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MEMORANDUM

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ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT

TO: Jeff Good
Executive Director, UTLA

FROM: Ira L. Gottlieb, Joshua Adams

DATE: July 25, 2018

RE: Teacher and Parent Communications During Labor Disputes and Strikes

I. SUMMARY – PUBLICIZING LABOR DISPUTES TO PARENTS

Teachers are not restricted from communicating about labor disputes with parents simply because the parent has a child in the teacher’s class. Even while on campus and during the work day, teachers can talk to other teachers, parents and students about labor disputes on non-instructional time as long as it is non-disruptive.

Outside of work, teachers have broad rights under the Educational Employment Relations Act (“EERA”), the First Amendment and the California Constitution to publicly discuss work conditions, educational policy, and labor disputes. The outer limit of public speech, where it becomes unprotected and a teacher may be disciplined, occurs where the teacher’s speech threatens violence or raises public safety concerns; or if the teacher’s speech is either disparaging or disrupts school services.

As a general matter, in talking to parents, teachers can criticize school work conditions, the District’s unfair bargaining positions, or the need to improve the quality of education or District management more broadly.

II. DISCUSSION – PUBLICIZING A LABOR DISPUTE TO PARENTS

A. Teachers’ Rights to Leaflet and Communicate with Parents

The “distribution of leaflets or other materials to advertise grievances or solicit support from employees and the public are among the statutorily-guaranteed rights of employees and employee organizations.” *Petaluma City Elementary School District (“Petaluma”)*, PERB Dec. No. 2485 (2016) (emphasis added). This includes communications between teachers and parents. PERB specifically has found that teachers engaged in protected conduct under EERA when they passed out fliers during a break

ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT

July 25, 2018

Page 2

to parents who were dropping off their children at school. *Id.* Similarly, at a student graduation ceremony, community college faculty engaged in protected conduct when they passed out fliers to the audience which included parents and members of the public. *Mt. Saint Antonio Community College District*, PERB Dec. No. 224 (June 30, 1982). Of note, the flyer passed out at the student graduation ceremony was expressly critical of the educational institution, and was passed out during a break between periods when faculty were required to participate in graduation ceremonies. *Id.*

The protection of teachers' right to engage in peaceful communications with parents, including distribution of leaflets and materials, extends into the school itself. Talking about "negotiable subjects" or "collective employment-related concerns . . . including budget concerns" during the workday, while during a "lunch break, rest break, or other non-working" time, constitutes protected speech. *City of Escondido*, PERB Dec. No. 2311a-M (2016). In the classroom, PERB has held that teachers may wear union buttons about wages, hours, and working conditions that are not disruptive to instruction.

While on campus and outside the classroom, teachers have even greater rights to leaflet or express pro-union sentiment during non-instructional settings such as a "back-to-school" night or, as discussed below, in non-work areas. For example, in one case, an administrative law judge determined that teachers engaged in protected activity during a back-to-school night when they brought "sad face" or "message" balloons to indicate that the union was "unhappy with the standstill in negotiations" and feeling "disrespected" by the District. *Rio School District*, Case No. LA-CE-5090-E (32 PERC ¶ 120) (ALJ, July 28, 2008) The administrative law judge noted that he would not find such balloons or other "union related material" to be disruptive of school functions during the back-to-school night, even "in the presence of students." *Id.*

B. Off-Duty Communications with Parents in Non-Work Areas on Campus

As indicated by the *Petaluma* case described above, off-duty teachers may lawfully pass out union fliers to parents dropping off children before school; and non-work areas can encompass locations where school-related activity is ongoing and children are near.

Outside the classroom, off-duty teachers may peacefully and truthfully communicate with and provide leaflets to parents in most non-work areas of the school where there is regular public access or where employees normally take breaks. A non-work area may include locations as diverse as campus common areas, courtyards, playgrounds, gates, and parking lots. Some traditional non-work areas (such as a breakroom) may be obvious, others less so, depending on whether on-duty District employees can see or hear activities in the challenged area, and whether students are present or within earshot.

C. Publicizing a Labor Dispute to Parents Off Campus

Under EERA, the District cannot lawfully discipline educators for working together with third parties, including students and parents, to protest and speak out on educators' working conditions. *See L.A. Cmty. Coll. Dist.*, PERB Decision No. 2404E (2014). Teachers may engage in direct, targeted communications with parents as members of the public outside of the school campus and while off duty. For example, teachers engage in protected activity when they send letters to parents, call parents, or use social media to communicate with parents in criticizing labor conditions at the school or the financial management of the school (for example, the hiring of outside consultants). *See CTA v. Public Employment Relations Bd.*, 169 Cal.App.4th 1076, 1091 (2009) (finding that a letter campaign to parents was lawful).