



September 7th, 2023

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Board of Education
Temecula Valley Unified School District
31350 Rancho Vista Road
Temecula, CA 91710

Re: August 22, 2023, Regular Meeting – Agenda Item O.1 Proposed Board Policy – Parental Notification – 5020.1

Dear Board Members:

The Temecula Valley Educators Association (TVEA) is aware that the Board of Education of the Temecula Valley Unified School District (District) adopted new board policy no. 5020.1 (BP 5020.1), Parental Notification. I write to bring to your attention TVEA's concern that adoption of BP 5020.1 runs afoul of California law, particularly the School Success and Opportunity Act (Assembly Bill 1266) and student privacy rights grounded in the California Constitution. Also, the failure to provide TVEA notice and an opportunity to bargain over the impacts and effects of these policies could be deemed an improper unilateral change and bad faith bargaining.

The Adoption of BP 5020.1

Citing Education Code section 48980, the District adopted BP 5020.1, which mandates that school employees notify the parents of any student who wishes to be identified by a name other than their legal name; who wishes to be identified using pronouns that do not align with the biological sex or gender listed on their birth certificate or official records; who wish to access sex-segregated school programs that do not align with their biological sex; or who wish to change any information in their official or unofficial records. While we agree that parents and guardians have a right to participate in the education of their children in the manner set forth in various sections of the Education Code, the notification requirements proposed in BP 5020.1 are not mandated by law and, in fact, violate state and federal antidiscrimination and privacy laws.

As made clear by the California Department of Education (CDE) in its advisory on the School Success and Opportunity Act (AB 1266), students are entitled to privacy in their gender identity and gender expression, and “schools must consult with transgender students to determine who can or will be informed of the student’s transgender status, if anyone, including the student’s family.” (See CDE FAQs on AB 1266, at n. 7 - <https://www.cde.ca.gov/re/di/eo/faqs.asp>). Disclosure of a transgender or gender nonconforming student’s gender identity to parents without the student’s consent could expose the District to liability under state and federal privacy laws and California’s anti discrimination laws:

A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home. Revealing a student’s gender identity or expression to others may compromise the student’s safety. Thus, preserving a student’s privacy is of the utmost importance. The right of transgender students to keep their transgender status private is grounded in California’s anti-discrimination laws as well as federal and state laws. Disclosing that a student is transgender without the student’s permission may violate California’s anti-discrimination law by increasing the student’s vulnerability to harassment and may violate the student’s right to privacy.

(See CDE FAQs re AB 1266, at no. 6 - <https://www.cde.ca.gov/re/di/eo/faqs.asp>).

The bargaining process is particularly important here, as the policy’s wording is unclear and the TVEA bargaining unit members would likely be left uncertain about how it would be applied and what their professional obligations would be if the policy were adopted. Staff would also likely be unclear as to how this policy would interact with other obligations to follow privacy and anti-discrimination law. This is especially troubling as yesterday a California judge issued a temporary restraining order blocking the implementation of a similar policy in Chino Valley Unified School District.

In addition to conflicting with the law, the policy is not clear about what it is requiring of educators, as it lays out multiple options for the form of the notice. It also does not specify who must make the contemplated disclosures, as it lays out multiple options from a principal, a certificated staff member, a counselor, or an unspecified “designee” of the principal. There is no accompanying guidance or regulation that specifies the correct approach for staff, and other parts of the policy are unclear. For example, in paragraph 4, the policy requires a parent/guardian to receive notice of “any incident . . . of a verbal . . . altercation involving their child.” The policy does not establish what would constitute a verbal altercation triggering this requirement. The disciplinary consequences or potential impacts on teacher’s evaluations are also unclear and any changes to TVEA’s contract with respect to those issues must be appropriately bargained. These issues deserve careful consideration and should not be rushed through just as the school year begins.

In addition to the legal issues, this policy requires certificated employees to have the appropriate knowledge, training, and time to have communication with students and guardians about sensitive and confidential issues. With the number of requirements and expectations already placed on certificated staff, this is an unreasonable and highly concerning expectation.

The policy also puts school psychologists in a difficult position, as various professional organizations' ethical standards include that this information about students be kept private. For example, the Professional Standards of the National Association of School Psychologists, include:

Standard 1.2.5 Privacy Related to Sexual Orientation and Gender Identity and Expression

School psychologists respect the right of privacy of students, parents, and colleagues with regard to sexual orientation, gender identity, or transgender status. They do not share information about the sexual orientation, gender identity, or transgender status of a student (including minors), parent, or school employee with anyone without that individual's permission.

The District's adoption of this revised policy could also expose it to liability under the EERA for failure to give TVEA notice and an opportunity to bargain over the policy as it is applied to bargaining unit members. Due to the fact that BP 5020.1 falls squarely in the Board's Human Resources policies and sets out both prohibitions on conduct and new mandates in the workplace, violation of which could lead to discipline, the policy affects the terms and conditions of employment. Additionally, , Board Policy 5020.1 impacts matters within the scope of representation, including but not limited to the impacts and effects on employee evaluations, employee discipline, and on matters encompassed within Article 3.11 (Consultation), Article 4 (Rights Retained by District), Article 9 (Personnel File Contents and Inspection), Article 8 (Evaluation), Article 10 (Public Charges), Article 12.18 (Working Conditions), and Article 20 (Miscellaneous). TVEA demands that the District withhold implementation of Board Policy 5020.1 until the parties have completed bargaining.

Finally, BP 5020.1 will have a detrimental impact on students and staff. These types of policies hurt all students because they fail to promote equity and inclusion in the school community as a whole. The policy, as adopted, will subject the District to legal liability, create ambiguity between staff on how to implement the policy, and works against supporting the Temecula Valley community, making it difficult (or near impossible) to live by the stated ideals of the District to provide and promote safe schools, a positive school climate, humility, civility, and service.

Sincerely,

Edgar Diaz
TVEA President

cc. (by email only): Superintendent Kimberly Velez, Ed.D
Anthony Saavedra, CTA UniServ Staff