



FCUSD

Kathryn Allaman, Assistant Superintendent

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Office of Secondary Instruction

Name of complainant, a District parent, has been redacted to protect the privacy of the student.

FINAL WRITTEN DECISION

June 26, 2017

UNIFORM COMPLAINT OF [REDACTED]
(Administrative Regulation 1312.3)

INTRODUCTION

On April 28, 2017, [REDACTED] ("Complainant") filed a Level I Uniform Complaint with the Folsom Unified School District ("District"). (Attachment 1.) This Complaint was referred to the undersigned (Kathryn Allaman, Assistant Superintendent, Secondary Instruction), who is the District's designated Compliance Officer under its Uniform Complaint Procedures (Board Policy ("BP") 1312.3 and Administrative Regulation ("AR") 1312.3).

Complainant is currently a Parent of a Student enrolled at Vista del Lago High School ("Vista") in the District. Student is a participant in the Vista Cheer Program, an extracurricular activity that is recognized by Vista and the District. Though not a formal extracurricular competitive sport, and not currently governed by the California Interscholastic Federation ("CIF"), the Cheer Program is recognized, sanctioned, facilitated and supported by the District. Also, under the encouragement and approval of the District, the Cheer Program team participates in interscholastic competitions.

NATURE OF THE ALLEGATIONS

Complainant asserts that the District has violated its duty under the California Constitution to provide a free education to all students by allowing certain practices pertaining to the collection of fees and fundraising to exist in the Vista Cheer Program. Complainant also asserts that coaching staff has misused Cheer Program funds and "bullied" parents and students with regard to fundraising for the Program. Specifically, Complainant asserts that, as a condition of participation and membership on the Cheer team:

1. Students/Parents are charged mandatory fees for uniforms, equipment and supplies;
2. Students/Parents are required to pay fees for Student participation in a summer Cheer camp, for which attendance is mandatory;
3. Students/Parents are required to purchase tickets for attendance at Cheer banquets, and purchase raffle tickets at such events;
4. Students/Parents are required to bear the cost of mandatory bus transportation to and from Cheer events;

5. The Cheer Program misappropriated or improperly expended donations or other income to pay coach stipends and/or coach personal expenses related to attendance at camps, banquets, or other functions;
6. Cheer Program coaching staff exerts undue pressure (“bullying”) on Parents/Students to participate in fundraising activities and make donations to the program.

SUMMARY OF THE INVESTIGATION

In conducting the investigation, the undersigned drew information from a wide variety of sources, including interviews and written statements of the Complainant and other parents of students in the Vista Cheer program, interviews and written statements of administrators and coaching staff, other written material issued from school sites, and information posted on Vista and other District school websites.

INTERIM RESPONSE AND REMEDY

On May 25, 2017, while the investigation was in progress, I determined that enough facts had been gathered to conclude, to a substantial likelihood, that certain violations of law and District policy as set forth in the Complaint had occurred in the Vista Cheer Program. I also determined that there was risk of ongoing harm to parents and students who were currently being asked to incur fees and expenses associated with the Vista Cheer Program regarding both the current season and the upcoming 2017-2018 cheer season.

As allowed by the law and District Administrative Regulations, I therefore issued an Interim Response and Remedy, pending completion of this Final Written Decision. (Attachment 2.)

FINDINGS OF FACT

Based on a preponderance of the evidence reviewed, I make the following Findings of Fact.

For a period of more than one (1) calendar year, as alleged in the Complaint, the District has engaged in the following practices with regard to the Vista Cheer Program¹:

1. **Uniforms and Other Equipment**

Participants in the Program have been required, as a condition of attendance, to purchase fitted uniforms, including by way of illustration and not limitation, items such as hair bows, pom-poms, and warm-up clothing.

¹ It is noted that, although not specifically alleged in the Complaint, this investigation found that many of the practices discovered have also occurred, at least on occasion, at other sites and in other extra-curricular programs within the District. This ancillary finding will be addressed in the Corrective Actions section of this Response.

2. Cheer Camp

Participants in the Program have been given the reasonable belief that they must attend and bear the cost of an annual summer Cheer camp.

3. Dinners, Banquets, and Related Expenses

Participants in the Program have been required to purchase tickets for dinners and/or an annual banquet, as well as purchase associated raffle tickets.

4. Transportation

District-provided transportation has been mandatory and participants have been required to pay a fee for this transportation.

5. Fundraising and Donations

Parents and students have been improperly pressured to raise funds to support the Cheer Program in a manner that has suggested that participation in certain activities, and fundraising in designated amounts, or making donations in pre-determined amounts, is a requirement for families whose students participate in the Cheer Program. Names of students associated with amounts generated by donations or fundraising have been disclosed to other families within the Cheer Program in a manner that may have created undue social pressure on participants to engage in fundraising activities they might otherwise decline, meet fundraising goals, or make donations.

CONCLUSIONS OF LAW

A. Allegation of Violation of the California Constitutional Free Education Guarantee

California Education Code Section 49010 sets forth the following definitions pertaining to pupil fees:

(a) "Educational activity" means an activity offered by a school, school district, charter school, or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.

(b) "Pupil fee" means a fee, deposit, or other charge imposed on pupils, or a pupil's parents or guardians, in violation of Section 49011 and Section 5 of Article IX of the California Constitution, which require educational activities to be provided free of charge to all pupils without regard to their families' ability or willingness to pay fees or request special waivers, as provided for in *Hartzell v. Connell* (1984) 35 Cal.3d 899. A pupil fee includes, but is not limited to, all of the following:

(1) A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.

(2) A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.

(3) A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity.

California Education Code Section 49011 provides:

(a) A pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.

(b) All of the following requirements apply to the prohibition identified in subdivision (a):

(1) All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.

(2) A fee waiver policy shall not make a pupil fee permissible.

(3) School districts and schools shall not establish a two-tier educational system by requiring a minimal educational standard and also offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school district or school does not provide.

(4) A school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil's parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil or the pupil's parents or guardians did not or will not provide money or donations of goods or services to the school district or school.

(c) This article shall not be interpreted to prohibit solicitation of voluntary donations of funds or property, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities.

(d) This article applies to all public schools, including, but not limited to, charter schools and alternative schools.

(e) This article is declarative of existing law and shall not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

Folsom Cordova Unified School District Board Policy accords with the Education Code. As set forth in District Board Policy (BP) 3260, in relevant part²:

The Governing Board recognizes its responsibility to ensure that books, materials equipment, supplies, and other resources necessary for students' participation in the educational program are made available to them at no cost.

No student shall be required to pay a fee, deposit, or other charge for his/her participation in an educational activity which constitutes an integral fundamental part of the district's educational program, including curricular and extracurricular activities.

As necessary, the Board may approve fees, deposits, and other charges which are specifically authorized by law. When approving such fees, deposits, or charges, establishing fee schedules, or determining whether waivers or exceptions should be granted, the Board shall consider relevant data, including the socio-economic conditions of district students' families and their ability to pay.

A complaint alleging district noncompliance with the prohibition against requiring student fees, deposits, or other charges shall be filed in accordance with the district's procedures in BP/AR 1312.3 - Uniform Complaint Procedures. (Education Code 49013)

If, upon investigation, the district finds merit in the complaint, the Superintendent or designee shall recommend and adopt an appropriate remedy to be provided to all affected students and parents/guardians in accordance with 5 CCR 4600.

As set forth in the afore listed Findings of Fact, the District has violated Education Code Sections 49011 and Board Policy 3260 by engaging in the following unlawful practices with regard to the Cheer Program at Vista del Lago High School:

1. Requiring students to pay fees in association with participation in extracurricular activities. Such fees included:
 - || Uniforms and other equipment;
 - || Cheer camp fees;
 - || Dinners, banquets and related expenses.
2. Improperly charging transportation fees, while mandating the use of school transportation and failing to provide an appropriate fee waiver process.
3. Threatening to remove privileges from students, or otherwise discriminating against students due to lack of voluntary donations or participation in fundraising activities by or on behalf of the student.

² The Board Policies and Administrative Regulations pertinent to this Complaint are listed in Attachment 3, and set forth in detail on the District website at <http://www.gamutonline.net/district/folsomcordovausd/>.

4. Failing to properly or clearly advise parents and students that participation in fundraising activities, and the providing of donations is purely voluntary.

B. Allegation of Unethical Use of Funds

The Complaint asserts, in summary, that the Vista Cheer Program's funds generated through fundraising activities and donations, including excess funds generated by tickets for dinners and banquets, were improperly or unlawfully redirected to subsidize stipends for Cheer coaches, and payment for coach attendance at Cheer camps and Cheer events.

There is no provision of California Law or Board Policy that explicitly prohibits the use of such donated and generated funds for coach stipends or to offset the cost of coaching staff attendance at camps and events. The investigation revealed that Vista Cheer coaches engage in a broad range of activities in support of the Cheer program, including many hours attending events, supporting student success in the program, and interfacing with parents and other individuals involved in Cheer competition. By all accounts, the amount of stipends afforded the coaching staff are very modest. Also, the subsidy of coach attendance at camps and other events directly supports the students in the program and promotes program morale.

Nonetheless, the investigation did reveal a lack of transparency and record keeping pertaining to the amount and disposition of funds generated by the Vista Cheer Program. While no intent to conceal or defraud was in any way revealed, the relative lack of internal financial controls and transparency may contribute to a loss of trust with families and could ultimately create opportunities for unethical or improper handling or use of funds.

C. Allegation of Bullying

FCUSD Board Policy 3260 also sets forth in relevant part:

The prohibition against student fees shall not restrict the district from soliciting for voluntary donations, participating in fundraising activities, and providing prizes or other recognition for participants in such activities and events. However, the district shall not offer or award to a student any course credit or privileges related to educational activities in exchange for voluntary donations or participation in fundraising activities by or on behalf of the student and shall not remove, or threaten to remove, from a student any course credit or privileges related to educational activities, or otherwise discriminate against the student, due to lack of voluntary donations or participation in fundraising activities by or on behalf of the student.

Whenever district employees, volunteers, students, parents/guardians, or educational or civic organizations participate in such events or activities, the Superintendent or designee shall emphasize that participation in the event or activity is voluntary.

As set forth in the Findings of Fact, the District violated Board Policy 3260 in the implementation of the Vista Cheer Program by creating the impression, whether

intentionally or otherwise, that participation in certain designated fundraising activities and/or making donations in lieu of sufficient successful fundraising in pre-determined amounts, was a requirement for families whose students participate in the Vista Cheer Program. Names of students associated with amounts generated by donations or fundraising were disclosed to other families within the Cheer Program in a manner that may have created undue social pressure on participants to engage in fundraising activities they might otherwise decline, meet fundraising goals, or make donations. Such circumstances violate District Policy.

DISPOSITION AND RATIONALE

For the reasons stated in the Findings of Fact and Conclusions of Law, and by a preponderance of the evidence discovered in the investigation, the Uniform Complaint lodged by Complainant on April 28, 2017 is sustained.

Moreover, it is noted that, although not specifically raised in the Complaint, the investigation revealed that in some instances, though not necessarily on a consistent basis, certain of the Vista Cheer Program practices identified in the investigation also have occurred at other District sites and in other District extracurricular programs. Given the systematic nature of the violations identified in the Vista Cheer Program, its longstanding nature, and the fact that such practices have also been reflected elsewhere in the District, I find that it is appropriate to implement a District-wide remedy.

CORRECTIVE ACTIONS³

1. **Cease and Desist**

Effectively immediately, the Vista del Lago Cheer Program and Vista del Lago High School shall cease and desist from engaging in the unlawful and prohibited practices identified in Conclusion of Law, subsections 1-4, set forth above. Implementation of this Action shall be under the direction and authority of the Principal of Vista and the Vista Athletic Director.

2. **Transparency and Accounting**

In conjunction with, and under the direct supervision of the Assistant Superintendent for Business Services or her designee, Vista del Lago High School and the Vista Cheer Program shall develop and implement a system of internal financial controls with regard to all funds received and expended in the Cheer Program. A report shall be completed on a quarterly basis commencing with the end of the first quarter of the 2017-2018 school year, and shall be available upon request (with any confidential or exempt information redacted) upon request by parents or other members of the public.

³ Corrective actions shall comport with the requirements of California Education Code Section 49010 and Title 5 Cal. Code of Regs. Section 4600.

3. Training

District-wide staff training shall be implemented at each District school site within thirty (30) calendar days of the commencement of the 2017-2018 school year. The training content shall be developed by the Office of the Assistant Superintendent for Secondary Education and shall, at a minimum, address the following topics:

- || the duty to provide a free education to all students, and specifically how to avoid the implementation or collection of any prohibited pupil fees;
- || the process for implementing legally permissible pupil fees; and
- || the prevention of improper influence on parents and/or students with regard to voluntary activities and fundraising.

4. Annual Notification

The District's annual notification shall be reviewed and updated to ensure compliance with applicable law and clarity with regard to the free education guarantee, prohibition of unlawful fees, and lawful fundraising practices.

5. Notification to Parents Regarding Reimbursement Claims

Within thirty (30) calendar days of the date of the Final Written Response, Notification shall be issued to all parents of record for students of the District, either by electronic or other means designed to insure delivery, of the existence of this Report.

Such Notice shall include direction as to how a copy of this Report (with the Complainant's name and other identifying data redacted) may be obtained. Links to the Notification and the redacted Final Written Decision shall be posted in a prominent location on the District website.

Such Notification shall also advise parents that they and their affected students have the right to seek full reimbursement if they believe that they have incurred a financial detriment related to the determinations herein during the preceding calendar year.⁴

The Notification shall specifically describe the nature and process to claim potential reimbursement regarding expenditures related to extracurricular or co-curricular participation in the following categories:

- || Uniforms and Other Equipment
- || Camps Related to Extracurricular Participation

⁴ Pursuant to Title 5, California Code of Regulations section 4630 and District Board Policy/Administrative Regulation 1312.3, such claims are limited to a period of one (1) year from the date of the detriment or loss.

- || Dinners, Banquets, and Related Expenses
- || Transportation
- || Donations

RIGHT TO APPEAL

If dissatisfied with this Final Written Decision, Complainant may file an appeal in writing with the California Department of Education within fifteen (15) calendar days of receiving this Decision. The address for filing such an appeal is as follows:

**Categorical Programs Complaints Management Office
California Department of Education
1430 N Street, Suite 6408
Sacramento, CA 95814-5901**

Any appeal shall specify the basis of the appeal of the decision and whether the findings of facts are incorrect and/or the law has been misapplied. The appeal shall be accompanied by a copy of the filed Complaint and a copy of this Final Written Decision.

Date: June 26, 2017

By: Kathryn Allaman
Kathryn Allaman
Assistant Superintendent, Secondary Instruction

Attachments:

1. Uniform Complaint
2. Interim Response and Remedy
3. District Board Policies/Administrative Regulations:
 - BP 1312.3
 - AR 1312.3
 - BP 3260