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April 18, 2024

Dexter Community Schools:

Superintendent Christopher Timmis
timmisc@dexterschools.org
2704 Baker Road
Dexter, Michigan 48130

Members of the District Board of Education:

President Mara Greatorex;
Vice President Elise Bruderly;
Treasurer Dick Lundy;
Secretary Jennifer Kangas;
Trustee Daniel Alabré;
Trustee Brian Arnold; and
Trustee Melanie Szawara
boe@dexterschools.org
2704 Baker Road
Dexter, Michigan 48130

via email and U.S. Post

Re: Violation of Constitutional Rights Pursuant to Policy 2418

Dexter Community Schools District Officials,

We are writing on behalf of concerned parents of the Dexter Public School District regarding Policy 2418 (Revised November 6, 2023), which pertains to sex education instruction. Our clients have brought to our attention their grave concerns regarding the discriminatory nature of this policy, which they believe violates rights under the Equal Protection and Due Process clauses of the Fourteenth Amendment, Freedom of familial association under the First and Fourteenth Amendments, and right to Free Exercise of Religion under the First Amendment, as well as the protection of state law under MCL § 380.1507.

As you know, Policy 2418 allows certain parents to opt-out of sex education within health class, while withholding this same right from other parents when sex education topics or discussions arise in classes outside of those specifically designated for health education. This selective granting of opt-out rights *by policy* creates a disparity in treatment among parents, thereby infringing upon their fundamental rights protected under the Fourteenth Amendment, and implicates the other rights as identified above.

District Policy 2418 allows parental opt-outs of sex education class:

The District shall notify the parents, in advance of the instruction and about the content of the instruction, give the parents an opportunity, prior to instruction, to review the materials to be used (other than tests), as well as the opportunity to observe the instruction and advise the parents of their right to have their child excused from the instruction.

However, the same policy discriminates against parental opt-outs of sex education in classes outside health class:

Discussions, activities, or texts/books used to teach to other academic standards, that are introduced during classroom instruction of non-health courses, and that may include human sexuality, gender identity, or any of the core concepts outlined above do not constitute sex education and would not be subject to the legal requirements of §380.1507, as they are not materials and methods that are part of a unit to teach the Michigan Health Education Standards focusing on growth and development/sex education (Strand 7).

In practice, the Dexter Community Schools District has an inconsistent and arbitrary record of recognizing when and what topics fall outside health classes, but under the inclusive definition of sex education. For example, at times, schools within the District have provided parents prior notice and ultimately granted the opportunity to opt-out when the child-aimed book *I Am Jazz* about “[t]he story of a transgender child based on the real-life experience of Jazz Jennings, who has become a spokesperson for transkids everywhere”¹ was to be read at a school assembly. At other times, parents have been given no prior notice, and their children have been provided instruction through book assignments, including reading *Pride: The Story of Harvey Milk and the Rainbow Flag*.² Both books contain sex education and reproductive health subtopics, including gender identity and human sexuality, which falls under “sex education” as defined by Michigan law in MCL §380.1507, and as defined by various third-party guides to “Comprehensive Sex Education.”³

There should be no question of whether sex education instruction would or could occur in classes other than designated “health” classes. That question was answered over four decades ago in an Attorney General opinion that the text codified at MCL § 380.1507 prohibits “any sex education instruction in any class or course that students are required to take,” including, for example, home economics (that is, a non “health” class.) The Honorable Francis R. Spaniola, 1981-1982 Mich. Op. Atty Gen. 130 (1981).

¹ <https://www.amazon.com/I-Am-Jazz-Jessica-Herthel/dp/0803741073>

² <https://www.amazon.com/Pride-Story-Harvey-Milk-Rainbow/dp/0399555315>

³ E.g., *What is comprehensive sexuality education*, UNESCO, (last visited April 11, 2024) <https://csetoolkit.unesco.org/toolkit/getting-started/what-comprehensive-sexuality-education>; Comprehensive Sexuality Education, American College of Obstetricians and Gynecologists, Committee Opinion No. 678 (November, 2016, reaffirmed 2023), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2016/11/comprehensive-sexuality-education>.

District Policy 2418 erodes parental confidence that the District will respect parental notice and opt-out in the future as it by-text excludes sex education outside health class from the normal sex education notice and opt-out procedures.

In correspondence with our clients, District Superintendent Chris Timmis provided unsatisfactory and ambiguous answers that leave our clients with no confidence they will be provided prior notice and opportunity to opt-out in the future. Further, prior communications from school administration assuring our clients that parents would be notified and given the chance to review material and opt-out have proven to be empty.

District practice has been no better when it comes to respective parental notice and opt-out. Just last week, one of our clients' children enrolled in a Dexter elementary school was subjected to sex education instruction through a book reading related to "human sexuality and the emotional, physical, psychological... and social aspects of family life" without prior notice to our clients, or any other parents. Our clients have a standing-opt-out request, and if they had been provided notice, they would have requested that their child be opted-out.

The issues are two-fold; first, based on experience, coupled with the text of District Policy 2418, our clients have no confidence they will have consistent prior notice in order to engage in opt-out discussions. Second, the lack of consistency directly harms and threatens further harm to their parenting styles, ability to direct the upbringing of their children according to their religious values, as well as their parent-child relationships.

As summarized in *Troxel v. Granville*, 530 U.S. 57, 66–68 (2000), the U.S. Constitution recognizes the fundamental parental right to direct the upbringing of their children. When parents are denied that fundamental right, that naturally interferes with the relationship between children and their parents. Furthermore, the United States Court of Appeals for the First Circuit, in *McConkie v. Nichols*, 446 F.3d 258, 261 (1st Cir. 2006), has affirmed that significant interference with the parent-child relationship constitutes conscience-shocking conduct, which may give rise to constitutional claims under 42 U.S.C. § 1983.

The recent ruling by a United States District Court in California, *Mirabelli v. Olson*, 2023 WL 5976992 (S.D. Cal., 2023), underscores the importance of upholding constitutional rights in educational settings. In that case, teachers initiated a federal civil rights action against the Escondido California Union School District, challenging a district policy. The court's preliminary ruling in favor of the teacher-plaintiffs denied qualified immunity to school district personnel who violated constitutional rights of the plaintiffs, reinforcing the accountability of teachers and school officials for their actions. The ruling further highlighted that district policies that infringe upon parental rights and compel educators to act against their conscience related to human sexuality do cause cognizable harm.

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In light of these legal precedents and the constitutional principles at stake, our clients demand that the Dexter Public School District:

1. Immediately revise Policy 2418 to ensure all parents have the right to opt-out of any sex education material, regardless of the class in which it is taught;
2. Implement a system to notify parents about all sex education topics discussed in any class, restoring the right to informed decision-making; and
3. Assure compliance with opt-out rights across all classes and subjects.

Failure to address this matter satisfactorily may necessitate legal action to protect the fundamental, constitutional, and state-protected rights of our clients and their children.

We anticipate your swift, complete, and appropriate response to this matter. Our clients and our office are always open to discussing potential resolutions to the issues raised here and any other issue affecting the rights of the parties involved. Please contact our office to meet in person or online, or call you have any questions.

Sincerely,

/s/ Erick G. Kaardal

Erick G. Kaardal*

EGK/mg

**Admitted to the United States District Court for the Eastern District of Michigan*