August 9, 2023

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Board of Education
Murrieta Valley Unified School District
41870 McAlby Court
Murrieta, CA 92562

RE: August 10, 2023, Regular Meeting – Agenda Item G3

Dear Board Members:

The Murrieta Educators Association (MEA) has learned that the Board of Education of the Murrieta Valley Unified School District (District) has included in its agenda for the August 10, 2023, meeting an item titled “Discussion and possible action regarding Parental Notification Board Policy.” A draft of the proposed policy is attached to the agenda item and labeled as “Parental Notification” – BP 5020.1.

I want to bring to your attention MEA’s concern that adoption of BP 5020.1 would run afoul of California law, particularly the School Success and Opportunity Act (Assembly Bill 1266) and student privacy rights grounded in the California Constitution.
Finally, the failure to give notice to MEA and the opportunity to bargain over the impacts and effects of this policy could be deemed an improper unilateral change and bad faith bargaining. The agenda item proposes adoption of 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 their biological sex or gender listed on their birth certificate or official records; who wishes 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 – a right that is set forth in Education Code section 51101, among others – some of the notification requirements proposed in BP 5020.1 are not mandated by section 51101 and, in fact, violate state and federal antidiscrimination and privacy laws. As made clear by the California Department of Education (COE) 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 COE FAQs on AB 1266, at n. 7 – https://www.cde.ca.gov/re/di/eq/faqs.asp). Disclosure of a transgender or gender nonconforming student’s gender identify to parents without the student’s consent could expose the District to liability under state and federal privacy laws and California’s antidiscrimination 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 antidiscrimination laws as well as federal and state laws. Disclosing that a student is transgender without the student’s permission may violate California’s antidiscrimination law by increasing the student’s vulnerability to harassment and may violate the student’s right to privacy.

(See COE FAQs on AB 1266, at n.6 – https://www.cde.ca.gov/re/di/eq/faqs.asp).

The District’s adoption of this revised policy could also expose it to liability under the EERA for failing to give MEA notice and an opportunity to bargain over the policy as it is applied to bargaining unit members. Because BP 5020.1 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. It is thus a change in policy on a mandatory subject of bargaining that the District cannot unilaterally implement without properly engaging in the meet and confer process with MEA.
The bargaining process is particularly important here, as the policy’s wording is unclear and MEA 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. 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. Staff would also likely be unclear about how this policy would interact with other obligations, not only their duties to follow privacy and anti-discrimination law, but also other specific statutes, such as those outlining school counselors’ confidentiality obligations under Education Code section 49602. In addition to conflicting with the law, the policy conflicts with the existing contract between the District and MEA, which does not include providing the notices described in the proposed policies among the “Communication” duties of teachers outlined in Article 8.6.3. The disciplinary consequences or potential impacts on certificated staff evaluations are also unclear and any changes to MEA’s contract with respect to those issues must be appropriately bargained. These issues deserve careful consideration and should not be rushed through just before the school year begins.

Finally, 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. For those reasons, we urge you to maintain the existing Parental Notification policy and work with all teachers and students to create a respectful, supportive environment for all students.

Sincerely,

Kimberly Binning Chevlin

Kimberly Binning Chevlin
MEA President

cc. (by email only): Superintendent Ward Andrus, Ed.D
Kate Phillips, CTA Primary Contact Staff