

March 27, 2023

VIA EMAIL & CERTIFIED MAIL

Dr. Sydnee Dickson, Ed.D.
Utah State Superintendent of Public Instruction
Utah State Board of Education
PO Box 144200
Salt Lake City, Utah 84114-4200
Sydnee.dickson@schools.utah.gov

Re: Request for Wavier of Administrative Rule R277-623-4

Dear Dr. Dickson,

This office represents and I write on behalf of Utah Charter Academies d/b/a American Preparatory Academy (“APA”) regarding the Climate Survey as set forth in Utah Administrative Code R277-623-4. APA recognizes the work done by USBE staff on the model Climate Survey. We appreciate the USBE’s efforts to fulfill their statutory requirement of providing guidance on the Survey. Due to the issues outlined below and, pursuant to Administrative Rule R277-121, APA requests a waiver of the Utah State Board of Education’s (“USBE”) Rule 277-623-4 regarding dissemination of a model climate survey (the “Climate Survey”).¹

APA takes seriously its responsibility to understand and evaluate the climate in its schools. To that end, APA regularly surveys both parents and staff, using surveys it has developed. As set forth below, in addition to those surveys, APA is willing to disseminate the “Adults” version of the Climate Survey with a few minor changes.² It is also willing to augment its parent surveys to address topics the USBE may request. However, it respectfully requests a waiver of the requirement to disseminate the student versions of the Climate Survey, which APA believes conflict with its responsibilities under Utah Code § 53E-9-203 and its internal policies.

If the USBE will not grant a waiver, APA requests a list of the required areas of content for the student survey so that APA can create and disseminate a survey that complies with its legal obligations and policies.

The Climate Survey Seeks Information that Requires Parental Consent

As you are undoubtedly aware, Utah law requires charter schools to obtain “the prior written consent of the student’s parent” before administering to a student “any psychological or psychiatric examination, test, or treatment, or any survey, analysis, or evaluation”, which has the “purpose or

¹ The APA Governing Board voted in an open meeting to request this waiver.

² APA does not employ SROs, and there is no option for “not applicable” on the portions of the Climate Survey pertaining to SROs. APA therefore requests permission to remove those questions before disseminating the “Adults” version of the Climate Survey.

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evident intended effect” of revealing information “concerning the student’s or any family member’s (b) mental or psychological problems; (c) sexual behavior, orientation, or attitudes; [or] (d) illegal, anti-social, self-incriminating, or demeaning behavior.” Utah Code Ann. § 53E-9-203(1). Written parental consent for a survey is required “whether the information [requested] is personally identifiable or not.” *Id.* A general consent to enrollment or education is insufficient, and schools must follow specific guidelines in obtaining parental consent. *Id.* § 53E-9-203(4).

Despite these explicit Utah legal requirements, the Climate Survey seeks information protected by Utah Code § 53E-9-203. For example, each Climate Survey asks students to identify their gender and gives three possible responses: boy, girl, and “prefer not to say.” The Climate Survey for older students asks about sexting and sexual harassment. It also asks students about their mental or psychological health, including by asking whether students “know how to ask for help when [they are] feeling sad or hopeless.” And it asks about bullying, violence, drug use, and other potentially illegal or self-incriminating behaviors.

Thus, APA cannot disseminate the Climate Survey to its students without first obtaining written parental consent for each student. The burden of obtaining that consent is considerable. Accordingly, APA requests a waiver of the requirement to disseminate the Climate Survey.

The Climate Survey Violates APA’s Policies and Values

APA does not permit its staff members to “speak to students regarding topics such as human sexuality” except in “specified classes and utilizing approved curriculum.” The model Climate Survey violates this policy.

First, each version of the Climate Survey asks students to identify their gender and gives three possible responses: boy, girl, and “prefer not to say.” APA has found that after reading questions like this, some students asked why would they “prefer not to say whether they are a boy or a girl.” APA’s policies prohibit teachers and other staff from answering such questions, which require explanations about transgenderism and sexuality.

Similarly, the Climate Survey for older students asks about “sexting” and “sexual harassment.” APA has found that these terms often result in questions from students, but, again, APA’s staff cannot answer such questions without violating APA’s policies. APA thoughtfully addresses topics relating to human sexuality in specified classes with approved curriculum. It should not be required to violate its policies by disseminating the Climate Survey.³

³ The Climate Survey also asks students to identify their nationality, ethnicity, or race, which is inconsistent with APA’s value of equality. APA believes that teaching children to make divisions and identifications based on nationality, ethnicity, and race promotes racist thinking. It is APA’s

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In short, the Climate Survey violates APA's carefully considered policies and values. APA therefore requests a waiver of the requirement to disseminate the Climate Survey.

APA's Proposed Waiver Agreement

Pursuant to Administrative Rule R277-121-2(1)(iii), APA proposes that the requested waiver take effect immediately upon the USBE's approval. Within sixty (60) days of the USBE's approval, APA will disseminate a modified "Adults" version of the Climate Survey and a survey to parents with topics the USBE may suggest. Within ten (10) days of disseminating the surveys, APA will report survey results to the USBE. APA proposes that this waiver remain in effect unless and until the USBE proposes a modified climate survey that makes significant changes to the current version, at which point, APA will reevaluate the survey's compatibility with the law and APA's policies.

Alternatively, APA Requests a List of Required Content

If the USBE will not grant a waiver, APA requests that the USBE identify the areas of content for a climate survey to be created by APA. Utah Code § 53G-8-802(2)(i) permits the USBE to "create a model school climate survey that may be used by an LEA" and to adopt rules "requiring an LEA to create or adopt and disseminate a school climate survey" based on "areas of content" the USBE specifies. (emphasis added). In accordance with Utah Code § 53G-8-802(2)(i), once the USBE provides the areas of content, APA will create a survey that comports with Utah Code § 53E-9-203 and APA's internal policies and values.

Again, APA takes seriously its responsibility to evaluate the climate of its schools, and it is eager to work with the USBE to accomplish that goal while remaining true to its legal obligations, policies, and values.

I invite you to contact me if you would like to discuss this matter further.

Best Regards,



David Mortensen

view that a diverse but unified school should not encourage children to categorize themselves based on nationality, ethnicity, or race.



FOLEY & LARDNER LLP

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cc: Bryan Quesenberry, Esq. (via email)

DM:btc