



KARIN M. SWEIGART
KSWEIGART@DHILLONLAW.COM

March 20, 2023

Dr. Wesley Smith, Superintendent
Newport-Mesa Unified School District
2985 Bear Street
Costa Mesa, CA 92626
superintendent@nmusd.us

Re: Demand for Opt-Out Option from RULER Curriculum

Dear Superintendent Smith:

I am Karin Sweigart, Counsel at Dhillon Law Group. I am writing to you on behalf of California Policy Center and California Alliance for Education regarding this District's improper use of the RULER curriculum in violation of state and federal law. California Policy Center and California Alliance for Education represents a group of District parents and taxpayers concerned about the District's exploitation of public school children to elicit information about their beliefs and feelings with the goal of changing their emotions and behaviors in accordance with the cultural bias of the day and without regard to family beliefs or values. The District must implement policy changes to require parental notice, the right to inspect curriculum, and an opt-out option to comply with state and federal statutes.

1. The RULER Curriculum

In recent years, the District determined to pivot away from teaching math, reading, science, and other core subjects, to focus on teaching students "emotional intelligence" through the RULER curriculum. Developed by the Yale Center for Emotional Intelligence, RULER is described as "a systemic approach to social and emotional learning (SEL)" that "aims to infuse the principles of emotional intelligence into the immune system of PreK to 12 schools." Alarmed by this change in focus and mission, a group of parents sought access to the curriculum, which the District only provided after a public records request and threat of legal action. Even then, the parents were not permitted to have a copy of the curriculum and were only granted a limited time to review the materials. Given the District's efforts to hide these materials from parents, the parents were disconcerted, but unfortunately not surprised, by what they learned.

The RULER curriculum deputizes untrained educators as mental health professionals to evaluate—including by surveys and other personal data collection—the “emotional health” of students. It pushes educators to assess students’ personal family relationships, religion, political affiliation, and other sensitive topics to help steer students to “what characteristics compose a person’s best self” as determined by the educator, the students’ peers, and cultural norms.¹ Rather than focusing on teaching academics, educators are tasked with “recogniz[ing] emotional patterns” and evaluating student moods as a part of their curriculum.² The RULER curriculum encourages, for instance, educators to build “culturally responsive classrooms” by having children question “stereotypes” they may have learned from their family or their religion.³ It encourages educators to show students “controversial photographs or news headlines” and prompt them to “choose a side,” and “nudge [their] students towards feeling red [defined as anger] when you discuss topics such as injustice,” with the educator defining what is just and unjust based on the cultural bias of the day and without regard to parent values and beliefs.⁴ Or, in the fifth grade curriculum, students are asked to learn to process “sad and hopeless” feelings by doing self-talk, remembering happier times, breathing, or a host of other strategies other than addressing these emotions by talking with parents and leaning on family religious practices such as praying.⁵ And, in the 3-5 grade curriculum, students are asked to “consider their relationships with their parents, which calls for them to discuss private relationships.”⁶

In short, the RULER curriculum uses public-school classrooms and tax dollars to indoctrinate impressionable students to parrot “cultural norms” which may be anathema to parents’ values and beliefs, or even poses the children against their parents. All of this is behind closed doors and without parent input or consent.

This usurpation of parental rights violates statutory and constitutional law.

2. Federal Law

The “Protection of Pupil Rights” (“PPRA”) amendment, 20 U.S.C §1232h, states that “[n]o student shall be required...to submit to a survey, analysis, or evaluation that reveals information concerning...political affiliations or belief of the student or the student’s parent,” “mental or psychological problems of the student or the student’s family,” “sex behavior or attitudes,” “critical appraisals of other individuals with whom respondents have close family relationships,”

¹ *RULER for Middle School*, 9,
https://ruleronlineimgs.s3.amazonaws.com/media/RULER_MiddleSchool_CoreRoutines-2.pdf

² *Id.* at 2.

³ *RULER for Middle School*, 11,
https://ruleronlineimgs.s3.amazonaws.com/media/RULER_MiddleSchool_CoreRoutines-2.pdf

⁴ *Id.* at 8.

⁵ A link to this portion of the RULER program is not available online to cite, which further illustrates the need for parental notice and inspection rights. An image of this portion of the curriculum is enclosed.

⁶ A link to this portion of RULER is also not available online, but an image of this portion is enclosed.

and, among other things, “religious practices, affiliations, or beliefs of the student or student’s parent...” 20 U.S.C §1232h(b). It further guarantees parents to notice, the ability to inspect any materials, and to opt out of any related programs to which they do not want to subject their children and requires schools to permit parents to inspect materials related to any program that gathers certain information and for parents to opt their children out of participation in that activity. Specifically, “All instructional materials...which will be used in connection with any survey, analysis, or evaluation of an applicable program shall be available for inspection by the parents...” 20 U.S.C §1232h(a).

In accordance with the PPRA, the District is required to create policies that recognize the “right of a parent of a student to inspect...before the survey [which is defined under §1232h(c)(6)(G) as including an evaluation] is administered or distributed...” 20 U.S.C §1232h(c)(1)(A)(i); *see also* (c)(1)(C). The District is also required to make “[a]rrangements to protect student privacy...” 20 U.S.C §1232h(c)(1)(B); *see also* (c)(1)(E). Additionally, when a program described by the PPRA is going to be implemented, the District must “provide for reasonable notice of the adoption or continued use of such policies” and “offer the opportunity for the parent...to opt the student out of participation in an activity described in [the PPRA].” 20 U.S.C §1232h(c)(2)(A)(ii).

A federal regulation promulgated under PPRA reaffirms these principles. “No student shall be required, as a part of any program...to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following: political affiliations, mental and psychological problems potentially embarrassing to the student or his family, sex behavior and attitudes, critical appraisals of other individuals with whom the student has close family relationships.” 34 C.F.R. §98.4(a). A “psychiatric or psychological examination or test” is defined as “a method of obtaining information, including a group activity, that is not directly related to academic instruction that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings.” 34 C.F.R. §98.4(c)(1). “Psychiatric or psychological treatment” holds a similar definition. 34 C.F.R. §98.4(c)(2).

The RULER program runs afoul of the PPRA. RULER tasks educators—who are not licensed mental health professionals—with evaluating and even treating perceived problems with students’ emotional health. It also expressly instructs educators to gather information regarding categories prohibited under the PPRA including family background, family relationships, religious beliefs, and religious practices. Worse, the District engaged in this behavior behind parents’ backs. The District only showed parents’ this curriculum after threatened with public records request litigation they would lose, and even then, the District refused to provide parents with copies of the curriculum as required by the PPRA.

3. California Law

DHILLON LAW GROUP INC.

A CALIFORNIA PROFESSIONAL CORPORATION

177 POST STREET, SUITE 700 | SAN FRANCISCO, CA 94108 | 415.433.1700 | 415.520.6593 (F)

Similarly, California law also requires parents to be involved in curricular decisions for their children. “It is essential to our democratic form of government that parents and guardians of school age children attending public schools and other citizens participate in improving public education institutions.” Cal. Educ. Code §51100(a). “Specifically, involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education.” *Id.* “[T]he parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children.” Cal. Educ. Code §51101(a). This includes the rights to “examine the curriculum materials” and to “receive information about any psychological testing the school does involving their child and to deny permission to give the test.” *Id.*

Additionally, California Education Code section 49091.10 provides:

(a) All primary supplemental instructional materials and assessments, including textbooks, teacher’s manuals, films, audio and video recordings, and software shall be compiled and stored by the classroom instructor and made available promptly for inspection by a parent or guardian in a reasonable timeframe or in accordance with procedures determined by the governing board of the school district.

Parents have also been denied full access to the Ruler Curriculum including all of the items listed in section 49091.10 (videos, teacher manuals, etc.). While we recognize that section 49091.10 provides parents with a different set of rights than the Public Records Act, the District’s denial of parents’ rights is further evidence of a pattern and practice of denying parental and citizens’ rights to review curriculum materials.

As demonstrated above, RULER obtains information not directly related to academic instruction and elicits information about attitudes, habits, traits, opinions, beliefs, or feelings as to child attitudes toward many subjects. Often these topics are private and personal. Further, educators in the classroom setting under RULER engage in mental health assessments of children’s “emotional health” without giving parents the opportunity to opt out of these assessments. This violates state law.

4. Constitutional Law

In addition to statutory rights, the Constitution protects the parental right to direct the upbringing of their children. The “interest of parents in the care, custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized.” *Hardwick v. Cnty. of Orange*, 980 F.3d 733, 741-42 (9th Cir. 2020)(quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

“[T]he traditional interest of parents with respect to the religious upbringing of their children” outweighs the traditional obligations of the state in education. *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972). Much of the RULER curriculum is inconsistent with the religious beliefs of some religions. For example, one of the RULER provisions referenced above calls for “examining stereotypes in the context of emotional regulations as they relate to race, gender, sexuality, *religion*, and other forms of difference.”⁷ This provision directly draws critical attention to “religion,” as well as subjects that religion touches upon. Others are more subtle, encouraging students to “take focused breaths, participate in a visualization...”⁸ when experiencing so-called microaggressions or prejudice. But religious families would encourage their children to lean into God or spiritual elements rather than breaths and visualization. With regard to the Free Exercise Clause of the First Amendment, the Ninth Circuit’s standard is that “offensive content that does not penalize, interfere with, or otherwise burden religious exercise does not violate Free Exercise rights.” *California Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1020 (9th Cir. 2020). This means that, conversely, if the content does “interfere with, or otherwise burden” religious exercise, it does violate the First Amendment. RULER trains children to handle situations inconsistent with the faith of their families which, by definition, interferes with and burdens religious exercise.

5. Attorney Fees

If the District continues to persist in denying parents their state and federal rights, my clients are prepared to file a lawsuit. If my clients were to prevail, you would be liable for mandatory attorney’s fees.

6. Conclusion

The District should not be forcing children to participate in RULER against parents’ wishes. Yet when parents requested the opportunity to opt out of the RULER curriculum, the District refused. Once they obtained the curriculum, they found that it hits at the core tenets of their beliefs. Therefore, to avoid potential litigation, we urge you to comply with the law and adopt policies and procedures that would allow any parent in the District to be notified of RULER curriculum and classroom scheduled days that will use RULER, to permit parents to inspect all RULER curriculum that will be used, and give the parents the right to opt their children out of RULER curriculum. Anything short of agreeing to these three terms will be met with further action.

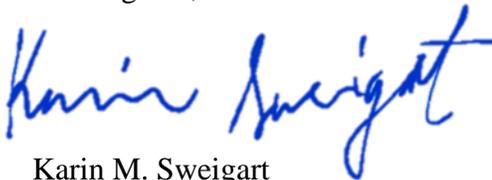
⁷ *RULER for Middle School*, 11,
https://ruleronlineimgs.s3.amazonaws.com/media/RULER_MiddleSchool_CoreRoutines-2.pdf

⁸ *Id.* at 2.

Additionally, my clients demand that any changes to the RULER curriculum, or any plans to implement any curriculum in any way similar to RULER, must be noticed to all parents within the District, that these changes be provided to the parents to inspect, and, if necessary, options must be given to opt out of the modified curriculum.

We welcome a dialogue and encourage counsel for the District to reach out and discuss this matter. However, if we do not hear from you within thirty (30) days of this letter, my clients are prepared to seek court intervention.

Best regards,



Karin M. Sweigart

DHILLON LAW GROUP INC.

A CALIFORNIA PROFESSIONAL CORPORATION

177 POST STREET, SUITE 700 | SAN FRANCISCO, CA 94108 | 415.433.1700 | 415.520.6593 (F)