

By Electronic Mail

August 23, 2023

U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

RE: Nampa School District's Violations of Title IV of the Civil Rights Act of 1964

INTRODUCTION

1. The Nampa School District (“NSD” or “The District”) enrolls more than 15,000 students and is the third largest school district in the state of Idaho. Approximately 40 percent of the students enrolled at NSD identify as Latine,¹ representing one of the largest Latine student populations in the state.²

2. The NSD administration for several years has implemented discipline in a way that disproportionately targets Latine students. NSD’s policy against gang activity includes a dress code policy that prohibits students from wearing anything that is “evidence of membership in, affiliation with any gang and/or representative of any gang.” This vague and broadly drafted policy gives staff and police broad discretion to ban any item they allege to be related to gangs. In practice, this has resulted in the targeting and disproportionate disciplining of Latine students based on their clothing, including some items with close ties to their ethnicity and culture, like Catholic rosaries, La Huelga Bird, or clothing resembling *cholo* style.

¹ Throughout this complaint, we use the term *Latine*, the gender-neutral form of the term *Latino/a*.

² According to a report by the Idaho Commission on Hispanic Affairs, in the 2019-20 school year the Nampa School District served the largest population of Latine students in the state. Idaho Commission on Hispanic Affairs, The Hispanic Profile Data Book for Idaho 5th Edition (2021), <https://icha.idaho.gov/docs/Hispanic%20Profile%20Data%20Book%202021%20-%20FINAL%20V3.pdf>. Federally reported data indicates that in the 2020-2021 school year, 38% of students identify as Latine (Hispanic) and 56% identify as white.

3. Latine families continue to experience the resulting surveillance and disciplinary consequences of these gang dress codes. A recurring concern among community members who work at or whose children are enrolled in NSD is that Latine students experience disciplinary actions very differently from their White peers. This is confirmed by data analysis showing that Latine students receive in and out-of-school suspensions at higher rates than would be expected for their student population. These disparities are even greater for Latine male and English-learning students.

4. The ACLU of Idaho also received several reports of racist comments by school staff, including school police, adding to the hostile environment that Latine students face at NSD.

COMPLAINANTS

5. This complaint is filed on behalf of Latine students enrolled in the Nampa School District.

6. A.B.³ is a former staff member at NSD. In their position with the District, A.B. often supported Latine students facing unfair treatment in discipline, including under NSD's Gang Dress Code, and Latine students who faced instances of microaggressions or racial discrimination from staff.

7. A.C.⁴ is a current staff member at NSD. In their position with the District, A.C. has supported Latine students facing unfair treatment, including under NSD's policy and practice to ask students to conceal or remove, or altogether prohibit the use of their Catholic rosaries.

8. A.D.⁵ is a parent whose son was labeled and pushed out of NSD as a result of the District's Gang Dress Code when he attended Roosevelt Elementary School and Lone Star

³ A.B. is a pseudonym.

⁴ A.C. is a pseudonym.

⁵ A.D. is a pseudonym.

Middle School. Given the hostile environment, unfair treatment in discipline, and a denial for enrollment at Treasure Valley Leadership Academy, A.D. was forced to enroll their son in a charter school outside of the District.

9. A.E.⁶ is a parent whose son received unfair treatment and discipline when he attended Sherman Elementary School. Given the hostile environment and unfair treatment towards Latine students and parents, A.E. was forced to transfer their son to a charter school outside of the District.

10. This complaint is against the Nampa School District in Canyon County, Idaho.

The contact information for NSD's superintendent is:

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JURISDICTION

11. This complaint concerns NSD's discrimination on the basis of race, national origin, religion, and English language learner status in the course of administering a public education program.

12. NSD accepts funding from the U.S. Department of Education.

13. The U.S. Department of Justice Civil Rights Division Equal Opportunities Section is responsible for ensuring that educational programs receiving departmental funding comply with Title IV, 42 U.S.C. § 2000c, *et seq.*, Title VI, 42 U.S.C. § 2000d, *et seq.*, of the 1964 Civil Rights Act, and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.*, and for investigating complaints of unlawful discrimination under these laws.

⁶ A.E. is a pseudonym.

14. This complaint is timely because it is filed within 180 days of the ongoing discriminatory policies and practices.

FACTUAL BACKGROUND

I. NSD’s Gang Dress Code and Interpretation

15. NSD’s “Gang and Gang Activity” policy states that students cannot “[w]ear, possess, use, distribute, or sell any clothing, jewelry, emblem, badge, symbol, sign, or other items which are evidence of membership in, affiliation with any gang and/or representative of any gang[.]”⁷ NSD Policy 3310 (“NSD Gang Dress Code”), Exhibit A. Students are also prohibited from displaying tattoos “which may be affiliated with any gang and/or representative of any gang.” *Id.*

16. NSD policy does not define specific clothing or symbols prohibited, define gang, or how, for example, an article of clothing would be interpreted as evidence of gang affiliation.

17. Students in violation of this policy can receive “disciplinary action, up to and including suspension, expulsion, and/or notification of police.” *Id.* Administrators can also “deny class entrance to students dressed or otherwise adorned inappropriately until arrangements may be made for their proper attire.” NSD Policy 3255, Exhibit B. Any class time students miss as a result of dress code violations is deemed an unexcused absence. *Id.*

18. NSD also does not have a uniform code of student discipline outlining the rules and procedures for the administration of student discipline, including the prohibitions on gang clothing. *See* NSD Policy 3330, Exhibit C (assigning each school to independently provide a “uniform written statement of school rules and procedures”). Looking to just one school specific

⁷ Nampa School District’s policies are available at <https://go.boarddocs.com/id/nsd131/Board.nsf/Public?open&id=policies#>. In addition to prohibitions on student dress, Policy 3310 prohibits students from “[e]ngag[ing] in any act, whether verbal or nonverbal, including gestures or handshakes” showing a gang connection. *Id.* As with the policy’s dress code provisions, these rules are vague, lacking in definition of key elements, and broadly restrict students’ expressive activity.

example, Lone Star Middle School’s student handbook provides that “inappropriate behaviors” which “may result in police intervention” include “but are not limited to,” “[e]xpression of gang or hate group affiliation through clothing, signs, graffiti, tattoos, and/or activities,” as well as “[a]ny dress and/or appearance which is disruptive to the learning process,” “[d]isrespect to teachers, staff, or students,” and “willful defiance or insubordination.” Lone Star Middle School Parent & Student Handbook 2022-2023, p. 11, Exhibit D. Confusingly, the policy simultaneously categorizes “nonconformity to the dress code” and “disruptive behavior” as its lowest level of disciplinary infractions. *Id.*

19. Lone Star Middle School’s dress code further prohibits “jewelry containing gang related letters or numbers,” “attire connected to hate or gang groups such as hats, bandanas, rags, colors, shirts, sags, chains, being dressed in a single color, etc.,” “number 13, 14, 18, or any numbers that add to those numbers,” and “[a]dditional items as identified by police personnel.” *Id.* at p. 15. The policy provides no further definitions or clarifications of this rule.

20. NSD’s policies provide sweeping discretion to discipline students for dress and expression, while simultaneously failing to provide defined guidelines. As a result, school employees enforce prohibitions on gang related attire on an ad hoc basis and rely on further vague and broad training from law enforcement. Students are without notice of the forms of expression that may be cited to restrict their access to education and are vulnerable to not only arbitrary but also discriminatory deprivations and further referrals to law enforcement.

21. In one incident, A.D.’s son was labeled as “gang” because of his clothing and, as a result, received multiple disciplinary actions when he attended Roosevelt Elementary School and Lone Star Middle School. These allegations became part of their son’s disciplinary record and resulted in a hostile environment for their son, who felt continuously surveilled and targeted by administrators and school police. Even disciplinary incidents unrelated to their son’s clothing

were labeled as “gang”, because of their son’s prior violations of NSD’s Gang Dress Code. A.D. tried to transfer their son to Treasure Valley Leadership Academy (TVLA) to escape this hostile environment and unfair treatment in discipline. However, TVLA denied his enrollment because they assumed, based on his disciplinary records, that he was a documented gang member.

A. Law Enforcement Defined Prohibitions on Gang Clothing

22. In the 2022 and 2023 school years, NSD’s school-based police offered four “gang” training presentations to NSD school staff. Exhibits E-H. During these presentations, school-based police encourage staff to notify them of any incidents of “gang” clothing or activity. *See e.g.*, Exhibit H, p. 8.

i. Prohibition on “Gang” Clothing

23. NSD school police identify in their training and in their interactions with staff and students several items as alleged “gang” clothing. Some of these items closely resemble *cholo* style clothing, including:

- A. Bandana neatly folded over head or neck (Exhibit E, p. 5)
- B. Ben Davis shirts (Exhibit E, p. 8)
- C. Dickies / khaki shorts or pants (Exhibit E, p. 5; Exhibit F, p. 4)
- D. High white socks (Exhibit F, p. 4)
- E. Plaid shirts (Exhibit F, p. 4)
- F. Top button only shirts (Exhibit F, pp. 4, 5)

Families also reported that certain items, including Nike Cortez sneakers and hairnets have been prohibited as allegedly gang related.

24. Cholo style has deep cultural roots for many Latine communities in the U.S. and dates to early 20th century pachucos who wore zoot suits. In the 1940s, pachucos were a “visible symbol of cultural autonomy” for many Chicanos on the West Coast and along the border. Pachucos wore zoot suits, long, pressed shoulder-padded blazers and long tapered pants synched at the waist, and a wide brim hat made of wool. Some communities outlawed the style, and in 1943, Mexican Americans who wore zoot suits faced several attacks during zoot-suit riots at the

hands of white servicemen. By the 1970s, the pachuco style transformed to a “more casual, cholo” style. The cholo style for many Chicanos and Latines has continued to transform and can include “long-sleeved flannel shirts buttoned to the top, oversized [khaki] Dickie’s creased to perfection cropped below the knee exposing long white socks and crisp Nike’s classic Cortez shoes.” Although the cholo style (just like the pachuco style before it) is often dismissed as synonymous with gang, for many Latines the style is a way to legitimize and celebrate their cultural and ethnic identity.⁸

25. NSD school police have also identified as “gang” attire symbols that have close ties to the Latine community like La Huelga Bird. *See* Exhibit E, p. 12. La Huelga Bird represents an important symbol for Chicanos and other people in the Latine community.⁹ It is the symbol of the United Farm Workers, a union that has fought for basic human rights for farm workers since 1962.¹⁰ Cesar Chavez’ brother, Manuel Chavez, designed the flag. The Aztec eagle represents the Mexican American heritage, its black color represents the dark times in farmworkers’ lives, the white circle represents hopes and aspirations, and the red represents union members’ hard work and sacrifice.¹¹

ii. Catholic Rosaries

⁸ *See* Jacqueline Aguirre, *From Pachucos to Cholos: Chicano Pride as Identity*, MINERO MAGAZINE (Jan. 21, 2020), <https://mineromagazine.com/2134/artsandculture/from-pachucos-to-cholos-chicano-pride-as-identity/> (detailing the transition from Pachuco to cholo identity for Latine communities); Matthew Wills, *The Zoot Suit Riots Were Race Riots*, JSTOR DAILY (Oct. 13, 2021), <https://daily.jstor.org/the-zoot-suit-riots-were-race-riots/> (describing the importance of zoot suits and ensuing riots); Mekita Rivas, *How Embracing Chola Culture in High School Helped Me Understand My Latina Identity*, HELLOGIGGLES (Aug. 24, 2017), <https://hellogiggles.com/embracing-chola-culture-high-school-understand-my-latina-identity/> (recounting the experiences of a Latina teenager in Nebraska).

⁹ UNITED FARM WORKERS OF AMERICA TRADEMARK LICENSING FREQUENTLY ASKED QUESTIONS (FAQ) VERSION 5-18-2016, <https://ufw.org/wp-content/uploads/2017/01/UFWTrademarkfaq-5-18-16.pdf>.

¹⁰ UNITED FARM WORKERS OF AMERICA TRADEMARK LICENSING FREQUENTLY ASKED QUESTIONS (FAQ) VERSION 5-18-2016, <https://ufw.org/wp-content/uploads/2017/01/UFWTrademarkfaq-5-18-16.pdf>.

¹¹ Chicanismo Today, *The Meaning Behind the United Farm Workers Flag*, YouTube (Oct. 2, 2022), <https://youtu.be/8V8vrTBx1IQ>.

26. NSD enforces an informal “no rosaries policy” in at least some of its schools, including at Lone Star Middle and South Middle School. Because the policies are not formally documented, it is difficult to track the full scope of their use. However, emails obtained through open records requests reflect that South Middle School enforces a “no rosaries” policy based on police guidance “that this item has been used to show gang affiliation.” January 2023 email by Marcos Sanchez, Dean of Students at South Middle School, Exhibit I. In the same email, Dean Sanchez indicates the school enforces the policy even though there is “strong parent resistance” and “[t]here is no specific policy in the handbook banning crosses or rosaries.” *Id.*

27. Community members also report that school administrators are unresponsive to staff and community members who speak out against the Gang Dress Code policy and ignore concerns about the discriminatory impact on Latine students. As one community member described it, it was not until a white religious group threatened to sue, that the district began to consider the legality of the policy prohibiting rosaries.¹² In another instance, a white staff member told a Latine staff member who spoke out against the ban on rosaries that Catholics are not supposed to wear rosaries in the first place.

28. The use of beads for prayer has been common across many faiths and cultures for thousands of years. Roman Catholics use rosaries to recite several prayers. Their rosary is made up of 6 large beads used for praying the Our Father prayer, and 53 smaller beads used for praying the Hail Mary prayer. Rosary prayer can also include a reflection on several mysteries of the Catholic faith that relate to the life of Mary and Jesus. Wearing a rosary in a mocking or sacrilegious way could be considered a sin in the Catholic Church. But wearing rosary rings, bracelets, or necklaces is popular among many Catholics as a symbol of devotion and a reminder

¹² On information and belief, although there have been concerns raised with the prohibition on wearing rosaries, the prohibition has not been revoked and students and families have not received notice that they will be permitted to wear or possess rosaries at school.

or aid to pray. In particular, this practice is common in many countries across Latin America and for Latines who observe Catholicism in the United States.¹³

29. Through these interpretations, NSD enforces its vague gang dress code in a manner that discriminates against Latine students, prohibiting their expression of religious and cultural beliefs through their attire. Further, these prohibitions are grounded only in the general, unspecified advice of law enforcement.

B. Color Contracts

30. NSD also has an informal practice of placing students on “color contracts,” also referred to as modified dress codes, that prohibit a particular student from wearing a particular color. The use of color contracts is not documented in NSD’s code of conduct or other school policies that would provide students and families with notice about rules and procedures associated with color contracts. However, community members are familiar with the use of color contracts dating back many years. In response to inquiries by the ACLU, District Staff indicated that color contracts are administered on an individual basis through consultation with police, and

¹³ John Desmond Miller, *Chronology of the Development of the Rosary*, in BEADS AND PRAYERS: THE ROSARY IN HISTORY AND DEVOTION (Bloomsbury Publishing 2002) (describing the use of beads and rosaries for prayer); Dynamic Catholic, *A Brief History of the Rosary: Ever Ancient, Ever New*, <https://www.dynamiccatholic.com/rosary/history-of-the-rosary.html> (same for Roman Catholics); United States Conference of Catholic Bishops, *How to Pray the Catholic Rosary*, <https://www.usccb.org/how-to-pray-the-rosary> (noting different prayers); Fred de Noyelle, *Can you Wear a Rosary Around Your Neck*, ALETEIA (Aug. 18, 2022) <https://aleteia.org/2022/08/18/can-you-wear-the-rosary-around-your-neck/> (“They are intended to be used as aids to prayer, making it easier to pray the Rosary, and not primarily as jewelry. There is nothing wrong with wearing a rosary as a necklace, as you would a religious medal or scapular; indeed, this is a common custom in many cultures. In this way it serves as a reminder to pray the Rosary.”); Father Edward McNamara, *Wearing the Rosary as a Necklace*, EWTN (June 14, 2011) <https://www.ewtn.com/catholicism/library/wearing-the-rosary-as-a-necklace-4581> (noting a reader’s comments that “in El Salvador and Honduras it is not uncommon to see men and sometimes women wearing a rosary around their necks” and although some gang members wear them “as a sort of talisman, to protect them” it is an expression of faith for many others); *The Rosary in Every Day Mexican Life*, San Miguel Times (May 16, 2020), <https://sanmigueltimes.com/2020/05/the-rosary-in-every-day-mexican-life/> (“Countless times in the company of others, a situation has occurred making the public saying of a rosary necessary. Suffice to say you’ll never catch a Mexican without easy access to a rosary!”); Noyelle, *supra* note 9, (“Dominicans, for example, wear a rosary attached to their belts.”); Latino History Harvest, *Rosary Beads*, <https://library.ccsu.edu/latinohistoryharvest/items/show/67> (describing the usage of rosary beads in Connecticut).

“the vast majority” of contracts exist only orally. NSD Email Explaining Color Contracts, Exhibit J.

31. Template written color contracts obtained through open records requests specify that an individual student cannot wear particular colors the District identifies as “gang” colors. NSD Color Contract High School, Exhibit K; NSD Color Contract Middle School, Exhibit L. (Colors are not specified in the contract document, but community members indicated that contracts would generally apply to red or blue. These are also the school colors of Nampa High School and several other schools in the district.) The contracts establish expectations that the student: not wear the “determined color,” including at sporting events; talk to students or staff about the colors; or wear any clothing accessory with this color, including shoes or nail polish. *Id.* Students who fail to abide by their color contract more than once can be subject to in- or out-of-school suspension. *Id.* The written contracts include spaces for student and parent signatures. *Id.* Community members report that even if a student or family member refuses to sign the contract, they will still be expected to comply with the terms.

32. For the 2022-2023 school year, both students under *written* Color Contracts were male, Latine, and identified as students with Limited English Proficiency. The students were also enrolled at Lone Star Middle and Skyview High School.¹⁴ Exhibit J.

C. NSD’s Enforcement of Its Gang Dress Code

33. Community members also report that many times students face informal disciplinary consequences for violations of the dress code (e.g., sent to the principal’s office or sent home for the day), but there is no documentation of students missing class. This makes it

¹⁴ The ACLU of Idaho requested records related to Color Contracts in January and February of 2023, so there may be additional written Color Contracts for the remainder of the Spring 2023 semester we did not review.

harder to track the disciplinary consequences Latine students are facing as a result of NSD’s “gang” dress code and the impact on their education.

34. Sworn law enforcement officers, employed by the Nampa Police Department (“NPD”) and NSD to serve as school police, play a role in advising and, at times, enforcing NSD’s Gang Dress Code, as the policies described above reflect. Yet, it is hard to track their involvement in this and other types of discipline due to possible under-reporting by the District. In the 2013-2014, 2015-2016, 2017-2018, and 2020-2021 school years, NSD reported to the ACLU of Idaho zero school-related arrests. The ACLU of Idaho made several attempts to clarify this information from NSD, citing the District’s requirement to report this data as part of the Civil Rights Data Collection (CRDC). In response, NSD admitted that its discipline files track whether there was any “Justice System Involved,” but not whether the disciplinary action resulted in referrals to arrest, or what action caused the arrest or referral.¹⁵

35. On information and belief, NPD officers may also have access to students’ disciplinary records through the School-Wide Information System (SWIS). In the fall 2022, school police led a training for Nampa School District where they provided detailed instructions to staff on how to input gang related dress code violations or activity into SWIS. Exhibit F, p.5. The instructions included a specific request to “use a simple entry” and examples of alleged “gang related clothing” (belt hanging down or top button only shirts) and gang behavior (whistling in halls or 6th graders hanging out in 7th grade hallways or gathering in the bathrooms). *Id.* SWIS contains sensitive information and raises concerns for protected information under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

II. NSD’s Disproportionate Discipline of Latine Students

¹⁵ Additionally, in 2015-16 and 2017-18 the District reported almost zero students with disabilities under IDEA, even though it reported 8.8% of its student enrollment as IDEA students in 2013-14 and then again 10.7% in 2020-21.

36. From 2013 to 2021, White students made up between 56% and 62% of the student population and Latine students made up between 33% and 38% of the student population. ACLU Discipline Data Analysis, Exhibit M.

37. In the 2021-22 and 2022-23 school years, Latine students attending NSD received 7 out of the 9 documented incidents of gang-affiliated violations, including for alleged gang clothing. All students, except one, were suspended.¹⁶ NSD Gang Related Incidents 2021-2022 and 2022-2023, Exhibit N.

38. The majority of students enrolled at NSD are White (54.9 percent) and Latine students represent less than 40 percent of the population. Yet, analysis of NSD's discipline data for the 2013-2014, 2015-2016, 2017-2018, and 2020-2021 school years shows that:¹⁷

A. Latine students are suspended (both in-school and out-of-school) at rates higher than would be expected for their student population. Conversely, white students are consistently suspended at rates lower than would be expected. *Id.* For example, in 2017-18, Latine students were suspended (in-school) at a rate 1.23 times higher than would be expected for their share of the student population, compared to just .85 for white students. Exhibit M.

B. Moreover, the same disparity in suspension rates is observed when accounting for both race and gender. In the worst year in 2015-16, Latine Male students were suspended (in-school) at a rate of 1.83 times higher than would be expected for their share of the student population, compared to 1.19 for White Male students. *Id.*

¹⁶ As discussed above, community members report that discipline related to the gang dress code is often informal, suggesting that while these documented incidents reflect the racially discriminatory impact of the policy in its application, they do not capture the full scope of its enforcement.

¹⁷ The methodology for this data analysis is included in the ACLU of Idaho's report "Proud to Be Brown: Punishing Latine Culture in Schools", p. 25, available at https://www.acluidaho.org/sites/default/files/field_documents/aclu_id_proud_to_be_brown_july_2023.pdf. The raw data is also available upon request.

C. There is also a consistent disparity in in-school suspension rates between English-learning students (LEP status) and non-English learning students. In the worst year in 2020-2021, English-learning students were suspended at a rate of 2.29 times higher than would be expected for their share of the student population, compared to 0.85 for non-English learning students. *Id.*

39. In one incident, A.E.'s son, an Latine elementary school student, was disciplined after another white student reported that he had slapped her. Based on the white student's allegation, school staff forced A.E.'s son to stand facing a wall in the cold while other students saw this and continued to play around him. When A.E.'s son told A.E. about the incident, he reported that the white student had been bullying him on several occasions, had hit him on this occasion, and he had simply pushed back to defend himself. To A.E.'s knowledge, the other student was not punished. When A.E. complained to the school about the incident, A.E. received no response.

III. Additional Discriminatory Treatment of Latine Students

40. Community members report ethnic bias and discrimination against Latine students by some staff members, including:

A. A school resource officer saying his job was to "clean up" the school after he was discussing a particular Mexican student had been disciplined.

B. A substitute teacher telling Latine students "You need to speak English here" even though the students were speaking English. This teacher also called a group of Latina students "chulas" and told a Black student "I bet you are a great football player." Despite complaints by staff to the principal, the substitute teacher was asked to return to serve on assignments for the District.

C. An office manager commenting “let’s see how long he lasts” because “we already got rid of all his friends” when a Latine student re-enrolled in the District.

D. A teacher praised on social media a student’s poems about “his love of/for big booty Latinas” and bragged on their social media post that they published the poems.

41. Other comments by school staff reflected a criminalizing and stigmatizing view of students, such as:

A. A teacher referred to students as “gang bangers.”

B. A teacher suggesting that NSD set up a trailer in the back of the school with all the “troubled students” and for a parent, instead of staff, to supervise them and be prepared to deal with “future criminals.”

42. When Latine and Spanish speaking families attempt to address concerns with the treatment of their students, they are met with dismissiveness and face unfair language barriers in attempting advocate for their children. For example, when A.E., a Spanish speaker, attempted to schedule a meeting with the principal at Sherman Elementary, the school secretary told them that the Spanish speaking staff were too busy and that A.E. would need to provide for their own translation. Eventually A.E. was able to secure a translator through the school district, but particularly because of the secretary’s dismissive attitude, they have concerns about the neutrality of the translation provided. On multiple occasions, A.E. has struggled to secure translation to be able to communicate with the school about their children’s education and describes some school staff as being dismissive towards Latine and Spanish-speaking families.

LEGAL VIOLATIONS

I. NSD’s Gang Dress Code and Disciplinary Practices Violate Title VI

43. Title VI of the Civil Rights Act of 1964 prohibits race and ancestry discrimination by providing that “no person in the United States shall, on the ground of race, color, or national

origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 42 U.S.C. § 2000(d) (1964). These prohibitions against discrimination and different treatment also extend to staff schools and districts contract with, like school police. *See* 34 C.F.R. Section 100.3(a) and (b) (prohibiting discrimination through “contractual or other arrangements”).

44. Title VI prohibits “prohibits “discrimination against an individual where it is based on the group’s actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.” U.S. Department of Justice Civil Rights Division Letter to U.S. Dep’t for Educ. Office of Civil Rights, *Title VI and Coverage of Religiously Identifiable Groups* (September 2010); *see also* U.S. Dep’t of Educ. Office of Civil Rights, *Shared Ancestry or Ethnic Characteristics*, <https://www2.ed.gov/about/offices/list/ocr/sharedancestry.html>. This can include discriminating against students of a religion when the discrimination involves how a person dresses and that dress is linked to their ethnicity or ancestry. *See* U.S. Dep’t of Educ. Office of Civil Rights, *Know Your Rights: Title VI and Religion*, <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

45. Title IV of the Civil Rights Act of 1964 also prohibits discrimination on the basis of race, color, and national origin in public education. 42 U.S.C. § 2000(c) *et seq.*

46. Title IV and VI also protect against a hostile education environment. *See, e.g.*, U.S. Dep’t of Education, Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994); U.S. Department of Education Office for Civil Rights, U.S. Department of Justice Civil Rights Division, *Resource on Confronting Racial Discrimination in Student Discipline* (May 2023); *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F.Supp.3d 332, 356 (S.D.N.Y. 2014) (“Discriminatory

actions proscribed by Title VI include exclusion of educational benefits or programs. Educational benefits ‘include an academic environment free from racial hostility.’”) (quoting *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666 (2d Cir. 2012)); *Stafford v. GWU* (“Under Title VI, as under other federal antidiscrimination statutes, federally funded institutions may be liable for intentional discrimination if they have been ‘deliberately indifferent’ to known acts of harassment that give rise to a hostile educational environment.”))

47. NSD violates Latine students’ rights under Title VI and Title IV by enforcing its prohibitions on alleged gang dress to target Latine students for wearing items that have close ties to their ethnic and cultural heritage, like Catholic rosaries, clothing with La Huelga symbol, and clothing resembling *cholo* style. Additionally, NSD punishes Latine students for wearing clothes that all students commonly wear without issue, like red or blue clothing, based only on vague assertions of gang dress prohibitions.

48. The discriminatory consequences of NSD’s prohibitions on alleged gang dress include the disparate denial of Latine students’ First Amendment rights. Students have a First Amendment right to freedom of expression. In order to regulate student expression, including expression communicated through articles of clothing, schools must show that student conduct would “materially and substantially interfere” with the proper operation of the school. *Tinker v. Des Moines Independent Community School Dis.*, 393 U.S. 503, 509 (1969) (citation omitted). NSD’s prohibition on students’ expression through clothing including La Huelga bird, rosary beads, and other items, does not meet this standard. NSD disciplines student expression based on viewpoints closely tied to Latine ethnicity and culture but does not prohibit other cultural or religious views expressed through student dress.

49. Additionally, discrimination in the application of school discipline is facilitated by vague rules that lack objective standards in violation of the Due Process Clause. *See, e.g.*,

City of Chicago v. Morales, 527 U.S. 41, 56 (1999); *Stephenson v. Davenport Community Sch. Dist.*, 110 F.3d 1303, 1310 (8th Cir. 1997) (holding District’s regulation prohibiting “gang related activities such as display of ‘colors,’ symbols, signals, signs, etc.” was “fatally vague”). Vague rules also deprive students of notice of what conduct and expression is prohibited, and of the consequences of a violation.

50. Further, students are entitled to due process in school discipline. This requires, at a minimum, notice, an explanation of the evidence, and the opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 581 (1975). The administration of discriminatory prohibitions on gang dress without adherence to the requirements of due process further disparately and discriminatorily impacting Latine students’ access to education.

51. NSD’s policies related to student discipline and dress codes violate students’ due process rights. The district operates without a uniform discipline policy or dress code that would apply equally to all students. Policies that do exist at the district and school level are excessively vague. They fail to define central components of the rules students are asked to comply with, for example providing no definition of gang attire, and incorporate open-ended discretion to add to the policies.

52. Numerous policies are unwritten and established through informal consultation with law enforcement, failing to provide any notice or base line for uniform and non-discriminatory enforcement. Color contract policies in particular allow for additional rules and disciplinary consequences to be assigned to students on an ad hoc and individual basis. In addition to failing to clearly identify the rules of conduct that students must comply with, NSD policies do not provide clear notice of the consequences of a school rule violation. Vague rules and the imposition of discipline in the absence of any written rule defy objective application of discipline and instead invite discrimination. The lack of written policies and documentation of

the administration of discipline further deny Latine students constitutionally required procedural protections, and frustrate the ability to ensure that discipline does not occur on a discriminatory basis.

53. The consequences of NSD's discriminatory discipline practices also implicate students' privacy rights. Disciplinary records constitute educational records reflecting students' personally identifiable information. School districts have an obligation to keep this information private, and may not allow access to this information except to school officials who have a legitimate educational interest in the information or in other specific, narrow, exceptions. FERPA, 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.31. The potential for law enforcement officers to access NSD's database of student discipline records raises concerns under FERPA.

54. Last, the failure to keep and report discipline data further undermines Latine students right to an equal educational opportunity. School districts are required to keep and report through the federal Civil Rights Data Collection accurate records of school discipline, including records of referrals to law enforcement and arrests. *See* 20 U.S.C. 3413(c)(1); 4 CFR § 100.6(b), 34 CFR § 106.81, and 34 CFR § 104.61. NSD's failure to keep and report complete disciplinary records interferes with the ability to ensure that discipline and other school policies are applied in a manner that does not discriminate on the basis of race. It denies students and families the ability to understand how discipline is applied in the District, to have meaningful input into school district practices, and to be confident in the fair, non-discriminatory administration of school policies.

55. The Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701, *et seq.*, protects the rights of English learners. This includes ensuring the ability of non-native English-speaking families to meaningfully communicate in a language they understand with the school about their child's education. *See, e.g.*, U.S. Dep'ts. of Educ. & Justice, *Information for Limited*

English Proficient (LEP) Parents and Guardians and for Schools and School Districts that Communicate with Them, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-lep-parents-201501.pdf>. NSD fails to ensure that non-native English-speaking families can communicate with the school district regarding their students' experiences and treatment within the school district.

REMEDIES

56. Complainants request that the U.S. Department of Justice Civil Rights Division Educational Opportunities Section:

1. Investigate NSD to determine whether its dress code complies with Titles IV and VI and their implementing regulations, both on its face and as enforced;
2. Take all necessary steps to remedy any unlawful conduct, as required by Titles IV and VI;
3. Secure assurances of compliance from NSD with respect to remedies for any unlawful conduct discovered; and,
4. Monitor any resulting agreements with NSD to ensure compliance.

Respectfully submitted,

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