



Orange Unified Education Association

1224 East Katella Avenue, Suite 203 Orange, CA 92867

P: 714-288-1288 F: 714-288-0227

August 16, 2023

Dear Board Members:

The Orange Unified Education Association (OUEA) has learned that the Board of Education of the Orange Unified School District (District) has included in its agenda for the August 17, 2023, an item titled "Board Policy Regarding Parent/Guardian Notification BP 5020.2."

I write to bring to your attention OUEA's concern that adoption of BP 5020.2 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 OUEA 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 5020.2, 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—a right that is set forth in Education Code section 51101, among others—some of the notification requirements proposed in BP 5020.2 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/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 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



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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/eo/faqs.asp>).

Enclosed with this letter is a communication from the California State Attorney General, Rob Bonta, to Chino Valley Unified School District's Board and Superintendent regarding a very similar policy that was under consideration recently. It highlights the legal issues with the proposed policy.

The District's adoption of this revised policy could also expose it to liability under the EERA for failing to give OUEA notice and an opportunity to bargain over the policy as it is applied to bargaining unit members. Because BP 5020.2 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 OUEA.

The bargaining process is particularly important here, as the policy's wording is unclear and OUEA 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 about how this policy would interact with other obligations to follow privacy and anti-discrimination law. 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. No accompanying guidance or regulation specifies the right approach for staff. 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 OUEA'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.





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For these reasons, we urge you to maintain the existing policy regarding notifications to parents/guardians and work with all teachers and students to create a respectful, supportive environment for all students.

Greg Goodlander
President – Orange Unified Education Association

Encl.

Cc – Acting Superintendent OUSD, Ernie Gonzales



State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

July 20, 2023

VIA U.S. MAIL & EMAIL

Dr. Norman Enfield, Superintendent
Members, Board of Education
Chino Valley Unified School District
5130 Riverside Drive
Chino, CA 91710

RE: Item II.A.1 on July 20, 2023 Agenda -- “New Board Policy 5020.1 – Parental Notification”

Dear Superintendent Enfield and Members of the Chino Valley School Board:

I write to share my serious concern regarding the proposed “New Board Policy 5020.1 – Parental Notification” scheduled for consideration on the agenda for the July 20 meeting of the Chino Valley Unified School District (“CVUSD”) Board of Education. The policy would, if enacted, require school officials to notify parents, without exception, whenever: (1) a student requests to use a name or pronoun other than those listed on the student’s birth certificate or in official records; (2) a student requests to participate in programs or to use facilities that do not align with the gender stated in these records; or (3) when a student requests to change any information in their official or unofficial school records. (Item II.A.1, July 20, 2023 agenda, New Board Policy 5020.1—Parental Notification.)

As the California Department of Education has instructed, “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.”¹ Courts have recognized that gender identity is a protected privacy right under the California and U.S. Constitutions. (See *Whalen v. Roe* (1997) 429 U.S. 589, 598–600 (avoiding disclosure of personal matters is constitutionally protected); see also Cal. Const. art. I, § 1 (listing privacy as an inalienable right).) Transgender identity is an “excruciatingly private and intimate” detail about oneself and is thus protected by the right to privacy. (*Powell v. Schriver* (2d Cir. 1999) 175 F.3d 107, 111–112.) And students do not waive their reasonable expectation

¹ Cal. Dep’t of Educ., Frequently Asked Questions, <https://tinyurl.com/y54447xf>

of privacy simply by expressing their gender identity in school. (*C.N. v. Wolf* (C.D. Cal. 2005) 410 F.Supp.2d 894, 903 (holding that student had reasonable expectation of privacy in their sexuality, despite expressing their sexual orientation in school, protecting their sexuality from disclosure to their parents).) Infringements on privacy rights can only be justified by compelling state interests and must be narrowly tailored to serve those interests. (*Lopez-Valenzuela v. Arpaio* (9th Cir. 2014) 770 F.3d 772, 780.)

In addition to infringing upon student privacy, forced “outing” of students to their parents is very likely to result in significant emotional, mental, and even physical harm and subject students to discriminatory harassment. There are numerous applications of this policy that could violate the law, including: (1) where parents have threatened to harm the student if the student identifies as a gender different from the one assigned at birth,² and (2) when a student’s family relationships are so fraught that the student expresses a significant likelihood that they may commit self-harm or suicide if their gender identity was disclosed to their parents.³

Recognizing the significant harms that transgender students may suffer from being “outed” to their parents against their will, the California Department of Education recommends that schools “consult with a transgender student to determine who can or will be informed of the student’s transgender status, if anyone, including the student’s family.” The California Department of Education further instructs, “schools are required to respect the limitations that a student places on the disclosure of their transgender status, including not sharing that information with the student’s parents,” subject to “rare exceptions.”⁴ The guidelines recommend disclosure of a student’s status to parents only in “those very rare circumstances where a school believes there is a specific and compelling ‘need to know’” and that the school give the student advance notice before informing the parents.⁵ Board Policy 5020.1 contradicts this guidance in almost every respect.

² Cf. Stacy Chen, *Oklahoma School Shuts Down for 2 Days After Parents Threaten Transgender 7th Grader*, ABC News (Aug. 15, 2018), <https://tinyurl.com/43ek5z28>.

³ See Ashley Austin et al., *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors*, 37 J. Interpersonal Violence 5 (2020).

⁴ Cal. Dep’t of Educ., *Frequently Asked Questions*, <https://tinyurl.com/y54447xf>; see also Cal. Dep’t of Educ., *Legal Advisory*, <https://tinyurl.com/3unt8xds> (citing FAQ).

⁵ *Id.*

Superintendent Enfield and Members of the Chino Valley School Board
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My office has a substantial interest in protecting the legal rights of children in California schools and protecting such children from trauma and exposure to violence. I will not hesitate to take action as appropriate to vigorously protect students' civil rights.

Sincerely,

A handwritten signature in blue ink that reads "Rob Bonta". The signature is written in a cursive, flowing style.

ROB BONTA
Attorney General

cc: Tony Thurmond, California Superintendent of Public Instruction