up/has sex with) from one person to another, where the people they choose to hook-up with are within the same group of friends (homies).” *Homie Hopper*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=homie%20hopper> (last visited Nov. 30, 2022).

by this disparate treatment and reports to his mother, Sue W., that Ms. Gustaveson makes him feel singled out by disciplining or directing his behavior without giving the same directions to other students. In another example, Charles W. has a common behavior of resting his arm on the desk behind him. When he does this, Ms. Gustaveson responds by sitting on the desk behind him (evidently to force him to take his arm away), thus towering over him and causing him to feel singled out in front of all his classmates. There are multiple alternative ways that Ms. Gustaveson could address this behavior, but instead she has disciplined Charles W. for this behavior on multiple occasions by shaming him. As a third example, in September 2022, Ms. Gustaveson sent Charles W. to the office to finish some unfinished schoolwork during a special occasion “movie day.” No other students were sent to the office on “movie day” to finish their schoolwork. Charles W. felt this treatment was particularly unfair because on multiple occasions, Ms. Gustaveson has sent Charles W. to the office for minor behavior infractions which caused him to fall further behind on his work. To Sue W.’s knowledge, Charles W. has never previously been sent to the office this many times by his other teachers for classroom behavior, a fact which was confirmed to Sue W. by the school secretary.

A third Indigenous student, Trin M., has witnessed Ms. Gustaveson send Indigenous students out of the classroom for minor behavior for which non-Indigenous students are not disciplined. All three students report that when Ms. Gustaveson disciplinarily excludes students from the classroom, she does not provide schoolwork for them to do, so the students miss important educational time.

## **2. Teacher Heather Nyberg**

Ms. Nyberg also disparately disciplines Indigenous students. For example, throughout the 2021-2022 school year, Ms. Nyberg disciplined Acsa, an Indigenous student, more frequently and severely than his non-Indigenous peers. Ms. Nyberg wrote up behavior infractions for Acsa when he would exhibit minor behaviors related to his disability, such as tapping his foot or pencil. Ms. Nyberg frequently called Acsa’s mother, Sasa, at work to ask her to come to the school to deal with these minor incidents.

More recently, Ms. Nyberg has engaged in a pattern of disciplining Elaine O., an Indigenous student, when Elaine O. responds to non-Indigenous students who bully her. Ms. Nyberg does not discipline the non-Indigenous students who bully Elaine O. For example, on a weekly basis during the current school year, multiple non-Indigenous students have called Elaine O. derogatory names, such as “slut,” “bitch,” and “fat.” On multiple occasions when this occurred, Ms. Nyberg told Elaine O. to move away from those students but failed to discipline the non-Indigenous students for calling Elaine O. those slurs. When Elaine O. has responded by leaving the classroom to escape from the students who are bullying her, Ms. Nyberg has punished Elaine O. by sending her to a different classroom (the 7/8 grade classroom) where it is more difficult for Elaine O. to concentrate on her schoolwork. This has a significant negative impact on Elaine O.’s learning time.

One male non-Indigenous student in particular, with whom Elaine O. has had a conflicted relationship for a period of years, often calls Elaine O. names and makes rude faces (such as a

“puking” face) at her. On one occasion, Elaine O. had a pencil and the other student tried to grab it from her. A struggle over the pencil ensued and the pencil ended up flying across the room. Ms. Nyberg disciplined Elaine O. but not the male student for this incident. On another occasion, the non-Indigenous student called Elaine O. names. Elaine O. responded by calling him names and walking away from him. The non-Indigenous student then physically attacked Elaine O., punching her multiple times in the back and on the back of the head. Ms. Nyberg later told Elaine O. words to the effect of, “I told you not to talk to him and you talked to him, and that’s what’s going to happen,” effectively blaming Elaine O. for the other student physically assaulting her.

### **3. Superintendent Linda Row**

In response to the incident between Elaine O. and the non-Indigenous male student described immediately above, Superintendent Row became involved. After Elaine O. was physically attacked by the non-Indigenous student on the playground, Superintendent Row repeatedly asked Elaine O., “what did you say to the other student to provoke him?” as though Elaine O. was at fault for being physically assaulted and punched on the playground. Elaine O. was crying and otherwise visibly upset during the interview with Superintendent Row, and later, Elaine O. reported to her mother, Lynn O., that she felt unprotected at school. Superintendent Row sent the non-Indigenous student home for the remainder of the school day, but he was back in school the next day. This reflects disparate treatment because, in previous school years when Elaine O. was involved in a physical fight with a student, Lynn O. was told by District administrators that students who are involved in physical fights must be suspended for at least one full school day (and Elaine O. was suspended for a full school day). But in this situation, the non-Indigenous student was only sent home for the remainder of the school day.

On another occasion, Trin M., an Indigenous student, and multiple non-Indigenous students failed to come in from recess on time. Superintendent Row came out to the recess area and yelled only at Trin M. for failing to come in from recess on time. Superintendent Row did not yell at or otherwise discipline any of the other students who were also late coming in from recess. Trin M. felt unfairly targeted and expressed this to Superintendent Row, which resulted in Superintendent Row further disciplining Trin M. by calling Trin M.’s father, Nick M.

#### **c. Circumstantial Evidence Also Shows the District’s Discriminatory Intent Towards Indigenous Students.**

##### **1. Loleta USD Departs from Required Policies and Procedures in Disciplining Indigenous Students.**

In addition to disparately and harshly punishing Indigenous students, Loleta Elementary staff routinely fail to follow the District’s discipline policy that outlines four categories of disruptive behaviors and the consequences to be given for those behaviors.<sup>29</sup> According to the District’s Positive Behavior Intervention and Supports/Multi-Tier Intervention and Supports plan, for Tier 2: Mild (which includes all minor behaviors) a call home should be made occasionally, and for

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<sup>29</sup> Parent/Student Handbook, 2022-2023, Loleta Elementary School, 21-22 (on file with author).

Tier 3: Moderate a call home should be made sometimes. Tier 4: Extreme is the only category that requires a call home, and the only category that includes referral to counselor or administrator as a consequence. Tier 4 is reserved exclusively for physical contact/aggression and threats. Throughout Fall 2022, Loleta Elementary staff have violated this policy by habitually calling parents of Indigenous students who engaged in Tier 1, 2, and 3 behavior and sending Indigenous students to the office for non-extreme behavior, further reflecting their discriminatory intent against Indigenous students.

On many occasions, Ms. Gustaveson has disciplined Indigenous students for minor behaviors by either sending them to the office or calling their parents. Ms. Gustaveson does not consistently implement the behavioral consequences listed for Tier 1, 2 or 3 behaviors and instead consistently applies Tier 4 consequences against Indigenous students for minor infractions. For example, in August and September 2022, Ms. Gustaveson called Indigenous student Trin M.'s father, Nick M., five or six times a week about minor classroom behavior infractions by Trin M. During that same period, Ms. Gustaveson sent Trin M. to the office at least twice a week for Tier 2 or 3 behaviors. As described above on pages 10-11, Ms. Gustaveson routinely sends Charles W. to the office for Tier 2 or 3 behaviors and routinely calls Charles W.'s mother about those behaviors. Between September 2021 and January 2022, Loleta Elementary staff called Acsa's mother, Sasa, over 50 times on her cell phone to complain about Acsa engaging in lower-tier behaviors such as leaving the classroom without permission and being disruptive. These examples demonstrate the District's discriminatory intent by departing from its required policies in disciplining Indigenous students, specifically through sending Indigenous students to the office and repeatedly calling Indigenous parents for mild and moderate behaviors.

## **2. Loleta Departs from Required Policies and Procedures in Responding to Complaints from Indigenous Families.**

Loleta staff also routinely fail to follow required policies and procedures in responding to complaints of discrimination and harassment from Indigenous families. For example, Sasa filed UCP complaints about school staff harassment and discrimination against her son Acsa on June 1, 2022, and June 13, 2022. State law requires that the District shall resolve and complete a written report addressing all UCP complaints within 60 calendar days of the receipt of the complaint, and the 60-day period may only be extended with written consent from the complainant.<sup>30</sup> Sasa did not receive any written response from the District regarding her complaints until October 11, 2022, when Superintendent Row informed Sasa by email that the District's written report would not be completed until November 2022. On November 14, 2022, more than three months after the District was required to issue a written decision on her UCP complaint, Superintendent Row sent Sasa the District's written decision sustaining her complaints in significant part.<sup>31</sup> The District also simply failed to respond at all to multiple written complaints submitted by Indigenous parent Lynn O. in December 2017 and February

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<sup>30</sup> CAL. CODE REGS. tit. 5, § 4631(a), (e).

<sup>31</sup> Exhibit 1.

2018, in which Lynn O. alleged that Ms. Nyberg engaged in racial harassment of Lynn O.'s son, Joseph O., by calling him a "dirt monkey" and of Lynn O. herself by calling Lynn O. "sketchy."

### **3. Loleta is Deliberately Indifferent to Complaints of Discriminatory Treatment of Indigenous Students.**

Superintendent Row and the Loleta USD School Board have acted with deliberate indifference to racial discrimination by failing to effectively respond to specific complaints of discrimination, retaliation, and verbal racial harassment against Indigenous students.

As described above, Bear River Band Tribal Chairwoman Josefina Frank, Tribal Administrator Teresa Ballew, and Education Director Sarah Sand, in addition to other Tribal members, attended the District School Board meeting on October 13, 2022, to complain about Ms. Nyberg using the N-word in her classroom and then attempting to justify her use of that racial slur with Indigenous students. One School Board member responded to this complaint with words to the effect that there was not much the School Board could do to address the situation, because "there are rules and lawyers and unions" involved. At another point in the meeting, another School Board member suggested that perhaps Ms. Nyberg might attend a "training" before the end of the school year. On October 28, Superintendent Row told Education Director Sarah Sand in an email that the District had "taken administrative action in this matter." However, it is unclear what administrative action was taken, whether that action addressed Ms. Nyberg's racial bias, and whether any meaningful action is being taken by the District to ensure Ms. Nyberg does not engage in racial harassment or other racial discrimination in the future. The response of School Board members at the October 13 meeting, suggesting weak measures to perhaps send Ms. Nyberg to an unspecified "training" at some point in the future, does not constitute meaningful action to remedy the racial harassment and discrimination and demonstrates the District's deliberate indifference towards discriminatory treatment of its Indigenous students.

Loleta USD also showed deliberate indifference towards complaints of discriminatory treatment of Indigenous students prior to October 2022. As noted above, in June 2022, Sasa filed two UCP complaints with the District. The first complaint, filed on June 1, reported disability- and race-based discrimination and harassment against herself and her son, Acsa. The second complaint, filed on June 13, alleged additional discrimination and retaliation against her son. State law requires that the District issue a written response within 60 days, or by July 30 and August 12, respectively. The District failed to issue a written response to either complaint until November 14, 2022, and that written response failed to address allegations from the June 1 UCP complaint regarding Loleta Elementary employee Deborah Fogle.

This pattern of the District failing to respond to complaints of discrimination from Indigenous families about Ms. Nyberg has been ongoing for years. In December 2017, Lynn O. sent a letter to then-District Superintendent Sutter alleging that Ms. Nyberg directed racially-coded slurs at Lynn O. and her son Joseph O. Lynn O. stated in her complaint that Ms. Nyberg said to Lynn O. on a school field trip in December 2017, "your type isn't welcomed here!" and then later in the same month asked Lynn O. and her sister, "what are you sketchy ladies doing here?" when they came to visit Loleta Elementary. That month, Joseph O. told his mother that Ms. Nyberg said to

him, “get back to work, dirt monkey!” The District failed to respond to Lynn O.’s written complaint. On February 2, 2018, Lynn O. sent a second letter of complaint to the District about Ms. Nyberg’s racial harassment. The District again completely failed to respond to her complaints. Thereafter, Lynn O. started attending School Board meetings to raise her concerns. When she asked School Board members what the District was doing to investigate or address her prior written complaints, the School Board members failed to provide any meaningful response. At one point, a School Board member suggested that Lynn O. could file a complaint with OCR or the ACLU if she wished to receive a response, and then later gave Lynn O. an OCR complaint form. Later that month, Lynn O. filed a complaint about Ms. Nyberg’s harassment with OCR, but OCR responded that it could not investigate the matter because an internal investigation by the District was ongoing. On February 14, 2018, the School Board placed Lynn O.’s complaint on its meeting agenda. When Lynn O. arrived at the meeting, a School Board member told her that Ms. Nyberg was going to come to the meeting to “give her side of the story.” The School Board member asked if Lynn O. wanted to be there. Lynn O. was surprised and concerned by this but said she wished to be there with Ms. Nyberg because she did not want Ms. Nyberg to speak to School Board without Lynn O. present. At the School Board meeting, Ms. Nyberg admitted to everything in Lynn O.’s complaint but gave numerous excuses for her verbal harassment of Lynn O. and her son Joseph O. Then-Superintendent Sutter also announced his resignation at this meeting. Thereafter, to Lynn O.’s knowledge, no further action was taken to address Lynn O.’s complaints or remedy the racial harassment and discrimination by Ms. Nyberg. Lynn O. received no follow-up communication from the District. Lynn O. brought her concerns about the District’s failure to address or resolve her December 2017 and February 2018 complaints of discrimination to subsequent District administrators, all of whom said they would look into the issue but then failed to take action.

From approximately 2018 through 2022, the Humboldt County Office of Education provided a part-time School Psychologist and School Climate Director, Sandy Radic-Oshiro, who helped to meaningfully address discrimination experienced by Indigenous families and to create a more racially inclusive school culture at Loleta Elementary. Ms. Radic-Oshiro left Loleta Elementary in June 2022 and has not been replaced. The absence of an effective School Climate Director has exacerbated much of the discrimination and harassment experienced by Indigenous students and their families as described herein. The failure to replace Ms. Radic-Oshiro’s position also demonstrates deliberate indifference to discrimination at Loleta USD.

#### **4. Loleta Elementary Staff Retaliate against Parents and Students for Submitting Complaints of Discriminatory Treatment**

Public school districts have the responsibility to adopt policies and procedures for the investigation and resolution of complaints of harassment, and these policies must protect complainants from retaliation.<sup>32</sup> Loleta USD’s “Nondiscrimination Statement” states that “[t]he District prohibits retaliation against anyone who files a complaint or who participates in a

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<sup>32</sup> CAL. CODE REGS. tit. 5, § 4621.

complaint investigation.” In conflict with state law and the District’s own policy, however, on many occasions, District staff have retaliated against Indigenous parents and students for submitting complaints of race- and disability-based discrimination.

On June 1, 2022, Sasa submitted a written UCP complaint about Ms. Nyberg’s disparate treatment of her son, Acsa, because of his race and disability status. Just eight days later, Sasa was told by the Sheriff’s Office that Ms. Nyberg suggested that Acsa was involved with a written “bomb threat” in the school bathroom. It was subsequently determined by then-Principal Fairbanks that Acsa was not involved. Sasa strongly believes Ms. Nyberg suggested to the Sheriff’s Office that Acsa was involved in the bomb threat in part to retaliate against the family for Sasa’s June 1 UCP complaint about Ms. Nyberg’s discriminatory treatment of Acsa. Sasa also experienced retaliation by other District staff earlier in the 2021-2022 school year in response to other complaints. That retaliation included: persistent phone calls from District staff about minor misbehavior by Acsa that was related to his disability; then-District Superintendent Autumn Chapman questioning Sasa’s residency in the school district and pressuring Sasa to transfer Acsa to a different district; and targeted exclusion of Sasa from Loleta USD Advisory Committee meetings by sending her (but not other school community members) notices that the meetings were canceled when the meetings were not canceled.

Sandra O. and her daughter, Elana O., also experienced retaliation by Ms. Nyberg after Sandra O. complained on October 3, 2022 to Superintendent Row that Ms. Nyberg used the N-word in her classroom, and then tried to justify using the N-word with her students, including Sandra O.’s daughter Elana O. Just two days later, on October 5, Sandra O. received her first-ever communication regarding Elana O.’s perceived misbehavior from Ms. Nyberg. Sandra O. also experienced retaliation in the 2021-2022 school year by then-District Superintendent Chapman after Sandra O. complained that school staff were not appropriately addressing the problem of students vaping on school grounds. That retaliation included Superintendent Chapman inappropriately interrupting a parent-teacher conference between Sandra O. and Elana O.’s teacher and complaining loudly about a specific incident. Both Sandra O. and Elana O.’s teacher were shocked by then-Superintendent Chapman’s behavior because Superintendent Chapman had not been invited to the parent-teacher conference, she had already spoken to Sandra O. about the incident, and Elana O. had no previous history of such misbehavior.

Ms. Nyberg also retaliated against Lynn O. and her children after Lynn O. submitted a written complaint in December 2017 to the District about Ms. Nyberg’s racial harassment. Prior to Lynn O. submitting the complaint, Ms. Nyberg often complimented Joseph O. in class and gave him class awards. Joseph O. was never in trouble with Ms. Nyberg. Ms. Nyberg also texted Lynn O. often to share friendly information about Joseph O.’s progress in the classroom and other classroom activities. After Lynn O. filed the complaint, Ms. Nyberg began disciplining Joseph O. for minor misbehaviors such as going to the bathroom without a pass and blurting out in class. Other students were not disciplined for similar behaviors. Ms. Nyberg also gave Joseph O. fewer class awards. On several occasions in Spring 2018, Joseph O. told his mother that he wished she had not filed the complaint about Ms. Nyberg because it had made school so much worse for him. For the remainder of the 2017-18 school year, Lynn O. did not receive the same updates on



Joseph O. as she had before. This pattern continued when Lynn O.'s daughter, Elaine O., entered Ms. Nyberg's class in Fall 2022. Even though Lynn O. has specifically requested parent-teacher communications, Ms. Nyberg has failed to communicate about Elaine O.'s progress in school or even significant discipline matters such as when Ms. Nyberg sends Elaine O. to the office. As described above on pages 11-12, Ms. Nyberg also consistently disciplines Elaine O. more often and more harshly than other, non-Indigenous students.

These incidents of retaliation against Indigenous families for complaining about discriminatory and other behavior by school staff violate state law and the District's own policies and show discriminatory intent towards Indigenous students.

### **B. Loleta USD Violates the Rights of Disabled Students.**

Under Title II of the Americans with Disabilities Act ("ADA"), public entities, including school districts like Loleta USD, are prohibited from excluding a "qualified individual with a disability" from "participation in or... the benefits of the services, programs, or activities of a public entity."<sup>33</sup> Students with physical or mental impairments that substantially limit one or more major life activities are considered to have disabilities and are "qualified individuals" by virtue of meeting age and residency requirements for public school.<sup>34</sup> Section 504 of the Rehabilitation Act of 1973 ("Section 504") prohibits recipients of federal funding, like Loleta USD, from discriminating based on disability.<sup>35</sup> Additionally, the statute's implementing regulations affirmatively require that school districts locate disabled students, notify such students and their parents of the schools' duties under Section 504 and ensure that such students receive free and appropriate public education.<sup>36</sup> The ADA incorporates Section 504's nondiscrimination provisions.<sup>37</sup> Because the ADA provides no less protection than Section 504, a violation of Section 504 also constitutes a violation of the ADA.

Loleta USD violates both the ADA and Section 504 by failing to make reasonable modifications to avoid discrimination against disabled students and by denying them access to appropriate public education.

#### **i. Loleta USD Violates the ADA and Section 504 by Denying Students with Disabilities the Benefits of Public Education.**

Under the ADA and Section 504, the District must provide students with disabilities the benefits of an appropriate public education.<sup>38</sup> Loleta USD's disabled students, however, do not receive a

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<sup>33</sup> 42 U.S.C. §§ 12131(1)(B), 12132.

<sup>34</sup> Students who have a record of such impairment, or regarded as having such impairment, are also protected by the ADA. 42 U.S.C. §§ 12102(1), 12131(2).

<sup>35</sup> 29 U.S.C. § 794.

<sup>36</sup> 34 C.F.R. § 104.32-37.

<sup>37</sup> 28 C.F.R. § 35.103(a).

<sup>38</sup> 28 C.F.R. § 35.130(a), (b)(1)(i); 34 C.F.R. §§ 104.4(b)(1)(i), 104.33.

range of appropriate educational services required by law to ensure that they obtain equal educational opportunity.

**a. Elana O.**

Elana O. has an Individualized Education Plan (“IEP”) that requires she receive counseling services for her educational needs. In previous school years, Elana O. met regularly with the Loleta Elementary school counselor, but that counselor left her position last year. During the 2022-2023 school year, the new school counselor has failed to meet regularly with Elana O., as required by Elana O.’s IEP. Additionally, Elana O.’s IEP requires that Elana O. may use headphones when she needs them to access learning, but school staff do not always provide her headphones when she requests them. On at least one occasion in Fall 2022, a substitute teacher refused to let Elana O. use headphones and, as a result, Elana O. struggled to complete her schoolwork. Finally, Elana O. was allowed to use headphones that day, after a classroom aide stepped in to advocate for her. In fact, only two students were allowed to use headphones in class that day, although Elana O. is aware that other students have this accommodation in their IEPs but have similarly not been able to access headphones.

**b. Acsa**

Acsa has an IEP that requires he be provided with an appropriately trained one-on-one aide. In Winter 2022, the District replaced Acsa’s previous aide with an aide from the kindergarten classroom who was not appropriately trained and was never able to develop a relationship to work effectively with Acsa. District staff also suggested to Sasa that perhaps she should transfer Acsa to a different school district to implement the needs and services described in his IEP. By the end of the 2021-2022 school year, Acsa did not have a one-on-one aide at all.

Acsa’s IEP also requires that his schoolwork be provided primarily on paper, because he struggles with learning time on a screen. On numerous occasions, Acsa’s teacher last year, Ms. Nyberg, failed to provide Acsa with paper schoolwork, instead directing him to learn on a computer screen. Acsa’s IEP also allows him to work in other classrooms which are more conducive for his learning. Ms. Nyberg refused to give Acsa credit for schoolwork he completed in other classrooms, thus causing him to fall further and further behind. Moreover, Ms. Nyberg consistently punished Acsa for behaviors arising from his disability, including blurting out, tapping his toe, and tapping his pencil. This is corroborated by the District’s investigation into Sasa’s UCP complaint about Ms. Nyberg’s discrimination against Acsa on the basis of his disability and November 14, 2022 written decision which found that:

The evidence established Respondent [Nyberg] engaged in previous incidents of excluding students because of behavior related to their disabilities. Two witnesses credibly described instances in which Respondent locked students out of her class for disability related issues, conduct that was supported by documentary evidence, specifically a November 30, 2021 Letter of Reprimand to Respondent. Respondent did not deny locking students out either in her written response to the Letter of Reprimand, or during her interview.

The evidence also supported the conclusion that Respondent excluded your son [Acsa] and other children with IEPs from field trips in spring 2022, as punishment for behaviors related to a recognized disability. One of the students felt so uncomfortable and unwelcome in Respondent's classroom that he transferred out of the District. The exclusion of these students was corroborated by several witnesses as well as documentary evidence.

The District's investigation and written report also sustained a finding that Ms. Nyberg failed to implement strategies prescribed in Acsa's IEP and the IEP of at least one other student in her class.

**c. Elaine O.**

While she was in second- and third-grade, Elaine O. had an IEP that requires she be provided with an appropriately trained one-on-one aide. During those school years, the District failed to provide her with a one-on-one aide and told her mother, Lynn O., that it was because of "staffing shortages." When Elaine O. was in third grade, the District revised Elaine O.'s IEP to remove services from a one-on-one aide and told Lynn O. the District did not have staff to provide Elaine O. with a one-on-one aide. In place of a one-on-one aide, the District revised Elaine O.'s IEP to increase her time in the resource classroom. Elaine O.'s mother firmly believes Elaine O. still needs a one-on-one aide to access her education at Loleta Elementary.

Elaine O.'s current IEP also states that when Elaine O. becomes frustrated about not understanding her schoolwork, she may call home to get support and encouragement. This accommodation has been part of Elaine O.'s IEP since she was in second grade and has proven very effective. In the current school year, however, Elaine O.'s teacher, Ms. Nyberg, has failed to implement this accommodation even though Elaine O. is often frustrated with her inability to understand her schoolwork in Ms. Nyberg's class.

Elaine O.'s current IEP also provides that she shall receive extra assistance with writing and reading, but Loleta Elementary staff only inconsistently implement this accommodation. Elaine O. often has to wait a long time to receive this extra assistance or does not receive assistance at all. Elaine O.'s IEP also requires that she receive modified schoolwork for math, reading, and language arts. Ms. Nyberg has refused to implement this accommodation. For example, Elaine O. was at a first-grade reading level last year, but Ms. Nyberg has failed to modify Elaine O.'s reading curriculum and has insisted that Elaine O. use a sixth-grade reading curriculum, which is extremely difficult and frustrating for Elaine O.

**d. Jane M.**

Ms. Nyberg's refusal to implement legally-required accommodations to disabled students stretches back for years. In the 2020-2021 school year, Jane M. had a Section 504 Plan due to a kidney transplant she received in October 2020 which required her to miss significant learning time. One accommodation in her Section 504 Plan was that Jane M. received an extra 1-2 weeks to complete her schoolwork while undergoing and recovering from the surgery. Nevertheless, on multiple occasions, Ms. Nyberg criticized Jane M. for not completing her work on time and told

Jane M. words to the effect of “you’re falling behind in class and need to catch up” even though Jane M. had not yet reached the end of the extra time allotted for her recuperation from the surgery. On one occasion following the transplant, while Jane M. was in the hospital and had trouble leaving her bed, Ms. Nyberg asked Jane M.’s mother, Thelma M., to try to have Jane M.’s work done by the end of the week. Ms. Nyberg told Thelma M. that Jane M. should be able to finish her work on time because she was just lying in the hospital bed with nothing else to do. On multiple occasions, Thelma M. had to remind Ms. Nyberg that Jane M. had an accommodation in her Section 504 Plan (due to major surgery) giving Jane M. an extra 1-2 weeks to complete her schoolwork.

**e. Charles W.**

Charles W., an eighth-grade student in Ms. Gustaveson’s class, has an IEP to address his reading disability. The services and accommodations in his IEP include getting extra help with reading. His IEP also states that Charles W. has the option to work in the least restrictive environment outside of the classroom where he has an easier time completing his work.

During the current school year, rather than giving Charles W. extra help with reading as required by his IEP, on multiple occasions Ms. Gustaveson has told Charles W. that she does not have the time to work with him individually. When Charles W. becomes frustrated because he needs help understanding his reading material, Ms. Gustaveson often sends Charles W. out of the classroom rather than implementing his IEP accommodations. Sometimes, Ms. Gustaveson allows Charles W. to go to the resource room or other teachers’ classrooms to complete his schoolwork. In the resource room, Charles W. is able to get help from the resource teacher to understand his schoolwork. The resource teacher has told Charles W.’s mother, Sue W., that Charles W. does well there. Charles W. also does well when working next to a student helper in Ms. Gustaveson’s classroom, but for the first two months of the school year, Ms. Gustaveson did not allow Charles W. to sit there. Most often, Ms. Gustaveson sends Charles W. to the office—a highly restrictive educational environment—to do his schoolwork instead of sending him to the resource room. From August through October 2022, Ms. Gustaveson sent Charles W. to the office on numerous occasions after failing to implement his IEP accommodations. For at least one week in September 2022, the school secretary informed Sue W. that Charles W. had been sent to the office every single day that week. Sue W. does not know the total number of times Ms. Gustaveson has sent Charles W. to the office this school year, because Loleta USD does not inform Sue W. when her son is sent out of class. However, Charles W. reported to his mother that he has been sent to the office many times since being in Ms. Gustaveson’s class.

When Ms. Gustaveson sends Charles W. to the office, he typically stays there for most or all of the school day. Ms. Gustaveson has told Charles W.’s mother, Sue W., that she sends Charles W. to the office to complete his schoolwork; but the school secretary told Sue W. that, on multiple occasions, Ms. Gustaveson sent Charles W. to the office without any schoolwork at all. One time, Ms. Gustaveson sent Charles W. to the office with schoolwork, but he did not have the reading materials he needed to complete his assignment. The school secretary sent Charles W. back to Ms. Gustaveson to retrieve the reading material, but Ms. Gustaveson refused to give the reading material to Charles W. Another time in Fall 2022, Ms. Gustaveson sent Charles W. to the

office without schoolwork, and the school secretary asked Charles W. what he thought he should do. Charles W. suggested that he could help the janitor wash the school windows. Because of Ms. Gustaveson's actions, Charles W. then washed school windows rather than accessing his valuable educational time to learn.

Additionally, Charles W.'s mother attended an IEP meeting for Charles W. at the beginning of the current school year. Because of Ms. Gustaveson's refusal to implement Charles W.'s IEP accommodations and, as described above, Ms. Gustaveson targeting Charles W. for discipline because of his race/ethnicity and/or disability-related behavior, Sue W. has repeatedly requested a second IEP meeting, but it has still not been scheduled. Sue W. has also called Superintendent Row multiple times in October 2022 to discuss the above-described violations by Loleta Elementary staff, but Superintendent Row has never responded to Sue W.

**ii. Loleta Fails to Make Reasonable Modifications to Avoid Discriminating Against Students with Disabilities**

Under the ADA, school districts are required to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."<sup>39</sup> To avoid discriminating against disabled students, it may also be necessary for a school to treat a student differently when implementing discipline for behavior based on the student's disability.<sup>40</sup> Therefore, modifications to a disciplinary policy are sometimes needed to avoid discrimination.<sup>41</sup>

Rather than modifying disciplinary policies and practices, however, Loleta Elementary staff, including Ms. Nyberg and Ms. Gustaveson, routinely punish disabled students through exclusionary discipline due to behaviors arising from their disabilities, as described above on pages 10-12 and 18-21 with respect to Indigenous disabled students Acsa, Jane M., Charles W., Elaine O., and other disabled students referred to in the District's November 14, 2022 written letter responding to Sasa's UCP complaint.<sup>42</sup> Consequently, students who exhibit behaviors that are manifestations of their disabilities are removed from classrooms and denied the benefits of public education.

Additionally, Jane M. has chronic kidney disease which requires her to spend extra time in the bathroom and to have ready access to drinking water at all times. During the last week of October 2022, Ms. Gustaveson gave Jane M. a behavioral write-up for taking 20 minutes in the bathroom even though Jane M. needed that extra time due to her medical condition. Similarly, during the 2021-2022 school year, Ms. Nyberg refused to modify a classroom rule prohibiting

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<sup>39</sup> 28 C.F.R. § 35.130(b)(7)(i); *c.f.* 34 C.F.R. § 104.4 (Section 504 similarly prohibits discrimination against students on the basis of their disabilities).

<sup>40</sup> *Supporting Students with Disabilities and Avoiding Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973*, U.S. DEP'T OF EDUC., OFF. OF CIV. RTS. 27 (July 2022).

<sup>41</sup> *Id.* at 28.

<sup>42</sup> Exhibit 1.

drinks in class for Jane M., even though Jane M. needed to drink water often due to her medical condition.

### **III. REMEDIES**

The remedies instituted pursuant to the prior VRA have been helpful in improving the school climate and addressing the similar legal violations previously described in the 2013 complaint. However, with the departure of the previous Superintendent and previous School Climate Director/School Psychologist, the situation has rapidly spiraled out of control once again and the District is failing to take reasonable action to remedy or stop ongoing serious legal violations. Indigenous students, with and without disabilities, are suffering at Loleta Elementary because school staff are discriminating against them. Robust additional action is urgently needed.

Please contact the Bear River Band Tribal Council through its counsel at the ACLU, Linnea Nelson, at [lnelson@aclunc.org](mailto:lnelson@aclunc.org) to schedule a meeting to discuss possible additional remedies in light of the facts and allegations of this complaint.

Respectfully submitted,



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Linnea Nelson, Senior Staff Attorney  
Racial & Economic Justice Program  
ACLU Foundation of Northern California  
Statewide Education Equity Team Lead

# **Exhibit 1**



*Loleta Union School District  
PO Box 547  
Loleta, CA 95540*

*November 14, 2022*

*Via Email and U.S. Mail*

**Re: Written Decision Regarding Your Complaints Against Heather Nyberg**

Dear Ms. :

I am writing to you on behalf of Loleta Union Elementary School District (“District”) regarding the written complaints you submitted on June 1, 2022, and June 13, 2022, against 5<sup>th</sup>/6<sup>th</sup> grade teacher Heather Nyberg, instructional aide Deborah Fogle, and former Superintendent/Principal Autumn Chapman (“Respondents”). Your complaints allege that Respondents engaged in inappropriate and unlawful conduct, including, but not limited to, harassment and discrimination on the basis of disability, race/ethnicity, ancestry, and ethnic group identification. Allegations also include retaliation for making a protected claim. These complaints were processed together, with other complaints against Ms. Nyberg, under Board Policy (“BP”) and Administrative Regulation (“AR”) 1312.3 - Uniform Complaint Procedure. A copy of BP/AR 1312.3 is enclosed with this letter. This letter will provide you with the District’s written decision regarding your complaints.

The Whitestar Group, a neutral, private investigation firm, conducted the investigation of the complaints. You indicated to the investigator at the beginning of this investigation that, as she is no longer with the District, you are not pursuing a complaint against Autumn Chapman. You indicated on October 21, 2022 that you wish to pursue your complaint against Deborah Fogle. As the allegation against Fogle did not relate to the allegations against Nyberg, a separate investigation is being conducted. You will receive separate communication regarding your complaint against Fogle when that investigation is complete. This letter concerns only your allegations against Nyberg, who is referred to in this correspondence as “Respondent”.

Your June 1, 2022 and June 13, 2022 complaints made the following allegations:

**Allegation 1:** Respondent discriminated against your son on the basis of a recognized disability by:



- a. Excluding your son from field trips for behaviors related to his disability,
- b. Failing to implement your son's Individualized Education Program (IEP) established as a result of an identified disability,
- c. Inappropriately raising her voice to him, and
- d. Holding him accountable for classroom behaviors related to his recognized disability.

**Allegation 2:** Respondent created an unwelcoming and antagonistic educational environment for students at Loleta Elementary School by demeaning and shaming students in class.

**Allegation 3:** Respondent retaliated against your son in response to your filing a UCP complaint on June 1, 2022, by naming him as a suspect to law enforcement related to a school bomb threat that occurred at the Loleta Elementary School on June 9, 2022.

### **Investigation Process**

A total of 13 witnesses were interviewed as part of the investigation, including Respondent and Complainants. The investigator asked all parties to provide any additional relevant documentation. The investigation included a review of all District policies, records and documentation related to the allegations, and all records and documentation provided by any parties and/or witnesses in the investigation. A representative, partial list of the documentary evidence reviewed is below:

- Complaint from                      dated June 1, 2022
- Complaint from                      dated June 13, 2022
- Related complaints against Respondent
- BP/AR 1312.3
- BP 5131.2
- BP 4119.21
- BP 5137
- AR 6153
- Parent Student Handbook 2021-2022
- Relevant text messages between Respondent and Complainants
- Relevant correspondence between Respondent and witnesses
- Relevant letters of reprimand sent to Respondent on November 30, 2021 and March 29, 2022
- Responses and other documents submitted by Respondent
- Alexander Greenlee Letter dated April 6, 2022

Below are the District's Findings as to these allegations. Findings in this matter were based on the "preponderance of the evidence" standard used by the United States Department of

Education, Office for Civil Rights. Proof by a preponderance of the evidence means that the evidence supports the conclusion that it is more likely than not that the allegation is true.

In making findings of fact, this investigator applied the following standards:

- Where the preponderance of the evidence clearly establishes that the allegation is not true, the allegation is **UNFOUNDED**.
- Where there is insufficient evidence based on a preponderance of the evidence to determine whether the alleged conduct occurred, the allegation is **NOT SUSTAINED**.
- Where the investigation established by a preponderance of the evidence that the alleged conduct occurred, the allegation is **SUSTAINED**.

### **SUMMARY OF ALLEGATIONS, FINDINGS, & CONCLUSIONS**

**Allegation 1:** Respondent discriminated against students with recognized disabilities by:

- 1.a. Excluding your son from field trips for behaviors related to his disability.

***Finding 1.a.: Sustained.***

The evidence established Respondent engaged in previous incidents of excluding students because of behavior related to their disabilities. Two witnesses credibly described instances in which Respondent locked students out of her class for disability related behavioral issues, conduct that was supported by documentary evidence, specifically a November 30, 2021, Letter of Reprimand to Respondent. Respondent did not deny locking students out either in her written response to the Letter of Reprimand, or during her interview.

The evidence also supported the conclusion that Respondent excluded your son and other children with IEPs from field trips in spring 2022, as punishment for behaviors related to a recognized disability. One of the students felt so uncomfortable and unwelcome in Respondent's classroom that he transferred out of the District. The exclusion of these students was corroborated by several witnesses as well as documentary evidence.

The investigation found that Respondent excluded a group of students with disabilities from an Ocean Day field trip she led on June 2, 2022. During a May 11, 2022, orientation for the Ocean Day field trip, a number of students struggled to focus. The evidence indicated that their inattention was related to their disabilities. Respondent required her students to attend the orientation, but she was not present. After the orientation, Respondent's aide Alex Greenlee wrote a text message to seven people, including Respondent, regarding the students' "awful behavior" during the orientation. The text identified four students by their initials. By text, Respondent replied:

*"Please call parents and ask for research at home and consequence. The presentation is a requirement to attend. I would say they have not met that and can stay at school and not*

*attend the event. If they can't follow guidelines in a controlled enclosed environment, they should not be at an event where 1000 kids are on the beach. Make me a list Alex."*

Witnesses reported that after these text messages, Respondent made no attempt to accommodate the students, and left them behind.<sup>1</sup> The preponderance of the evidence supports a finding that Respondent excluded students from field trips for behaviors related to an identified disability. Documentary evidence corroborated that Respondent regarded exclusion of students as an appropriate consequence for student behaviors, including for students whose behaviors are related to identify disabilities.

- 1.b. Failing to implement your son's IEP established as a result of an identified disability.

***Finding 1.b.: Sustained.***

Multiple witnesses reported that Respondent failed to implement strategies prescribed in your son's IEP and at least one other student's IEP. Respondent denied this and stated that those witnesses were not in her classroom enough to evaluate her practices. On April 6, 2022, Respondent submitted a letter that she claimed was written by Alex Greenlee, an aide in Respondent's 5<sup>th</sup>/6<sup>th</sup> grade class. The letter states:

*The students that have required breaks listed in their IEPs receive them everyday [sic]. I myself take kids on breaks everyday at the time listed on the IEP, or when the student needs an additional break. Students in Mrs. Nyberg's class are provided with more breaks than those listed in student goals and IEPs. Mrs. Nyberg runs a great class and learning environment for all students.*

The letter, however, was unsigned, and Mr. Greenlee (whom Respondent identified as the author of the letter) did not attend a scheduled investigation interview and did not respond to calls attempting to reschedule.<sup>2</sup>

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<sup>1</sup> Two of the students who were not permitted to attend the field trip had not submitted written permission slips, but their parents had called the school and given verbal permission. The evidence supports the conclusion that Respondent accepted verbal permission from some students, but not for a student with identified disabilities, whom she said would have to bring a signed permission slip. Since district policy requires written permission, the exclusion of students without permission slips is not addressed here. The investigation focused on the allegation that students were excluded for behaviors related to a disability, not for other reasons.

<sup>2</sup> The investigation began on July 14, 2022. It was significantly delayed by Respondent's unavailability to sit for an interview for several weeks, during which the investigator made multiple attempts to schedule an interview through her union representative. At her August 17, 2022, interview, Respondent was asked if she knew anyone else who may have relevant information about the allegations. Respondent stated that she would send the investigator contact information for Alex Greenlee but did not provide the information until after the findings and report were initially completed. After receipt of the contact information, the investigator reopened the investigation, contacted Greenlee and scheduled an interview with him for October 21, 2022; however, Greenlee did not answer his phone at the scheduled time. Two more messages were subsequently left for Greenlee to attempt to reschedule the interview, but Greenlee did not respond.

The letter directly conflicts with the credible accounts of the complainants and other witnesses, as well as Respondent's own account regarding implementing break provisions in students' IEPs. In her interview, Respondent stated that she was not perfect at implementing breaks as called for in students' IEPs, that she created an area inside the classroom for students to take breaks instead of leaving the classroom, and that she implemented an extra break for one student beyond what was in his IEP. She said, "When we implemented all these breaks, what happened was everybody in the class would start saying, 'Oh, I need a break. Oh, I need a break,' and all of that. If we make a plan, I admittedly can be rigid." The preponderance of the evidence indicated that Respondent failed to implement student breaks in the manner called for in their IEPs.

1.c. Inappropriately raising her voice to your son.

***Finding 1.c.: Sustained.***

Every witness provided numerous examples of Respondent "screaming," "yelling," and raising her voice to both students and other staff members. Five witnesses stated they had personally observed Respondent "scream" at students on campus, and two witnesses described Respondent's conduct as "yelling." Witnesses sympathetic to Respondent described her conduct as "raising her voice." This conduct was directed at all students who displayed behavior that did not meet Respondent's expectations, including those with recognized behavioral disabilities. The school psychologist and several other witnesses observed negative impacts on students such as crying, saying Respondent didn't like them, and avoiding Respondent's class. One witness credibly cited four students with IEPs who specifically refused to go to Respondent's class because Respondent's comments make them feel unwelcome in the class.

1.d. Holding your son accountable for classroom behaviors when those behaviors are related to recognized disabilities.

***Finding 1.d.: Sustained.***

As discussed above, the evidence indicated that Respondent's management of classroom behaviors does not take into account that for some students (including your son) the behaviors are related to a recognized disability. Several witnesses gave consistent accounts that Respondent has held students accountable for their behaviors, regardless of disability.

***Conclusion- Allegation 1***

A preponderance of the evidence supports the conclusion that Respondent discriminated against students with recognized disabilities, such as your son, by excluding them from school field trips, failing to implement their IEPs as written, raising her voice at students for behaviors related to students' disabilities, and utilizing inappropriate behavior management measures to hold such students accountable for behaviors related to students' recognized disabilities. Accordingly, the preponderance of the evidence supported Allegation 1, and it is sustained.

**Allegation 2:** Respondent created an unwelcoming and antagonistic educational environment for both students and staff at Loleta Elementary School by demeaning and shaming students in class.

***Finding 2: Sustained.***

A preponderance of the evidence supports the conclusion that Respondent demeaned and shamed students in her class. The investigator reviewed documentation including prior complaints to the District regarding the same behavior, and a May 27, 2022, email from Sandy Radic-Oshiro to Respondent giving suggested strategies and techniques for improving Respondent's manner and tone with students who demonstrate challenges with impulse control. In this email, Respondent is instructed to "consider a change in mindset in considering student behaviors and academic struggles as a 'can't do' verses [sic] 'won't do'. A 'can't do' mindset considers that the student is experiencing lagging skills verses [sic] defiance and 'won't do'." The letter also states, "Remember you set the tone in the classroom. It is important to start fresh every day with each student and to avoid raising your voice to shame students into control." Consistent with this letter, several witnesses reported seeing a pattern of students in Respondent's class feeling unwelcome, believing Respondent did not like them, and expressing fear or dread of attending her class. Respondent said in her interview that she has a loud voice, but denied shaming or demeaning students. She said that holding them accountable for their actions constituted poor treatment in their eyes.

The evidence supported the conclusion that, during the 2021-2022 school year, Respondent shamed a specific student in front of his classmates by asking if he took his medication that day. The evidence also supported the conclusion that, in July 2022, when a student, whose IEP calls for breaks, returned to class after a break, Respondent asked the student's aide, "Now where was he?" The aide responded, "He took a short break." Respondent then replied in front of the whole class, "A break from what, laying his head down on the table all morning?"

The investigation found by a preponderance of the evidence that Respondent created a negative educational environment by demeaning and shaming students.

**Allegation 3:** Respondent retaliated against your son, in response to your filing a UCP complaint against her on June 3, 2022, by naming him as a suspect to law enforcement related to a bomb threat that occurred at the Loleta Elementary School.

***Finding 3: Unfounded.***

You alleged that in retaliation for filing your June 3, 2022, complaint against her, Respondent identified your son, \_\_\_\_\_, as a suspect responsible for writing a threatening statement on the wall of the boys' bathroom at school.

Respondent stated that she saw \_\_\_\_\_ and another student exit the boys' bathroom with a "shocked look on their face," and that they reported to her that someone had written a "bomb threat" on the bathroom wall. When law enforcement arrived to investigate, Respondent told the deputy what she had observed; she did not tell the deputy that she thought \_\_\_\_\_ was a suspect. Jennifer Fairbanks, Interim Principal, was present when the deputy interviewed Respondent and heard what Respondent reported. Fairbanks corroborated Respondent's account of the

conversation. Fairbanks' credibility on this issue was bolstered by the fact that she was an adverse witness to Respondent, who has filed several past complaints against Fairbanks. There was no evidence, other than speculation, to support a conclusion that Respondent took action against or intended to retaliate in response to your complaint. As such, the allegation was unfounded.

### CONCLUSIONS

In determining whether the substantiated conduct, detailed above, constituted a violation of District policy, the following policies were reviewed:

- Board Policy (BP) 4119.21- Professional Standards
- Board Policy (BP) 5131.2 - Bullying
- Board Policy (BP) 5137 - Positive School Climate

BP 4119.21 provides that District employees must maintain the highest ethical standards, behave professionally, follow District policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. The policy also requires employees to engage in conduct that advances the goals of the District's educational programs, and contributes to a positive school climate. It prohibits engaging in harassing or discriminatory behavior toward students or staff.

Here, all of the sustained conduct demonstrates a lack of good judgment when interacting with students on campus. Respondent inappropriately raised her voice to multiple students on many occasions, described by witnesses as "screaming" and "yelling," which had detrimental effects on school climate, negatively impacted students' learning experience, and hindered the implementation of educational programs. The investigation also sustained antagonistic, derogatory, and discriminatory behavior towards students. The District, therefore, finds that Respondent's conduct in each of these instances was a violation of BP 4119.21.

BP 5131.2 prohibits bullying by students or staff. Under this policy, any employee who engages in bullying shall be subject to disciplinary action, up to and including dismissal. The policy defines bullying to include harassing, threatening, and intimidating any student or school personnel, among other behaviors. Here, the sustained conduct included antagonistic, demeaning, and intimidating verbal conduct towards students. Respondent utilized shaming and yelling as inappropriate behavior management measures on multiple occasions. The District finds that Respondent's conduct toward students was bullying in violation of BP 5131.2.

BP 5137 outlines the expectation that all staff are to serve as role models for students by demonstrating positive, professional attitudes and respect toward each student and other staff members. Teachers are required to use effective classroom management techniques based on clear expectations for student behavior. The policy emphasizes that the school environment should allow all students to feel safe and should be characterized by positive interpersonal relationships among students and between students and staff.

The District finds that Respondent's conduct demonstrated an unprofessional and disrespectful attitude toward students. Her demeanor and classroom management techniques caused students

to dread going to her classroom and created an unwelcome and punitive educational environment in her classroom that impacted students' learning experience, and negatively affected school climate. As such, Respondent's conduct violated Board Policy 5137.

### **DISPOSITION**

Allegation 3 regarding retaliation was unfounded. The Investigation sustained Allegations 1 and 2, and substantiated violations of Board Policies 4119.21, 5131.2, and 5137.

### **CORRECTIVE ACTION**

The District will be taking corrective action and informing Respondent of District expectations.

### **APPEAL RIGHTS**

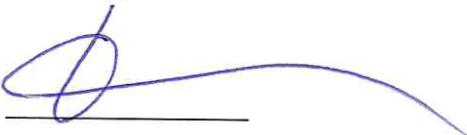
This report of the findings and disposition regarding the allegations in your Complaint should be considered the District's Written Decision. Per Administrative Regulation 1312.3, you have the right to appeal the District's Written Decision to the California Department of Education (CDE) by filing a written appeal within 30 calendar days of receiving the District's decision. (5 C.C.R. § 4632.)

You must wait until 60 calendar days have elapsed from the filing of an appeal with CDE before pursuing civil law remedies, including seeking assistance from mediation centers or public/private interest attorneys. (Education Code § 262.3).

We note that the investigation sustained conduct that implicates special education compliance, in addition to the above policies. However, specific findings in this regard are not appropriate as part of this investigation, because complaints regarding special education do not fall under the Uniform Complaint Procedure. In accordance with 34 Code of Federal Regulations ("CFR") section 300.153, an individual may file a signed written complaint with the California Department of Education ("CDE") under the procedures described in 34 CFR sections 300.151-152. (California Code of Regulations, tit. 5, section 3202.) For more information about how to file a special education complaint with the CDE, please see <https://www.cde.ca.gov/sp/se/qa/cmplntproc.asp>

Thank you for your participation in this process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Linda Row', written over a horizontal line.

Linda Row  
Superintendent/Principal

Enc:

BP/AR 1312.3

BP 5131.2

BP 4119.21

BP 5137