



# BEVERLY HILLS EDUCATION ASSOCIATION

*Educational Employees Working Together*

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## CONSENSUS

A Newsletter for BHEA Members

January 13, 2010



### In Memory of BHEA Member Will Aardappel

BHEA is deeply saddened by the unexpected death of Will Aardappel, an El Rodeo music teacher and BHEA site representative. Mr. Aardappel provided a voice for teachers at BHEA Representative Council meetings and consistently spoke his mind on important issues, even when he was advocating for a minority opinion. We feel his loss and have sympathy for his family and friends.

BHEA will hold a moment of silence in memory of Mr. Aardappel at our Jan. 14 Rep. Council meeting at 3:45pm in Room 118 at BHHS...followed by an opportunity for our members to honor Mr. Aardappel by sharing fond memories of him. All members are welcome to attend and participate.

### BHEA Has No Position on Opportunity Permits

Last Thursday, Beverly Hills *Weekly* columnist Rudy Cole made an appearance at the BHEA Executive Board meeting where he encouraged BHEA to enter into the opportunity permit debate by coming out in favor of continued enrollment through 12th grade for all students currently in BHUSD on an opportunity permit. We had a good discussion. Ultimately, your Executive Board chose to maintain the same position that we've held for over 2 years: "BHEA has no official position on opportunity permits." Our reasoning is that it is not the job of the employees to suggest to the district how to populate its student body. Our members educate any and all enrolled students equally, regardless of resident or permit status. BHEA will continue to advocate for the right of our members' own children to attend BHUSD as a contractual benefit of employment. BHEA would forcefully reject any attempts by the district to lay off our members due to any non-renewals of opportunity permits for two reasons: 1) our members should not bear the negative consequences of administrative changes to any practice or policy and 2) basic aid funding status means that decreases in student enrollment for any reason will not significantly reduce revenue; thus, there is no financial imperative to lay off.

BHEA respects the right of individual members of our union to express their own opinions in their own name, even when contrary to BHEA positions.

### BHEA Grows Increasingly Worried By District's Behavior Pattern on Grade Change

Several troubling events have transpired since our last update on the ongoing story about a teacher's grade being unlawfully changed last November. BHEA continues to stay on top of this matter, as it affects not only the welfare of our members, but also the integrity of a teacher's right to issue a binding grade. Here's a quick recap of BHEA's prior reports:

- Information surfaces in November that a student's Spring 2009 semester grade was changed at the direction of the high school administration without the teacher's knowledge or consent, a violation of Education Code 49066. Information also surfaces that a then-active Board of Education member pressured both the teacher and the administration on the grade.
- The administration subsequently changed the grade back to the grade that the teacher had originally submitted.
- The district hires a private, independent investigator to look into how the grade got changed.
- The district tells the teacher, who has only probationary status, that she must attend a Nov. 20 meeting to review the student's academic performance in her class during the last school year.
- At the Dec. 7 Board of Education meeting, Board member Myra Lurie taints the district's independent investigation by charging that BHEA and teachers violated student privacy laws. Interestingly, Lurie herself made an unsolicited reference to special education law, possibly revealing a confidential student record on camera.
- On Dec. 10, a high school administrator announces that the high school administration did nothing wrong and also asserted the administration's right to change a teacher's grade under certain conditions.
- BHEA reminded our members that Ed Code 49066 provides for only a very limited scope of reasons that the administration may change a grade, and absolutely requires the teacher to be included in all discussions.

#### TROUBLING PATTERN OF RECENT EVENTS

- On Nov. 16, the high school administration began accusing the teacher of potential job performance deficiencies. The administration ordered her to attend a Nov. 20 meeting where it queried her about her job performance. The administration denied her BHEA representation at this Nov. 20 meeting. A district office administrator had assured BHEA that the administration was going to back the teacher in a subsequent meeting later that day. Nonetheless, the administration informed the teacher on Dec. 15 that a determination was made on Nov. 20 that she had failed to meet a specific, narrow part of the student's academic program. The administration then threatened her with civil liability. The administration then told her that an "option" available to her was to change the grade from a "D" to either an "I" or a "P." Later in the day on Dec. 15, BHEA demonstrated that the administration never informed the teacher of this student's particular requirement. On Dec. 17, a high school administrator visited the teacher's 6th period class and handed her an unsigned, anonymous letter that con-

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- tained additional and ultimately unsubstantiated accusations of the teacher failing to deliver the student's academic program. The letter was unprofessional in that it was addressed to the teacher's first name only, not typed on district (or any other) letterhead, not signed, and bore no indication of who wrote it. The administrator who handed the teacher the letter bore no responsibility for it but was quick to coerce the teacher by telling her that she had to decide on whether she was going to change the grade by the next day, Dec. 18. The teacher refused to change the grade.
- On Dec. 23, in the middle of winter break, the administration called the teacher and informed her that a 5-member panel of administrators was being convened to look into a formal challenge to her original grade, the very same grade that the administration had to reinstate out of embarrassment once its earlier attempt to clandestinely and unlawfully change the grade backfired. When BHEA began to ask questions about this panel, the district office administrator in charge of setting up the panel said she would be on vacation until Jan. 4. The panel was scheduled to convene on Jan. 6. It was not until 1:43pm on Jan. 5, a mere 20 hours before the panel convened, that the administration disclosed the details on the procedures to be used by the panel. The administration gave the teacher a scant 23 hours to find "witnesses" to speak on her behalf. The administration also called supposedly impartial witnesses to the panel to present information, some of whom were involved themselves in administering the student's academic program. The teacher asserted her right to BHEA representation. The district denied it, even though Article IV, Section 2 of the certificated contract clearly gives her the right of "reviewing and evaluating the work of pupils," making this a contractual issue to which the teacher is entitled to union representation. The teacher also asserted her right to an attorney. The district denied it, even though a high school administrator had previously threatened her with civil litigation. On top of that, she faces the risk of the administration declaring her to be "incompetent," having acted in "bad faith," or with "fraud." These are all serious legal threats. So, the probationary teacher sat alone at a table in the district office Board Room on Jan. 6 and defended herself for 8 and half hours in the presence of a panel of five administrators with no union or legal representation.
  - Then, on Jan. 7 the administration asked the teacher if she would agree to change the grade to a "P." The teacher asserted that she had done nothing wrong. The administration disagreed with her, challenged her truthfulness,

and accused her of not complying with federal law. The administration reminded her that federal law supersedes state law. State law protects the teacher's right to issue a final grade. The administration told the teacher that it needed a response no later than the evening of Jan. 11. At 4:56pm on Jan. 11, the teacher submitted a signed statement to the superintendent indicating that she was standing by the original grade of "D."

- Although the administration claims that a document exists that shows that the teacher was responsible for carrying out a particular part of the student's academic program, the administration has never divulged the document, even though the teacher has made multiple requests to see it. The teacher also has documentary evidence that contradicts the district's claims. Furthermore, the teacher provided multiple other means of satisfying the requirement claimed by the administration through her well-established record-keeping and record-reporting practices. Also, there was substantial overall compliance by the teacher in providing the student a high-quality academic program. The teacher even gave up time outside of class to work one-on-one with the student. Finally, the administration has a motive to blame the teacher so as to deflect its own culpability in poorly administering a district program and deflect away from its original act of unlawfully changing the grade.
  - The episodes described in this article all occurred in the midst of a private investigation into how the teacher's grade was unlawfully changed in the first place. The private investigator instructed all people whom she interviewed to refrain from discussing the grade change case. However, several of the people whom the administration invited to participate in the Jan. 6 panel had already been interviewed by the investigator. Many of the issues and circumstances surrounding the original grade change were relevant points of discussion for the Jan. 6 panel to hear. Therefore, some panel members were put in the awkward position of trying to adhere to the investigator's instructions while at the same time trying to provide necessary information. BHEA also learned that, as of the afternoon of Jan. 5, the district had not alerted the investigator to the fact that the Jan. 6 panel was being convened.
- BHEA is taking all necessary means to defend the teacher and assert her right to issue a final grade free from coercion and scare tactics. We believe we have identified several areas of the contract, Board policy, and state and federal law that give the teacher protection and give BHEA the right to pursue justice for the teacher for any and all unfair treatment she has endured at the hands of the administration.

## Summary of BHEA Representative Council Meeting

Below is a summary of the Dec. 10 BHEA Rep. Council meeting:

- Reported that 5 or 6 IA members sought and achieved an increase in their work hours so they now exceed 19.5 hours/week and are eligible for the district contribution to their health benefits.
- Reported considerable progress on negotiating K-8 physical education class size language.
- Reported that BHEA's accountant has completed an audit of BHEA's 2008-2009 financial ledgers and that the numbers balanced.
- Advised creation of bylaws for our political action committee.
- Discussed a teacher's right to talk with school officials about student records when there is a legitimate educational interest.
- Discussed extra pay units and how similar extra work is paid at different rates depending on how the units are distributed.
- Encouraged teacher participation in the PTA leadership structure, noting that classroom money is often funneled through PTA and teacher perspective is needed. Reported that HM has three teachers on the PTA Executive Board.

## IMPORTANT DATES

- Jan. 14: BHEA Rep. Council meeting. Room 118. BHHS. 3:45pm.
- Jan. 18: MLK day. School holiday.
- Jan. 19: Certificated bargaining.
- Jan. 26: Board of Education meeting.
- Jan. 29: Pupil-free for grades 6-12. Staff development for grades K-5.