

August 27, 2024

From the desk of Jen Wiersma, Board Clerk and Presiding Officer of the TVUSD Board

As we begin the 2024-2025 school year, and in the wake of the notice letter regarding the recent California Department of Education (CDE) finding on TVUSD's Parental Notification Policy, I am reaching out as the clerk and presiding officer of the Board to share my thoughts and perspective with you on the CDE decision, Assembly Bill 1955, and our Parental Notification Policy, which the Board passed by the TVUSD Board of Education in August of 2023. Please note that these are my personal perspectives and not a statement on behalf of the Board. Nonetheless, given the reactions I have received and the understandable concerns within the community after receiving the notice letter, I felt it was important to communicate and share my views.

In a difficult post-COVID era, I recognize the important role of schools to support students struggling with social, emotional, and behavioral health issues on campus. Balancing student, parent, and employee rights and concerns while addressing rising social and behavioral needs continues to be a complex issue before school boards throughout the state. Many are asking what role the school should play when addressing the needs of students with varying and often complicated social, mental, and physical health considerations.

In contemplating these issues, I returned to important case law on the rights of parents and families to inform my thinking.

“Rights are the “starting point” of family law: “Natural bonds of affection lead parents to act in the best interests of their children.” (U.S. Supreme Court, *Parham v. J.R.*, 1979)

“Our society does recognize an ‘essential’ and ‘basic’ presumptive right to retain the care, custody, management, and companionship of one's own child, free of intervention by the government.” (California Court of Appeals, *In re Henry V.*, 2004)

The U.S. Supreme Court found that parental rights were fundamental under the Fourteenth Amendment, stating “the custodial parent has a constitutional right to determine, without undue interference from the state, how best to raise, nurture, and educate the child.” (U.S. Supreme Court, *Troxel v. Granville*, 2000)

“Parenting is a fundamental right, and accordingly, is disturbed only in extreme cases of persons acting in a fashion incompatible with parenthood.” (Supreme Court of California, *In re Carmaleta B.*, 1978)

Accordingly, in the absence of extreme or other similarly compelling circumstances, such as neglect or abuse, neither the State of California nor the CDE has a legal basis to interfere with a parent's fundamental right to care for and direct the upbringing of their child. Parents and guardians have the right to be informed about all aspects of their child's educational, social, and medical circumstances, progress, and involvement at school. Respecting the historical rights of parents gives guidance to our current tumultuous times.

In light of these first principles, federal and state law also recognizes the essential role of parents to authorize accommodations and services for students with unique needs. Public

schools are legally required to identify, accommodate, and provide educational services to students with disabilities, including physical or mental impairment or medical conditions, *after* obtaining consent from the student's parent or guardian. A school's failure to communicate social-emotional or mental health issues, or a student's request for the school staff to facilitate a psycho-social intervention, is inconsistent with federal and state laws, procedural safeguards, and school policies. Gender dysphoria is a mental health diagnosis based on an incongruence between one's experienced/expressed gender and biological sex ([DSM-5](#)). Though gender dysphoria is not a recognized disability under IDEA, the DSM-5 states that "the condition is associated with clinically significant distress or impairment" and students may have mental health comorbidities that could be classified under a disabling condition. Students *cannot* access disability assessment, education accommodations, or special services from schools without the consent of a parent or legal guardian. Withholding information from a student's parent about possible symptoms connected to a disabling condition arising from or associated with gender identity contravenes fundamental parental rights, is a form of unequal protection under the law, limits student access to substantial educational support, and is discriminatory under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. All students deserve to have equal access to educational supports regardless of gender identity which requires parental involvement.

In furtherance of parental rights and the best interests of our students, and based on applicable statutory and constitutional case law, the TVUSD Board passed parent notification Board Policy 5020.01 in 2023.

Recently, on February 23, 2024, the California superior court refused to issue a preliminary injunction against TVUSD's parental notification policy, affirming its initial view that the policy met federal and state law requirements. **The judge declared that BP 5020.01 did not violate students' constitutional rights stating, "the District's purpose in involving parents in the decision-making process and restoring trust is furthered by mandatory parental notification . . . The Policy is rationally related to legitimate governmental interests."**

Despite the clear ruling by a state superior court judge, on July 16, 2024, the CDE made an administrative "determination" that TVUSD BP 5020.01 was discriminatory. The CDE's determination conflicts with the state superior court's initial ruling allowing BP 5020.01 to stand. The state superior court's ruling was not discussed or addressed by the CDE. A comprehensive review of legal options and surrounding documentation was not brought before the TVUSD Board for consideration and a vote to direct how to proceed. As a result, TVUSD did not submit a request for CDE reconsideration based on the superior court ruling. Similarly, neither the taking of corrective action requested by the CDE nor the sending of the notice letter from the Superintendent was brought before the TVUSD Board for approval, and the Board has never authorized or approved the District, the Superintendent, or any other staff member to refrain from implementing BP 5020.01.

In July, the State of California passed AB 1955, which goes into effect in January 2025, prohibiting any school board policy, rule, or administrative regulation that requires a school employee to disclose any information related to a pupil's LGBTQ+ identity to any other person without the pupil's consent unless otherwise required by state or federal law. The Act does not limit a parent's ability to request and obtain school records, as required by the Family Educational Rights and Privacy Act (FERPA). How AB 1955 applies to various school board notification policies in conjunction with state and federal law, and whether AB 1955 is constitutional and valid is currently being litigated.

In a [lawsuit](#) filed by the Chino Valley Unified School District and concerned parents, and recently joined by the Anderson Union High School District and the Orange County Board of

Education, the plaintiffs ask the state superior court to bar California from implementing AB 1955 on the grounds that the legislation violates the First and Fourteenth Amendments as well as the Family Educational Rights and Privacy Act (FERPA). Ultimately, the legality of AB 1955 will be decided by the courts. In the near term, and as noted, if no injunction or stay is issued by the superior court, AB 1955 will go into effect in January 2025.

Regarding the prior communication from TVUSD about Board Policy 5020.01, I did not and do not agree with it. Neither the CDE nor the Superintendent of TVUSD has the authority to change or invalidate any aspect of the policy passed by the duly elected school board and upheld by a state superior court judge. Short of a court order, a valid and effective legal statutory requirement, or other valid and effective legal requirement, only the Board can make such an invalidation. Any future proposed Board policy, including changes to an existing policy, must be placed on the Board's agenda, with public comment allowed, and passed by a majority vote of the duly elected TVUSD Board in open session. In addition, in this situation, all available legal options should have been explored, including seeking reconsideration of the CDE's decision and challenging it in court, and second and third opinions from counsel should have been obtained, before providing communication to our families and community on such a complex, novel, and currently undecided set of legal issues that directly implicate fundamental parental rights. While I acknowledge that as an individual Trustee, I cannot override or prescribe a different action from the Superintendent's letter published to parents and the community, technically and legally the policy still stands as written and passed by the Board on August 22, 2023.

By January, hopefully, the results of the legal challenge to AB 1955 will be clear and understood. A fully constituted TVUSD Board with five seated Trustees can consider the Board's Parent Notification policy in open session, including whether any change to it or rescission of it, is warranted. And until then, and at this time, our teachers, administrators, and staff have every right and ability to communicate their concerns with families; students may receive compassionate support and educational services; and parents have full rights under the Federal Education Rights and Privacy Act (FERPA) to receive both official and unofficial records.

In closing, caring for our students and their families remains one of my highest concerns as a Trustee. As we begin the 2024-2025 school year, I look forward to seeing our students thrive in an environment designed to elevate their health, welfare, and education.

Sincerely,

Jen Wiersma
Board Clerk
Current Presiding Office