CALIFORNIA
DEPARTMENT OF
EDUCATION

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JACK O'CONNELL
State Superintendent of
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April 19, 2004

James Reed, President, Board of Trustees
Westminster Elementary School District
14121 Cedarwood Avenue
Westminster, CA 02793

Dear President Reed and Members:

The California Department of Education (CDE) has carefully reviewed your "Proposed Resolution of Non-Compliant Findings" dated April 12, 2004. Following this review we found that your proposal will technically resolve the non-compliance regarding inclusion of complaints of discrimination based on sex and sexual orientation, provided the district takes necessary future steps consistent with its proposal and the discussion set out below.

However, I must strongly caution the board regarding application of its newly adopted policy. The district's Uniform Complaint Procedure (UCP) policy now includes alleged discrimination based on sex and sexual orientation. Your attempt to redefine "gender," however, creates grave doubt as to the sincerity of the board's action and whether it intends to apply its policy in a manner consistent with state law.

In fact, it appears the district may intend to deny protection from discrimination and harassment to a class of students that the law clearly protects. Because we in education are dealing with a procedure intended to resolve complaints of harassment and discrimination, and not the state of mind necessary to achieve a criminal conviction, the definition of gender embodied in California Code of Regulation, Title 5, section 4610, subdivision (k), appropriately considers the perceptions of an alleged victim. Clearly, in these types of complaints the perceptions of an alleged victim are not *irrelevant*, as the district's policy statement now suggests.

As a local board of education, you lack authority to defy state law by adopting your own definition of gender based on your own personal prejudices. The Legislature has clearly spoken on the issue, and under California law the district is the agent of the state for purposes of carrying out state policy. The fact that the district objects to the language of a regulation, as opposed to the language of the statute itself, is of no weight whatsoever. The Legislature, at Education Code section 221.1, specifically directed the adoption of regulations to implement its prohibition of discrimination and harassment. Implementing regulations, including those defining gender, were adopted according to the procedure provided by law. Those procedures gave the district, and any other member of the public, an opportunity and avenue for participation in their development

and adoption. Those procedures further provide a legal avenue for challenging in court any regulation that one considers invalid.

Accordingly, whatever the board's objective or motivation in adopting its own policy pronouncement on gender, I want to make it perfectly clear that it is of no legal effect or authority. The board remains obligated to follow the law as declared by state statute and regulation. If you choose to adopt a discriminatory policy or fail to resolve a complaint of alleged discrimination on any basis, including sex, sexual orientation, or gender consistent with the provisions of state law, my department will pursue all legal means available to stop such action. My expectation is that you will not choose a path that would require us to further act against you.

In addition, the Notification of Findings, dated February 27, 2004, also specified that the district was out of compliance in respect to its annual notification of its policy of non-discrimination. We found the description of its UCP failed to specify unlawful discrimination on the basis of sex or sexual orientation.

CDE advised the district that in order to resolve its non-compliance it must notify parents and guardians, employees, students, and members of advisory committees of this new policy. This finding will remain open until such time that the district provides a complete explanation and example of the public notification it will give of the revised policy. In addition, once the district gives the required notice it must provide CDE verification, as well as copies of the minutes of the board meeting at which the original changes to the policy were adopted.

In summary, I want to again express my disappointment that those who took an oath to educate children would abuse their elected positions and attempt to flout the law. The public should reasonably expect their elected officials to safeguard their children, not seek to remove protection from them. The board's attempt to willingly disobey the law rather than use the available democratic process to seek change puts at risk the children its members swore to protect. This sets a destructive example for our children and is contrary to the democratic values of our society. Our children deserve better.

Sincerely,

JACK O'CONNELL

cc: Barbara DeHart, Superintendent