



# EQUAL JUSTICE SOCIETY

January 19, 2022

## **Sent Via Email and Certified Mail**

Gregory Nehen, Superintendent  
Antelope Valley Union High School District  
176 Holston Drive  
Lancaster, CA 93535  
gnehen@avhsd.org

cc: *legal@avhsd.org*;  
Lee Rideout - lrideout@f3law.com

Dear Superintendent Nehen:

We represent a group of Antelope Valley Union High School District (“AVUHSD” or “District”) students and their parents as well as Cancel the Contract, an Antelope Valley community organization. We write to share our clients’ concerns over the District’s policies and practices regarding student discipline, which have resulted in discriminatory treatment of students on account of both race and disability status. In addition, we are concerned over the District’s legally inadequate provision of special education services, inappropriate use of law enforcement, and failure to guarantee fundamental due process protections to students and their parents. We ask that the District take immediate steps to cease the unlawful policies and practices outlined below.

## **I. AVUHSD’s Imposition of Student Discipline Discriminates Against Black and Disabled Students**

### **A. The District Disproportionately Disciplines Black Students and Students with Disabilities**

Since at least 2018, AVUHSD has subjected Black students and students with disabilities to discipline and school assignment policies and practices that disproportionately suspend, expel, assign them to alternative schools, and/or lead to unnecessary contacts with law enforcement. Such policies and practices discriminate based on race and disability and thereby violate the California Constitution. They also fail to provide a safe and supportive learning environment, contributing to lost instructional time, poor academic outcomes, emotional and psychological trauma, social isolation, and higher risk of drop-out and incarceration.

In the last full school year before the pandemic, AVUHSD reported 2,972 suspensions – a rate that is over 20 times that of Los Angeles Unified School District, a district 21 times the

size of AVUHSD. That same year, the District suspended Black students at a rate 259% higher than white students. The District's suspension rate for students with disabilities was 2.5 times its suspension rate for nondisabled students. Further, the District suspended one in four Black students with disabilities, a rate nearly *seven times* the suspension rate for white nondisabled students. These alarming suspension rates highlight how AVUHSD continues to disproportionately subject Black students and students with disabilities to disciplinary action.

While AVUHSD's suspension and expulsion numbers are high and the disparities staggering, the District's actual practice of exclusionary discipline is even worse than those metrics suggest. AVUHSD deliberately underreports its true discipline figures by disguising suspensions and expulsions as informal removals and transfers –two data points that the state either does not collect or does not publicly report.

The District is well aware that its policies and practices are contributing to the imposition of discipline that is disproportionately borne by Black students and students with disabilities. For example, the District relies on a metric for disciplining students referred to as “the Matrix,” which specifies the minimum and maximum disciplinary actions authorized for various Education Code provisions.<sup>1</sup> The District has twice admitted to the California Department of Education that the Matrix contributes to racial disparities in discipline. To date however, and despite its knowledge of the discriminatory effects of the Matrix, the District has not changed its policy or stopped use of the Matrix.

#### B. The District Unlawfully Segregates Disabled Students

Federal and state law requires school districts to educate students with disabilities in the least restrictive environment and in the most integrated setting appropriate.<sup>2</sup> Otherwise, students with disabilities suffer segregation and treatment as different and unequal. The law does not tolerate such treatment.

Nevertheless, the District has organized its programs and resources in a way that segregates and systematically denies its students with disabilities, and particularly Black students with disabilities, a meaningful opportunity to be educated side-by-side with their peers in an inclusive, general education environment. In particular, the District uses the Special Day Class-Behavioral (SDC-B) program to segregate students with emotional and behavioral disabilities. The District also implements a “level system” in all SDC-B classes. Based on a student's behavior, the teacher places them on levels. Students who have not met behavioral expectations must remain in the classroom during lunch and passing periods. Unlike the positive behavior supports widely proven to be effective with students with disabilities, this level system imposes negative punishment on students for disability-related behavior by depriving them of contact with their peers. District policy ensures that the SDC-B classrooms remain segregated and punitive, and disabled students in those classrooms have only limited opportunities for live instruction and collaboration with non-disabled peers – all in violation of applicable law.

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<sup>1</sup> ANTELOPE VALLEY HIGH SCHOOL, STUDENT PLANNER, MINIMUM/MAXIMUM PENALTIES (2019-2020), [https://www.antelopevalleyhs.org/uploaded/Antelope\\_Valley\\_HS/Students/2019-2020\\_AVHS\\_Planner.pdf](https://www.antelopevalleyhs.org/uploaded/Antelope_Valley_HS/Students/2019-2020_AVHS_Planner.pdf); LANCASTER HIGH SCHOOL, DISCIPLINE POLICIES, MINIMUM/MAXIMUM PENALTIES (2019-2020), <https://www.lancasterhs.org/uploaded/Lancaster/Parents/mou.pdf>.

<sup>2</sup> 20 U.S.C. § 1412(a)(5)(A); 28 C.F.R. § 35.130(d).

### C. The District Employs Discriminatory Law Enforcement and Security Practices

In the past 25 years, AVUHSD has markedly expanded its school police presence through a series of multi-million-dollar contracts with the Los Angeles County Sheriff's Department, which deploys deputies as School Resource Officers on each high school campus.<sup>3</sup> The District spends \$1.9 million per year on the current contract. In addition to its Los Angeles County Sheriff's Department partnership, the District also employs dozens of unsworn "Campus Security Supervisors."

District policies and practices empower and encourage School Resource Officers and campus security to intervene in minor and disability-related school discipline incidents that should be handled by teachers and administrators. Predictably, officer involvement often escalates these situations, with officers criminally citing students or using force such as restraint or handcuffs. Black students and students with disabilities are disproportionately subjected to these traumatic and extremely consequential interventions.

Furthermore, the District does not adhere to any of the procedural requirements for students with disabilities when using force and restraints – requirements that are designed to protect the well-being of disabled students. For example, the District does not require staff to complete a Behavioral Emergency Report; notify the parent, guardian, or residential care provider within one school day; or hold an IEP meeting within two school days after restraining or secluding a student with a disability, as required by California Education Code Section 56520, *et seq.* The District's failure to follow the law endangers these students' health and safety.

### D. The District Maintains a Racially Hostile Educational Environment

AVUHSD's policies and practices have created a racially hostile educational environment. Such an environment exists when a district creates or is responsible for harassing conduct that is "sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided" by that district.<sup>4</sup> AVUHSD's administration of discipline—through suspensions, expulsions, transfers, alternative school assignments, and referrals to law enforcement and campus security—impermissibly and invidiously targets Black students on account of their race, depriving them of their right to full and equal access to education.

The racially hostile educational environment in AVUHSD also manifests in staff interactions with students. The District has failed, and continues to fail, to take appropriate action in addressing biased actions and statements from school staff that demean Black students with stereotypes and racial epithets. For example, in 2020, Black students on an AVUHSD basketball team were repeatedly called the n-word by their coach. Another District teacher was found in

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<sup>3</sup> AVUHSD, "Our LASD Partnership" (last accessed Nov. 25, 2020), *available at* <https://www.avdistrict.org/community/our-lasd-partnership>.

<sup>4</sup> U.S. Dept. of Educ., Office for Civil Rights, Racial Incidents and Harassment Against Students, 59 Fed. Reg. 94-5531 (Mar. 10, 1994), *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

2019 to have used racial slurs targeting Latinx and Black students in class.<sup>5</sup> In 2020, an AVUHSD teacher repeatedly called a Black student “Darkie” in front of her peers. For years, many staff and administrators at a District school openly refused to change the school’s mascot, a cartoon Confederate soldier and Confederate flag; only recently did school administrators finally relent to public pressure and drop the mascot.<sup>6</sup>

## **II. AVUHSD Deprives Students and Parents of Critical Due Process Protections**

### **A. The District Fails to Maintain Legally Required Complaint Procedures**

AVUHSD does not follow the Uniform Complaint Procedure (UCP) process legally required by CDE and the California Code of Regulations<sup>7</sup> for complaints reporting discriminatory staff behavior. The District purports to maintain its own process for receiving and reviewing complaints of harassment and/or discrimination against students, parents, staff, and community members. However, the District’s process denies complainants critical due process protections that are guaranteed by the UCP process, including resolution of complaints within 60 days, the opportunity to receive a formal investigation report with corrective actions, if applicable, and the ability to appeal complaint findings to the California Department of Education.<sup>8</sup>

Moreover, the District fails to adequately publish its procedures and purposefully occludes its complaint procedures from students, parents, staff, and community members seeking to file complaints based on harassment and discrimination.<sup>9</sup>

The District’s failure to meet the legal mandates of the UCP process denies students, parents, staff, and community members their rights to lodge formal complaints about harassment, discrimination and intimidation and further contributes to the District’s racially hostile educational environment.

### **B. The District Fails to Provide Due Process for Suspensions and Expulsions**

The District fails to provide due process protections in the formal suspension process that are guaranteed by the California Education Code. The law mandates that the District provide parents and students with written notice and an opportunity for a pre-suspension conference at the time of the suspension,<sup>10</sup> not hours or days later, as is common practice in the District. Additionally, the law requires the District to make reasonable efforts to contact parents or

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<sup>5</sup> The Antelope Valley Press, “Teacher accused of racial slurs” (Dec. 20, 2019), *available at* [https://www.avpress.com/news/teacher-accused-of-racial-slurs/article\\_f2f2d4bc-22f2-11ea-bcc0-8b35a40d6659.html](https://www.avpress.com/news/teacher-accused-of-racial-slurs/article_f2f2d4bc-22f2-11ea-bcc0-8b35a40d6659.html).

<sup>6</sup> LA Times, “Antelope Valley high school’s decision to drop Rebels mascot is long overdue, some say” (Jun. 21, 2020), *available at* <https://www.latimes.com/california/story/2020-06-21/antelope-valley-high-schools-decision-to-no-longer-use-rebels-as-mascot-is-overdue-one-alumni-says>.

<sup>7</sup> 5 CCR §§ 4600-4687.

<sup>8</sup> 5 Cal. Code Regs §§ 4630, 4632

<sup>9</sup> *See* 5 Cal. Code Regs. §§ 4917, 4960-4962.

<sup>10</sup> Cal. Educ. Code § 48911(b), (d).

guardians at the time of the suspension to offer an opportunity to participate in the process,<sup>11</sup> which the District routinely fails to do. The conference and written notice must inform the student and their parent/guardian of the reasons for the suspension and the evidence against the student, to give students a chance to present their version of events and evidence in their defense.<sup>12</sup> The District regularly disregards this obligation as well.

The Education Code also gives students and their parents/guardians due process protections in the expulsion process that the District consistently fails to provide. Before a student can be expelled, the District is required to hold a hearing within 30 school days, unless the student requests that the hearing be postponed.<sup>13</sup> Ten days before the hearing, the District must provide the student and their parent/guardian with written notice of the expulsion hearing, the right to representation by counsel at the hearing, and their ability to inspect all documents and question all witnesses to be relied on at the hearing.<sup>14</sup> In the event a student is expelled, the Education Code requires that the District still provide them with an adequate education program.<sup>15</sup> The District routinely ignores each of these legal obligations.

#### C. The District Fails to Maintain Complete Student Records

School administrators fail to maintain complete expulsion records and cumulative files and fail to provide them to parents prior to an expulsion hearing or even pursuant to a parent request. Instead of maintaining complete discipline records in students' cumulative files or providing complete discipline records prior to a disciplinary hearing, the District maintains many discipline records in a separate "investigation file," which is often readily accessible to campus security and school-based law enforcement. The District likely does not provide all documents in this separate file to students in expulsion packets when they are issued. Additionally, the District relies on multiple platforms for data collection and reporting, creating conflicting, inconsistent, or unreliable data reporting in PowerSchool and eventually CALPADS.

#### D. The District Fails to Provide Language Access Services

AVUHSD routinely fails to provide suspension and other discipline notices to families and education rights holders in their primary language, as required by law.<sup>16</sup> Moreover, AVUHSD often fails to provide interpreters at IEP meetings, denying limited-English-proficient parents the opportunity to access and influence their children's education plans. Similarly, AVUHSD fails to translate IEPs for limited-English-proficient parents.

### III. AVUHSD's Violations of Federal and State Law Are Ongoing

The District is actively depriving Black students and students with disabilities of their rights to equal educational opportunities and to educational experiences that are free from

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<sup>11</sup> Cal. Educ. Code § 48911(d).

<sup>12</sup> Cal. Educ. Code § 48911(b).

<sup>13</sup> Cal. Educ. Code § 48918.

<sup>14</sup> *Id.*

<sup>15</sup> Cal. Educ. Code § 48916.1.

<sup>16</sup> Cal. Educ. Code § 48985.

discrimination and harm. The District's policies and practices violate, *inter alia*, the Civil Rights Act, the Americans with Disabilities Acts, Section 504 of the Rehabilitation Act, the California Constitution, and state anti-disability laws.

The California Constitution guarantees all students in California basic educational equity. AVUHSD has violated, and continues to violate, the rights of Black students and students with disabilities to receive equal protection of the laws, as guaranteed by Article I, § 7(a) and Article IV, § 16(a) of the California Constitution. By implementing, sanctioning, or failing to curb discriminatory discipline policies and practices, the District has failed, and continues to fail, to provide these students with equal educational opportunities that meet statewide standards.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. 42 U.S.C. § 2000d. This prohibition extends to recipients of federal financial assistance through the U.S. Department of Education, such as public-school districts. 34 C.F.R. §§ 100.1, 100.3. AVUHSD is a recipient of federal funding and thus subject to Title VI. AVUHSD has violated, and continues to violate, Title VI by intentionally discriminating against Black students and students with disabilities on the basis of race, color, or national origin, specifically by approving, authorizing, and using suspension, expulsion, school assignment, and school policing and security policies and practices that result in a denial of equal educational opportunities.

Title II of the American with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 protect qualified individuals with a disability from being excluded from participation, discriminated against, denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity because of their disability. 42 U.S.C. § 12132; 29 U.S.C. § 794. AVUHSD is a public entity subject to the Title II of the ADA. AVUHSD has discriminated, and continues to discriminate, against students with disabilities by denying them a meaningful opportunity to be educated side-by-side with their nondisabled peers, subjecting them to a hostile learning environment, denying them reasonable accommodations to policies and practices in the areas of discipline, law enforcement referrals, and restraints, using methods of administration in these areas that discriminate based on disability, and providing significant assistance to agencies that discriminate based on disability.

AVUHSD has failed, and continues to fail, to provide UCP processes and due process protections in formal suspensions and expulsions and voluntary and involuntary transfers. AVUHSD has also failed, and continues to fail, to protect Black students, students with disabilities, and limited English proficient families against discriminatory discipline, transfer, and school assignment policies. Per the Education Code, AVUHSD has a clear and present ministerial duty to provide for equal access to educational opportunities for all children enrolled in schools within the District; to take appropriate action to identify and eliminate policies and practices that interfere with equal participation of students in instructional programs; and to ensure that District and school operations are in compliance with state and federal laws applicable to the provision of equal education to Black students and students with disabilities. Ed. Code §§ 48910, 48911, 48918, 48432.3, 40432.5, 48662, 51865; 56301(c), 220; Gov. Code § 11135 et seq. The District meets none of these requirements.

California Government Code section 11135 prohibits the denial of full and equal access to the benefits of state-funded programs and activities on the basis of race, ethnicity, and disability. Violations of the Americans with Disabilities Act constitute violations of Government Code § 11135(b). Moreover, to avoid discrimination, implementing regulations at 2 CCR sections 11161 and 11162 require agencies such as AVUSHD to take appropriate steps to provide “alternative communication services” for individuals based on their national origin or ethnic group identification, which include linguistic characteristics. These alternative communication services can include “the provision of the services of a multilingual employee or an interpreter for the benefit of an ultimate beneficiary and the provision of written materials in a language other than English.” AVUHSD has consistently failed, and continues to fail, to provide equitable language access services to limited English proficient families in violation of state law.

#### **IV. AVUHSD Must Act to Remedy These Violations**

Based on the foregoing, our clients demand that AVUHSD implement the following changes and safeguards in order to protect the rights of its Black and disabled students.

1. Take immediate action to reform policies, procedures, and practices to fully comply with Section 504, the ADA, the Equal Protection Clause, Title VI, and state law. Such action must include securing mutually-agreed upon third-party experts and creating a Stakeholder Equity Committee, to include school representatives, teachers, counselors, school administrators, District administrators, special education staff or administrators, students, parents/guardians, and members of community organizations, to assist the District to:
  - a. Develop and implement a clear and defined plan to achieve inclusivity for all students throughout the District, including Black students and students with disabilities, that enables these students to receive access to equal education side-by-side with their peers without disabilities in the least-restrictive, most safe and welcoming educational environment;
  - b. Implement a districtwide Multi-Tiered System of Supports to identify the needs of and improve educational outcomes for all students using multiple data measures, and to provide strategic, targeted, appropriate, and culturally relevant interventions for all students that are available regardless of a student’s disability status or race;
  - c. Establish appropriate programs that are based on peer-reviewed research or other evidence-based programs to provide services, accommodations, and modifications to students with disabilities in the general education environment;
  - d. Provide for immediate and continuing education for all District staff and evaluation of progress towards compliance with 504, the ADA, the Equal Protection Clause, Title VI, and state law by qualified third-party experts. Such education or training must include identification of students with disabilities,

provision of appropriate and culturally relevant instruction, services accommodations and modifications in the least restrictive environment, stopping and preventing harassment and bullying based on disability or race, eliminating or significantly reducing reliance on exclusionary discipline and school-based law enforcement, implicit bias, and administration of discipline without racial or disability discrimination;

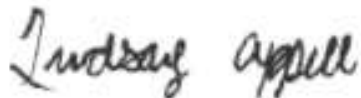
- e. Develop and implement a system to identify staff who are not complying with any of the laws cited in this Complaint, retrain and provide appropriate supports to any staff to enable them to come into compliance, and take appropriate disciplinary action regarding any staff who fail to come into compliance after such retraining or provision of supports;
  - f. Analyze all aspects of education for students with disabilities in the District for implicit racial bias and structural discriminatory racialization; and develop and implement a comprehensive plan to eliminate or mitigate such bias and discrimination;
  - g. Review and analyze the credentials and qualifications of all District administrators and staff; identify gaps in credentials or qualifications to administer or instruct students with disabilities; and develop and implement a detailed plan to eliminate such gaps; and
  - h. Determine appropriate District staffing levels, staff qualifications, methods of data collection and analysis, and effective measures to prevent and protect all students including students with disabilities and Black students, against bullying; develop and implement a detailed plan based on such determination;
2. Stop all use of the Matrix.
  3. Stop all use of on-campus detention and removals to the Student Support Center until a districtwide Multi-Tiered System of Supports is in place and a qualified third-party expert or experts have determined whether the District should continue use of such measures.
  4. Stop all referrals to law enforcement until a districtwide Multi-Tiered System of Supports is in place and a qualified third-party expert or experts have determined whether the District should continue use of such measures.
  5. Implement policies to provide students with positive supports and services in lieu security intervention, so that they may enjoy full and equal access to the District's programs.
  6. Prohibit security staff from mechanically restraining students and intervening in low level and disability-related behaviors.
  7. Void the District's contract with the Los Angeles County Sheriff's Department and remove law enforcement from campus.



8. Discontinue the use of the level system in the SDC-B until a qualified third-party expert or experts have determined whether the District should continue to use this system.
9. Discontinue segregation of disabled students and provide special education supports and services in the general education setting, to ensure that disabled students have access to education in the least restrictive environment and most integrated setting.
10. Provide limited English proficient families appropriate language communication services as required under state and federal law.
11. Disseminate to District staff, teachers, parents, and students a new Board of Trustees-approved written policy statement acknowledging the rights of Black students and students with disabilities and reasserting the District's commitment to honor those rights, including:
  - a. The right to access the same educational opportunities as their peers regardless of disability or race;
  - b. The right to services, accommodations, and modifications necessary to remain in the general education environment; and
  - c. The right to an educational environment free of discriminatory discipline, policing, harassment, and bullying;
12. Provide ongoing semi-annual community forums to seek input from parents and students regarding the issues and policy changes detailed in this letter.
13. Stop all disciplinary action, including any pending action, against any student with disabilities unless and until a Manifestation Determination Review has been completed, and maintain such practice until a districtwide Multi-Tiered System of Services and Supports has been implemented and determined effective by a qualified third-party expert or experts
14. Immediately discontinue all policies, procedures, and practices that do not comply with the laws cited in this letter.
15. Alongside a third-party expert, conduct a review of all current student's discipline records, including students issued suspensions, expulsions, and transfers, for compliance in following legal procedures and immediately expunge discipline records identified as noncompliant. Provide families with a notice informing them of the process for disputing discipline records and informing them of their right to request an expungement of records.

We ask for your response within 30 days of your receipt of this letter, including specifically whether the District intends to comply with these demands. If you do not respond to this correspondence within 30 days, our clients will consider all available legal remedies.

Sincerely,



**Disability Rights California**

Lindsay Appell  
Meeth Soni  
Stephen Peters



**Neighborhood Legal Services  
of Los Angeles County**

Chelsea Helena  
Melisa Fumbarg  
Rachel Steinback  
David Pallack



**Equal Justice Society**

Alexandra Santa Ana  
Mona Tawatao  
Christina Alvernaz



**Kilpatrick Townsend & Stockton  
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