



September 20th, 2023

Via Email To: Allison Barclay - abarclay@tvusd.us
Danny Gonzalez - dgonzalez@tvusd.us
Joseph Komrosky - jkomrosky@tvusd.us
Steven Schwartz - sschwartz@tvusd.us
Jennifer Wiersma - jwiersma@tvusd.us

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

Re: September 12, 2023, Regular Meeting – Agenda Item N.2 Revised Administrative Regulation 6115: Ceremonies and Observances

Dear Board Members:

The Temecula Valley Educators Association (TVEA) is aware that the Board of Education of the Temecula Valley Unified School District (District) revised administrative regulation no. 6115 (AR 6115), Ceremonies and Observances. I write to bring to your attention the Union's concern that AR 6115 would likely be deemed an improper infringement on important rights under the Educational Employment Relations Act (EERA) and the U.S. Constitution.

Additionally, the failure to give the Union prior notice and an opportunity to bargain over the decision and/or impacts and effects of these policies could be deemed an improper unilateral change and bad faith bargaining.

The Public Employment Relations Board ("PERB") has long supported the right to display union insignia and messages regarding working conditions in the workplace. The proposed changes to AR 6115 could reasonably be interpreted by District employees to prohibit speech that is protected under the EERA because it restricts the right of the Union and its bargaining unit members to express support for an employee organization in a manner that does not interfere with the District's educational programs.

Moreover, the District's adoption of this revised policy could expose it to liability under the EERA for failing to give the Union prior notice and an opportunity to bargain over the policy as it is applied to bargaining unit members. Because AR 6115 falls squarely in the Board's Human Resources policies and sets out a prohibition on conduct in the workplace, violation of which could lead to discipline, the policy affects the terms and conditions of employment. It is

thus a change in policy on a mandatory subject of bargaining that the District cannot unilaterally implement without first properly engaging in the meet and confer process with the Union.

The language could also be interpreted as violating the First Amendment of the U.S. Constitution. The policy provides that it is not intended to “deprive any person of his or her right to freedom of expression” but, contrary to that stated intent, it effectively bans the display of all “flags” except for the United States of America and California flags while failing to define what a “flag” is. Because this policy is so broad and vague, it can be reasonably interpreted to categorically prohibit any kind of speech within the confines of one’s workplace. While displaying a message in an employee’s workspace would clearly be a matter of personal expression rather than one of district expression, the District’s absolute prohibition of any such displays improperly restricts employees from being able to engage in free expression of any kind and is not supported by a compelling District need.

According to the Board agenda, AR 6115 is being revised to “*maintain a safe and orderly workplace for teachers, students, administrators, staff, parents/guardians and other members of the community.*” However, “[i]n order for ... school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Adcock v. Board of Education*, 10 Cal.3d 60, 67-68 (1973) (quoting *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 508-509). See also *Los Angeles Teachers Union, etc., v. Los Angeles City Bd. Of Ed.*, 71 Cal.2d 551, 560 (rejecting the district’s stated interest in prohibiting on-campus political speech in order to promote harmony and avoid division amongst teachers). The Board’s revised policy, which can reasonably be interpreted to apply to most displays in the workplace, is unlikely to meet this justification.

Because of the Union’s serious concern that the revised version of AR 6115 will expose the District to liability, we urge you to rescind AR 6115 in the manner proposed and to pause consideration of any such amendments until the Union and the District have had a full and fair opportunity to negotiate without an improper, unlawful, and unilateral change to policy.

You have three business days to respond, close of business on Monday, with notification of intent to rescind this policy.

Sincerely,

Edgar Díaz
TVEA President

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