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16 in her official capacity; TOM LANDO, in his  
17 official capacity; EILEEN ROBINSON, in her  
18 official capacity; and MATT TENNIS,  
19 in his official capacity

20 IN THE UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA

22 AURORA REGINO,

23 Plaintiff,

24 vs.

25 SUPERINTENDENT KELLY STALEY, in  
26 her official capacity; CAITLIN DALBY, in her  
27 official capacity; REBECCA KONKIN, in her  
28 official capacity; TOM LANDO, in his official  
capacity; EILEEN ROBINSON, in her official  
capacity; and MATT TENNIS, in his official  
capacity,

Defendants.

Case No.: 2:23-cv-00032-JAM-DMC

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

Complaint Filed: January 6, 2023  
Trial Date: Not Yet Set

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1 CHICO UNIFIED SCHOOL DISTRICT (“District”), by through Defendants KELLY  
2 STALEY (Superintendent), CAITLIN DALBY, REBECCA KONKIN, TOM LANDO, EILEEN  
3 ROBINSON, and MATT TENNIS (Board members) (collectively, “Defendants”, who are  
4 named in their official capacities only) consistently works in partnership with parents and always  
5 seeks to keep them as informed as legally permitted in matters concerning the wellbeing of their  
6 children. In this case and in others like it, however, there are legal limitations on what  
7 information can be shared about a student, including with the student’s family. Defendants are  
8 obligated to follow the law. The motion for the extraordinary relief of a preliminary injunction is  
9 not premised on existing law. Also, it does not meet the elements that would permit this Court to  
10 grant relief.

11 Rather, the motion is based on speculative future harm to an undisclosed group of  
12 individuals and lacks foundation as to the existence of a need for unrecognized constitutional  
13 protection. To date, prevailing federal authority holds that children have a recognized privacy  
14 interest in both their sexual orientation and gender identification. Yet, nowhere in her 21 pages  
15 of briefing, 27 pages of pleading, nor 103 pages of purported expert witness testimony does  
16 Plaintiff AURORA REGINO (“Plaintiff”) apprise the Court of that fact. Far from having a  
17 likelihood of success, Plaintiff’s claims are primed for an early dismissal with the forthcoming  
18 Federal Rule of Civil Procedure 12 motion to be filed by Defendants.

19 The bulk of Plaintiff’s pleadings, briefing and exhibits argue for what rights she believes  
20 a parent should have, rather than analyzing what rights the federal and California constitutions  
21 actually do provide; and overlooks the long-recognized privacy rights of children along the way.  
22 Plaintiff also overlooks the fact that the District is obligated to follow existing law. Accordingly,  
23 Defendants respectfully requested that Plaintiff’s motion for preliminary injunction be denied.

## 24 **PERTINENT BACKGROUND**

### 25 **A. Parties**

26 Defendant KELLY STALEY is the Superintendent for the Chico Unified School District  
27 (“District”). Verified Complaint, ECF 1 (“Complaint”), ¶ 19. In her position, Defendant Staley  
28 is responsible for overseeing implementation of District policies. Complaint, ¶ 19. Defendants

1 CAITLIN DALBY, REBECCA KONKIN, TOM LANDO, EILEEN ROBINSON, and MATT  
2 TENNIS are members of the District’s Board of Education (“Board”). Complaint, ¶¶ 14-18.  
3 The Board is the governing body of the District. Complaint, ¶ 13. Each of these individual  
4 defendants are named as parties to the litigation in their official District capacities only.  
5 Complaint, ¶¶ 14-19.

6 Plaintiff AURORA REGINO (“Plaintiff”) is the mother of A.S., a minor student who  
7 attended the District’s Sierra View Elementary School (“Sierra View”) during the 2021-2022  
8 school year. Complaint, ¶¶ 3, 11.

9 B. Legislative Background

10 California Education Code section 33308.5 (“Section 33308.5”) authorizes the California  
11 Department of Education (“CDE”) to provide public school districts guidelines and examples for  
12 compliance of laws within its jurisdiction. Cal. Ed. Code, § 33308.5, subd. (a). Based upon this  
13 authority, the CDE issued guidance several years ago, long before the 2021-2022 school year,  
14 concerning compliance with California Assembly Bill No. 1266 (2013) (“AB 1266”) and other  
15 transgender-related legal requirements. See <https://www.cde.ca.gov/re/di/eo/faqs.asp>;  
16 Declaration of Jimmie E. Johnson, ¶ 2; Request for Judicial Notice (“RJN”), No. 1. Included  
17 therein, the CDE provides the following:

18 7. What steps should a school or school district take to protect a transgender  
19 or gender nonconforming student’s right to privacy?

20 [A:] ... Pursuant to the above protections, schools must consult with a  
21 transgender student to determine who can or will be informed of the student’s  
22 transgender status, if anyone, including the student’s family. With rare  
23 exceptions, schools are required to respect the limitations that a student places on  
24 the disclosure of their transgender status, including not sharing that information  
25 with the student’s parents. ... A transgender student’s right to privacy does not  
26 restrict a student’s right to openly discuss and express their gender identity or to  
27 decide when or with whom to share private information. *A student does not waive*  
28 *his or her right to privacy by selectively sharing this information with others.*

1 8. What steps should a school or school district take to protect a transgender  
2 or gender nonconforming student’s right to privacy? What is a school or school  
3 district’s obligation when a student’s stated gender identity is different than the  
4 student’s gender marker in the school’s or district’s official records?

5 [A:] A school district is required to maintain a mandatory permanent student  
6 record which includes the legal name of the student and the student’s gender. If  
7 and when a school district receives documentation that such legal name or gender  
8 has been changed, the district must update the student’s official record  
9 accordingly.

10 *If the school district has not received documentation supporting a legal*  
11 *name or gender change, the school should nonetheless update all unofficial*  
12 *school records (e.g. attendance sheets, school IDs, report cards) to reflect the*  
13 *student’s name and gender marker that is consistent with the student’s gender*  
14 *identity. This is critical in order to avoid unintentionally revealing the student’s*  
15 *transgender status to others in violation of the student’s privacy rights, as*  
16 *discussed above in section 6.*

17 *If a student so chooses, district personnel shall be required to address the*  
18 *student by a name and the pronouns consistent with the student’s gender identity,*  
19 *without the necessity of legal documentation or a change to the student’s official*  
20 *district record. ...*

21 See <https://www.cde.ca.gov/re/di/eo/faqs.asp> (emphasis added); RJN, No. 1.

22 In connection with the aforementioned CDE guidance, the California School Boards  
23 Association (“CSBA”) – which is a membership organization comprised of approximately 962  
24 local educational agencies (school districts, county offices of education, etc.) responsible for the  
25 education 99.9% of all K-12 public school students statewide – circulated a sample anti-  
26 harassment administrative regulation, “Regulation 5145.3,” to its members in 2014 to consider  
27 for adoption in their respective districts. The sample regulation concerned most, if not all, forms  
28 of illegal harassment. With regard to transgender-based harassment, the proposed regulation

1 read, in pertinent part: “1. Right to privacy: A student’s transgender or gender-nonconforming  
2 status is his/her private information and the district will only disclose the information to others  
3 with the student’s prior consent, except when the disclosure is otherwise required by law or is  
4 necessary to preserve the student’s physical or mental well-being. ... As appropriate, the  
5 Coordinator [for Nondiscrimination] shall discuss with the student any need to disclose the  
6 student’s transgender or gender-nonconformity status to his/her parents/guardians and/or others,  
7 including other students, teacher(s), or other adults on campus. Any decision to disclose the  
8 student’s status to others shall be based on the student’s best interest.” Declaration of Kelly  
9 Staley, ¶ 2; RJN, No. 2.

10 The proposed regulation further read, in pertinent part: “6. Name and Pronouns: If a  
11 student so chooses, district personnel shall be required to address the student by a name and the  
12 pronouns consistent with his/her gender identity, without the necessity of a court order or a  
13 change to his/her official district record.” RJN, No. 2.

14 Thereafter, like numerous other school districts, the District adopted its own, revised  
15 version of the CSBA sample regulation. As of the 2021-2022 school year in question, the  
16 District’s own Administrative Regulation 5145.3 read, in pertinent part:

17 **Transgender and Gender-Nonconforming Students**

18 ...

19 To ensure that transgender and gender-nonconforming students are afforded the same  
20 rights, benefits, and protections provided to all students by law and Board policy, the  
21 district shall address each situation on a case-by- case basis, in accordance with the  
22 following guidelines:

- 23 1. Right to privacy: A student's transgender or gender-nonconforming status is the  
24 student’s private information and the district shall only disclose the information to  
25 others with the student's prior written consent, except when the disclosure is  
26 otherwise required by law or when the district has compelling evidence that  
27 disclosure is necessary to preserve the student's physical or mental well-being. ... As  
28 appropriate given the student's need for support, the compliance officer may discuss

1 with the student any need to disclose the student's transgender or gender-  
2 nonconformity status or gender identity or gender expression to the student's  
3 parents/guardians and/or others, including other students, teacher(s), or other adults  
4 on campus. The district shall offer support services, such as counseling, to students  
5 who wish to inform their parents/guardians of their status and desire assistance in  
6 doing so.

7 ...

- 8 5. Names and Pronouns: If a student so chooses, district personnel shall be required to  
9 address the student by a name and the pronoun(s) consistent with the student's gender  
10 identity, without the necessity of a court order or a change to the student's official  
11 district record. ...

12 Declaration of Kelly Staley, ¶ 4; RJN, No. 3.

13 C. Pleadings

14 On or about January 6, 2023, Plaintiff filed her Complaint in the above-captioned matter.

15 ECF 1. The Complaint alleges, in pertinent part:

16 20. The District has adopted and implemented the Parental Secrecy Policy. Under this  
17 Policy, which is a policy, practice, procedure, and/or custom of the District, schools will  
18 (1) socially transition students who express a desire to live as a gender different from that  
19 associated with their biological sex while (2) keeping the social transitioning secret from  
20 their parents unless the student specifically authorizes the school to inform them. On  
21 information and belief, for the reasons set forth in Paragraph 53, the District applies the  
22 Parental Secrecy Policy at all schools within the District.

23 ...

24 30. After one or two Girl's Group meetings [at Sierra View], A.S. went to [school  
25 counselor] Ms. Robertson's office to tell her that she 'felt like a boy' or words of similar  
26 effect. Ms. Robertson asked A.S. if she had a boy's name that she would like to be  
27 called and whether she would like to be referred to by male pronouns. A.S. was unsure  
28 whether she wanted others at school to start calling her by a male name and pronouns, but

1 she felt pressured by Ms. Robertson, so she responded in the affirmative and told Ms.  
2 Robertson her boy’s name was “J.S.” ...

3 31. After the meeting, Ms. Robertson walked A.S. back to her classroom and told her  
4 teacher that A.S. was now going by the name “J.S.” and male pronouns, and her teacher  
5 immediately began referring to her as such. ...

6 ...

7 34. During this time, school personnel continued referring to A.S. by her new name and  
8 pronouns. Every day at school, A.S. was known as “J.S.” and referred to with male  
9 pronouns, while at home, she remained A.S. Despite requiring a parental permission slip  
10 for A.S. to participate in an arts-and-crafts club, the District socially transitioned A.S.  
11 from a girl to a boy without even *informing* her mother, much less obtaining her  
12 permission to do so.

13 Complaint, ¶¶ 20, 30, 31, 34 (emphasis in original).

14 Based upon these allegations, Plaintiff raises the following causes of action:

- 15 • Count One – Facial Challenge to Parental Secrecy Policy Under 42 U.S.C. §  
16 1983 – Substantive Due Process (Complaint, ¶¶ 56-62);
- 17 • Count Two – As Applied Challenge to Parental Secrecy Policy Under 42 U.S.C.  
18 § 1983 – Substantive Due Process (Complaint, ¶¶ 63-67);
- 19 • Count Three – Facial Challenge to Parental Secrecy Policy Under 42 U.S.C. §  
20 1983 – Procedural Due Process (Complaint, ¶¶ 68-71); and
- 21 • Count Four – As Applied Challenge to Parental Secrecy Policy Under 42 U.S.C.  
22 § 1983 – Procedural Due Process (Complaint, ¶¶ 72-75).

## 23 ARGUMENT

### 24 I. Plaintiff Must Establish “By a Clear Showing” a Likelihood of Success, Irreparable 25 Harm, a Balance of Equities, and a Public Interest to Prevail on this Motion

26 Federal Rule of Civil Procedure 65 authorizes courts to issue preliminary injunctions.

27 Fed. R. Civ. P. 65(a). “A preliminary injunction is an extraordinary remedy never awarded as of  
28 right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24, (2008). Rather, the decision is

1 a matter of the district court's equitable discretion. *Id.* at 32. In exercising that discretion, the  
 2 moving party “must establish that he is likely to succeed on the merits, that he is likely to suffer  
 3 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,  
 4 and that an injunction is in the public interest.” *Id.* at 20; see also *Garcia v. Google, Inc.*, 786  
 5 F.3d 733, 740 (9th Cir. 2015) (en banc) (same). A preliminary injunction “should not be granted  
 6 unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*,  
 7 520 U.S. 968, 972 (1997) (emphasis in original, grammatical marks and citation omitted); see  
 8 also *Silvas v. G.E. Money Bank*, 449 F.App'x 641, 643-44 (9th Cir. 2011) (quoting *Mazurek*). In  
 9 doing so, the moving party bears the burden of meeting all prongs of the *Winter* test. *Alliance*  
 10 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011); *DISH Network Corp. v.*  
 11 *FCC*, 653 F.3d 771, 776 (9th Cir. 2011) (“To warrant a preliminary injunction, [plaintiff] must  
 12 demonstrate that it meets all four of the elements of the preliminary injunction test established  
 13 in *Winter*[.]”).

14 Finally, preliminary injunctions generally are intended “to preserve the relative positions  
 15 of the parties until a trial on the merits can be held.” *Univ. Of Texas v. Camenisch*, 451 U.S. 390,  
 16 395 (1981). When a complainant seeks mandatory preliminary injunctive relief that would alter  
 17 the status quo rather than preserve it – which is what Plaintiff seeks in the instant motion – a  
 18 court must exercise an even higher “doubly demanding” standard. *Garcia*, 786 F.3d at 740.  
 19 Specifically, in order to attain a mandatory preliminary injunction, a complainant must establish  
 20 that “extreme or very serious damage *will* result” unless the requested relief is granted. *Doe v.*  
 21 *Snyder*, 28 F.4th 103, 111 (9th Cir. 2022) (emphasis added). As discussed above, Plaintiff falls  
 22 significantly short of that standard.

## 23 **II. Plaintiff Cannot Establish “By a Clear Showing” a Likelihood of Success in this** 24 **Litigation**

### 25 A. Counts One and Two

26 “The first factor under *Winter* is the most important — likely success on the merits.”  
 27 *Garcia*, 786 F.3d at 740. Here, Counts One and Two raise claims under title 42, United States  
 28 Code section 1983 (“Section 1983”), alleging facial and as-applied substantive due process

1 violations. Complaint, ¶¶ 56-67. “To state a claim under § 1983, a plaintiff must allege  
 2 two essential elements: (1) that a right secured by the Constitution or laws of the United States  
 3 was violated, and (2) that the alleged violation was committed by a person acting under the color  
 4 of State law.” *Long v. County of Los Angeles* (9th Cir. 2006) 442 F.3d 1178, 1185 [citing *West*  
 5 *v. Atkins*, 487 U.S. 42, 48 (1988)]. With regard to the former, when a complainant alleges a  
 6 violation of their constitutional substantive due process rights, the complainant must establish  
 7 two elements. First, the complainant must establish a “deprivation of life, liberty, or property.”  
 8 *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006). Second, the complainant must also  
 9 establish a “cognizable level of executive abuse of power as that which shocks the conscience.  
 10 Only the most egregious official conduct can be said to be arbitrary in a constitutional sense.”  
 11 *Id.* (internal grammatical marks and citations omitted). “[T]here is no general liberty interest in  
 12 being free from capricious government action.” *Id.*

13 Here, with regard to the “deprivation of life, liberty, or property” element, Counts One  
 14 and Two allege that AR 5145.3<sup>1</sup> denies Plaintiff of her alleged “right to direct the upbringing of  
 15 her children; to make decisions concerning the care, custody, and control of her children; to  
 16 direct the medical and mental health decision-making for her children; and to make private  
 17 familial decisions regarding her children without undue interference by the state.” Complaint, ¶¶  
 18 58, 59 64 (quoted language in para. 58). Indeed, the United States Supreme Court has held that  
 19 parents hold a liberty interest in making decisions concerning the care, custody, and control of  
 20 their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000)); see also *Fields*, 427 F.3d at 1204.  
 21 However, Plaintiff contends that her rights as a parent include the authority to decide for herself  
 22 whether A.S. will become transgender – and that her child might have no say in the matter:  
 23  
 24  
 25

---

26 <sup>1</sup> Notably, the Complaint fails to ever specifically identify the “Parental Secrecy Policy” in  
 27 question. See generally, Complaint. However, there does not appear to be any dispute that the  
 28 “policy” is in fact the District’s regulation, AR 5145.3.

1 The Parental Secrecy Policy *authorizes children to make* mature, consequential, private,  
2 and potentially life-altering *decisions without parental* knowledge or *consent* by  
3 excluding parents from the decision-making process on these matters;

4 ...

5 The Parental Secrecy Policy *takes from parents the authority to make these*  
6 *consequential, private, and potentially life-altering decisions for their children* by  
7 excluding parents from the decision-making process and *placing decision-making*  
8 *authority in their children*;

9 ...

10 *The Parental Secrecy Policy usurps parents' responsibility as the ultimate decision-*  
11 *maker regarding their children's mental health and well-being, including but not limited*  
12 *to decisions related to their gender identity and expression....*

13 Complaint, ¶ 59 (emphasis added, quoted language from subparagraphs (a), (c) and (e)).

14 The question, therefore, is whether a parent does have the right to know their child's  
15 transgender status and the authority to compel their own transgender preferences upon their  
16 children. To that end, the United States Supreme Court has long recognized that the federal  
17 constitution provides individuals a right of privacy concerning personal information. *Whalen v.*  
18 *Roe*, 429 U.S. 589, 598-600 (1977). In the Ninth Circuit and California, this right of  
19 informational privacy applies to the sex lives of students with regard to their parents. For  
20 example, in *C.N. v. Wolf*, 410 F.Supp.2d 894, 903 (C.D. Cal. 2005), the Court found that a minor  
21 student had raised a valid claim of invasion of privacy by asserting that the school district had  
22 disclosed her sexual orientation to her parent without the student's permission. Later, that same  
23 court found that the underlying right to privacy arose from both the federal and California state  
24 constitutions. *Nguon v. Wolf*, 517 F.Supp.2d 1177, 1191, 1195-96 (C.D. Cal. 2007) (citing  
25 *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) with regard to federal  
26 right).

27 More recently, a federal district court specifically held that minor students also have a  
28 privacy right to maintain their gender identity a secret from their parents. *John & Jane Parents I*

1 *v. Montgomery Cnty. Bd. of Educ.*, 2022 U.S. Dist. LEXIS 149021 (D. Md. Aug. 18, 2022)  
2 (appeal pending). While this particular federal court represented the District of Maryland, it  
3 relied heavily upon the Ninth Circuit’s *Fields* analysis in coming to its determination. *Id.*, at  
4 \*\*26 (reliance on *Fields*), 34-35 (same), 38-39 (determination that “[b]y advising that school  
5 personnel keep a transgender or gender nonconforming student’s gender identity confidential  
6 unless and until that student consents to disclosure, they both protect the student’s privacy and  
7 create ... a zone of protection . . . in the hopefully rare circumstance when disclosure of the  
8 student’s gender expression while at school could lead to serious conflict within the family, and  
9 even harm.”)

10 Indeed, gender identity, in general, has long been considered information subject to the  
11 right of privacy by the Ninth Circuit. *Nelson v. NASA*, 568 F.3d 1028, 1037-38 (9th Cir. 2009)  
12 (J. Wardlaw concurring); see also *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir.  
13 2000) (“It is difficult to imagine a more private matter than one’s sexuality and a less likely  
14 probability that the government would have a legitimate interest in disclosure of sexual  
15 identity.”)

16 Notably, in her moving papers, Plaintiff never directly addresses the question at hand:  
17 Does a student that is a minor have a right to privacy regarding personal transgender beliefs that  
18 is trumped by her parents’ contrary belief? The reason is simple, as discussed above, every court  
19 to consider the question has found that a child has a right of privacy as to such matters. On  
20 account of this unanimity, instead of addressing the question head on, Plaintiff argues that the  
21 matter is one concerning parents having the “primary role” in raising children. Motion, 9:14-  
22 11:9 (“primary roll” language found at 9:17, 24, see also 9:19, 10:23). In doing so, Plaintiff cites  
23 out-of-circuit, out-of-date, and off-topic case law, all while overlooking the privacy rights of  
24 children discussed above. For example, Plaintiff cites an Eleventh Circuit case from 1989,  
25 *Arnold v. Bd. of Educ. of Escambia Cnty.*, 880 F.2d 305, 312 (11th Cir. 1989), for the proposition  
26 that parents have “the authority to make the ‘intimate decisions’ in the life of the child, as well as  
27 the “decisions that touch upon ‘fundamental values and ... beliefs that parents wish to instill in  
28 their children;” a D.C. Circuit case from 1983, *Franz v. United States*, 707 F.2d 582, 599 (D.C.

1 Cir. 1983), for the proposition that parents have the authority to make “decisions that involve the  
2 child’s ‘self-definition;’ and a Seventh Circuit Case from 1977, *Drollinger v. Milligan*, 552 F.2d  
3 1220, 1227 (7th Cir. 1977), for the proposition that parents have the right to make “decisions that  
4 implicate private ‘familial relationships.’” Motion, at 9:24-10:4. Aside from the fact that the  
5 Ninth Circuit has never adopted any such purported parental rights, Plaintiff significantly  
6 mischaracterizes the aforementioned decisions.

7 In the Eleventh Circuit *Arnold* case, the court found that school officials would have  
8 violated the constitutional privacy rights of students if those officials had coerced the children  
9 into having abortions and would have further violated the constitutional rights of parents if they  
10 had additionally coerced the students to refrain from consulting with their parents on the abortion  
11 decision. 880 F.2d at 312-14. As explained in *Benitez v. Gresham-Barlow Sch. Dist.*, 2012 U.S.  
12 Dist. LEXIS 126730, \*\*14-15 (D. Or. Sept. 6, 2012), *Arnold* merely holds that a public entity  
13 cannot coerce children – but remains free to provide guidance and support. Here, there is no  
14 allegation in the Complaint that the District coerced A.S. to keep her transgender status private  
15 from Plaintiff. See generally, Complaint.

16 Next, the D.C. Circuit *Franz* case concerned a natural father who was involuntarily  
17 separated from his children when the children, mother and the mother’s new partner entered the  
18 witness protection program. In finding that the way the separation occurred violated the father’s  
19 procedural due process rights, the Court commented, “Frequently each party to the relationship  
20 depends heavily on his ties with the other for his sense of self-worth, for his very self-definition.  
21 ...[A] parent’s right to the preservation of his relationship with his child derives from the fact  
22 that the parent’s achievement of a rich and rewarding life is likely to depend significantly on his  
23 ability to participate in the rearing of his offspring.” *Franz*, 707 F.2d at 599. In other words,  
24 nothing in *Franz* provides that parents have the right to make decisions of “self-definition” for  
25 their children. Rather, *Franz* merely concerns involuntary separations.

26 Finally, the Seventh Circuit *Drollinger* case concerned a grandfather challenging the  
27 probation conditions of his daughter-in-law because those conditions prohibited the grandfather  
28 from visiting his granddaughter. In reversing the lower court’s dismissal, the appellate court

1 held that “[t]he terms and conditions of [the daughter-in-law’s] probation seriously limit [the  
2 grandfather’s] freedom to care for his granddaughter. This basic interest in the integrity of the  
3 family unit has been afforded the protection of due process of law.” *Drollinger*, 552 F.2d at  
4 1227. As such, nothing in *Drollinger* provides that parents have the right to make any decision  
5 that concerns “private familial relationships.” Like *Franz*, it merely concerns state action which  
6 results in involuntary separations. Nor does Plaintiff explain how permitting A.S. to determine  
7 their own transgender status deprives Plaintiff of having a familial relationship with her  
8 daughter.

9 Understanding the lack of persuasive authority from these out-of-circuit cases, Plaintiff  
10 further cites the Ninth Circuit case *Wallis v. Spencer* and other authority holding that parents  
11 have the “right ... to make important medical decisions for their children.” 202 F.3d 1126,  
12 1141-42 (9th Cir. 1999) (quoted language at p. 1141); Motion, at 10:5-6. Aside from the fact  
13 that transgenderism is not a medical concern, the argument Plaintiff is trying to make is that she  
14 believes she has a parental right to control what the District teaches A.S., and the educational  
15 environment which the District provides, if the topic concerns gender. However, the United  
16 States Supreme Court has “stressed the limited scope” of the right of parents to make decisions  
17 concerning the education of their children. *Runyon v. McCrary*, 427 U.S. 160, 177 (1976)  
18 (superseded by statute on different issue).

19 “[O]nce parents make the choice as to which school their children will attend, their  
20 fundamental right to control the education of their children is, at the least, substantially  
21 diminished,” and “they do not have a fundamental right generally to direct *how* a public school  
22 teaches their child.” *Fields*, 427 F.3d at 1206 (emphasis in original; rejecting a substantive due  
23 process challenge to a public school’s questioning of children about sexual topics). In particular,  
24 the Ninth Circuit has specifically determined, “there is no fundamental right of parents to be the  
25 exclusive provider of information regarding sexual matters to their children, either independent  
26 of their right to direct the upbringing and education of their children or encompassed by it. We  
27 also hold that parents have no due process or privacy right to override the determinations of  
28 public schools as to the information to which their children will be exposed while enrolled as

1 students.” *Id.*, at 1200. The Ninth Circuit further espoused that “no court has ever held that  
2 parents have a specific fundamental right to control the upbringing of their children by  
3 introducing them to matters of and relating to sex in accordance with their personal and religious  
4 values and beliefs. In fact, no such specific right can be found in the deep roots of the nation’s  
5 history and tradition or implied in the concept of ordered liberty.” *Id.* at 1203-04 (grammatical  
6 marks and citation omitted).

7 In short, while “parents have a right to inform their children when and as they wish on the  
8 subject of sex, they have no constitutional right . . . to prevent a public school from providing its  
9 students with whatever information it wishes to provide, sexual or otherwise, when and as the  
10 school determines that it is appropriate to do so.” *Parents for Privacy v. Barr*, 949 F.3d 1210,  
11 1231 (9th Cir. 2020) (quoting *Fields*, 427 F.3d at 1206; internal grammatical marks omitted).  
12 “[I]n *Fields* we adopted the Sixth Circuit’s view that parents not only lack a constitutional right  
13 to direct the curriculum that is taught to their children, but that they also lack constitutionally  
14 protected rights to direct school administration more generally. Specifically, we endorsed the  
15 Sixth Circuit’s explanation that:

16 While parents may have a fundamental right to decide *whether* to send their child  
17 to a public school, they do not have a fundamental right generally to direct *how* a  
18 public school teaches their child. Whether it is the school curriculum, the hours of  
19 the school day, school discipline, the timing and content of examinations, the  
20 individuals hired to teach at the school, the extracurricular activities offered at the  
21 school or . . . a dress code, these issues of public education are generally  
22 committed to the control of state and local authorities.

23 *Id.* (italicized emphasis in original, quoting *Fields* at 1206 (quoting *Blau v. Fort Thomas Pub.*  
24 *Sch. Dist.*, 401 F.3d 381, 395-96 (6th Cir. 2005))).

25 In short, the United States Supreme Court and the Ninth Circuit have made it clear that  
26 the scope of a parent’s constitutional right to direct the educational upbringing of their child  
27 generally does not extend past the choice to send their child to public school. Plaintiff exercised  
28 her right to direct the educational upbringing of her daughter by choosing to enroll her child in

1 the District. Upon Plaintiff making that decision, it was the District’s decision as to what  
2 curriculum and extracurricular activities would be afforded her child. In turn, it was A.S.’s  
3 decision whether to inform Plaintiff of her decision to become transgender. The law requires the  
4 District to respect A.S.’s decision.

5 As such, Plaintiff cannot establish the “deprivation of life, liberty, or property” element  
6 of her Section 1983 substantive due process claim. Plaintiff does not have a legally cognizable  
7 right to know the transgender status of her child – let alone force her own gender preferences  
8 upon A.S. Nor can Plaintiff establish the “shocks the conscience” element of her due process  
9 cause of action. Far from constituting “egregious conduct,” the law requires the District to  
10 respect A.S.’s own constitutional right to keep their own transgender status confidential from  
11 Plaintiff.

12 For these reasons, Plaintiff cannot establish a likelihood of success on Counts One and  
13 Two.

14 B. Counts Three and Four

15 Counts Three and Four raise Section 1983 claims alleging facial and as-applied  
16 procedural due process violations. Complaint, ¶¶ 68-75. To that end, “[t]he first inquiry in  
17 every [procedural] due process challenge is whether the plaintiff has been deprived of a protected  
18 interest in ‘property’ or ‘liberty.’” *Am. Manufacturers Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59  
19 (1999). “Only after finding the deprivation of a protected interest do we look to see if the State’s  
20 procedures comport with due process.” *Id.*

21 Here, similar to Counts One and Two, Counts Three and Four complain that “the Parental  
22 Secrecy Policy violated in the past – and threatens to violate in the future – Ms. Regino’s  
23 fundamental right to direct the upbringing of her children; to make decisions concerning the care,  
24 custody, and control of her children; to direct the medical and mental health decision making for  
25 her children; and to make private familial decision regarding her children without undue  
26 interference by the state....” Complaint, ¶¶ 69, 73 (quoted language in para. 69). However, as  
27 discussed above, Plaintiff has no right to know the transgender status of A.S.; nor does Plaintiff  
28 have the right to impose her own gender preferences upon her child. Accordingly, whereas

1 Plaintiff cannot establish the first step of her procedural due process claims – i.e. the deprivation  
2 of a legally-cognizable liberty interest, she cannot establish any likelihood of prevailing on those  
3 causes of action.

4 In short, Plaintiff cannot establish “by a clear showing” a likelihood of success on any of  
5 her claims. On this ground alone, the Court should deny the instant motion.

6 **III. Plaintiff Cannot Establish “By a Clear Showing” a Likelihood of Suffering**  
7 **Irreparable Harm**

8 A. Plaintiff Cannot Show Need for Speedy Action

9 As discussed above, the second element a complainant must establish in seeking a  
10 preliminary injunction is that they are likely to suffer irreparable harm in the absence of  
11 preliminary relief. “A preliminary injunction is sought upon the theory that there is an urgent  
12 need for speedy action to protect the plaintiff’s rights. By sleeping on its rights a plaintiff  
13 demonstrates the lack of need for speedy action....” *Lydo Enters. v. Las Vegas*, 745 F.2d 1211,  
14 1213 (9th Cir. 1984). A two-month delay in seeking preliminary injunctive relief after learning  
15 of the purported wrongful conduct “counsels against a finding of likely irreparable harm.”  
16 *Oregon Nat. Desert Ass’n v. Bushue*, 594 F.Supp.3d 1259, 1266 (D. Ore. 2022). Here, Plaintiff  
17 admits that she learned of her child’s gender transition, and the District’s involvement in that  
18 decision, on April 8, 2022. Complaint, ¶¶ 35-36, 42-43. Plaintiff further admits that she then  
19 waited until August 9, 2022, to attempt to transfer her child – and even then, only to another  
20 school within the District. Complaint, ¶ 50. Plaintiff then waited until October 10, 2022, to  
21 further discuss the matter with District personnel. Complaint, ¶ 51. Finally, even though the  
22 District expressly notified Plaintiff on November 2, 2022, that it would continue to apply the  
23 alleged policy in question, Complaint, ¶ 52; she did not file the underlying litigation until  
24 January 6, 2023, see ECF 1.

25 In short, Plaintiff waited nine months to seek preliminary injunctive relief after learning  
26 of the purported wrongdoing – far exceeding the two-month window that “counsels against a  
27 finding of likely irreparable harm;” and, in doing so, waited more than two months after the  
28 District expressly told her that it would continue to apply AR 5145.3. Moreover, during that

1 nine-month period, Plaintiff admits that her child “began identifying as a girl again[, and]  
2 continues to identify as a girl,” despite the District continuing to apply AR 5145.3. Complaint, ¶  
3 41. On these grounds, Plaintiff cannot establish “by a clear showing” a likelihood of suffering  
4 irreparable damage if the Court does not enjoin continued enforcement of the District’s  
5 regulation.

6 Indeed, again, courts “observe that the basic function of a preliminary injunction is to  
7 preserve the *status quo ante litem* pending a determination of the action on the merits.” *Oakland*  
8 *Tribune, Inc. v. Chronicle Pub. Co.* 762 F.2d 1374, 1377 (9th Cir. 1985). Where the  
9 complainant is challenging a policy that has been in effect for a number of years, no new harm is  
10 imminent, and no compelling reason is apparent, preliminary injunctive relief is unwarranted.  
11 *Id.* And again, it is Plaintiff’s burden to establish these elements. *Winter*, 555 U.S. at 20. Given  
12 that Plaintiff admits that she waited nine months to bring this motion, and given that during that  
13 interim period her child has admittedly returned to identifying as a girl despite the continued  
14 application of the regulation in question, and given that Plaintiff has not proffered any evidence  
15 to meet her burden that a new harm is “imminent” and a compelling reason is “apparent,”  
16 Plaintiff cannot establish the necessary irreparable harm to warrant preliminary injunctive relief.

17 B. Plaintiff Has Failed to Establish an Immediate Threat

18 In order to satisfy the irreparable harm element, a complainant must also “demonstrate  
19 immediate threatened injury.” *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668,  
20 674 (emphasis in original omitted). A court cannot issue preliminary injunctive relief based  
21 upon the “possibility” of harm. *Alliance*, 632 F.3d at 1131. Nor does a complainant satisfy their  
22 burden by establishing past harm, *Munns v. Kerry*, 782 F.3d 402, 411 (9th Cir. 2015) or that  
23 irreparable harm will occur at some point in the indefinite future, *Midgett v. Tri-County metro.*  
24 *Transp. Dist. of Oregon*, 254 F.3d 846, 850-51 (9th Cir. 2001), *Campbell Soup Co. v. ConAgra,*  
25 *Inc.*, 977 F.2d 86, 91 (3rd Cir. 1992). The complainant must establish that harm is both *likely*,  
26 *Alliance*, at 1131; and *immediate*, *Midgett*, at 851. *Id.*

27 Here, Plaintiff offers nothing more than (1) the fact that A.S. has been harmed in the past;  
28 and (2) that both of her daughters still attend District schools, to raise the specter of a possible

1 sequel of events at some point in time. Motion, at 1:17-22. However, as discussed above,  
2 raising a specter of possible injury in the indefinite future does not satisfy the “likely” and  
3 “immediate” requirements. For this additional reason, the Court should deny the instant motion.

4 **IV. Plaintiff Cannot Establish “By a Clear Showing” that the Balance of Equities Tips**  
5 **in Her Favor**

6 Again, the third element a complainant must establish in seeking a preliminary injunction  
7 is that the balance of equities tips in their favor. “In each case, a court must balance the  
8 competing claims of injury and must consider the effect on each party of the granting or  
9 withholding of the requested relief.” *Amoco Prod. Co. v. Village of Gambell*, 480 U.S 531, 542  
10 (1987). With regard to the District, a public entity has an interest in the continued enforcement  
11 of its regulations. *Lydo*, 745 F.2d at 1213. The effect of a preliminary injunction would force  
12 the District to abandon enforcement of its regulation and accept the intrusion of its students’  
13 privacy rights.

14 On the other hand, as discussed above, Plaintiff has no constitutional right to know the  
15 transgender status of her daughter – and thus, cannot show that she will suffer any harm during  
16 the pendency of this litigation. Plaintiff further submits a 100-plus page declaration from a  
17 purported expert on the topic of gender identity. Complaint, Exh. A, ECF 1.1. However, the  
18 declaration focuses upon *possible* harm to *A.S.* – the daughter who is not a party to this action; as  
19 opposed to what *likely* “will” harm *Plaintiff* – the named party seeking injunctive relief.  
20 Moreover, if *A.S.* believes keeping their gender identity private from Plaintiff is harmful to  
21 Plaintiff, they are free to disclose their identity at any time. There is no allegation that the  
22 District’s regulation stops *A.S.* from disclosing her own gender identity to Plaintiff; rather,  
23 Plaintiff merely complains that the District will not disclose such information itself without  
24 *A.S.*’s consent.

25 The balance of the equities between the certain harm the District will endure in its right to  
26 enforce its regulations, plus the potential harm to its students in the infringement of their privacy  
27 rights, versus no potential harm to any right held by Plaintiff herself, tips heavily against  
28

1 imposition of a preliminary injunction. Certainly, Plaintiff cannot establish “by a clear showing”  
2 that the balance of the equities tips in her favor.

3 **V. Plaintiff Cannot Establish “By a Clear Showing” a Public Interest**

4 Finally, the fourth element a complainant must establish in seeking a preliminary  
5 injunction is that the imposition of such relief is in the public interest. A court “will not grant a  
6 preliminary injunction ... unless those public interests [supporting equitable relief] outweigh  
7 other public interests that cut in favor of *not* issuing the injunction.” *Alliance*, 632 F.3d at 1138.  
8 Here, on the one hand, Plaintiff wants unfettered access to the gender identity of A.S. –  
9 regardless of her child’s wishes, to compel her own personal gender beliefs upon her child. To  
10 date, no federal court to the knowledge of the District has ever found a public interest in the  
11 imposition of personal gender beliefs by parents against the will of their children. On the other  
12 hand, as found in *John & Jane Parents 1*, 2022 U.S. Dist. LEXIS 149021 at \*\*38-39, there very  
13 much is a strong public policy to “both protect the student’s privacy and create ... a zone of  
14 protection . . . in the hopefully rare circumstance when disclosure of the student's gender  
15 expression while at school could lead to serious conflict within the family, and even harm.”  
16 Plaintiff cannot establish “by a clear showing” that the interest in the former outweighs the latter.

17 In short, aside from failing to show a likelihood of prevailing on the merits of her claims,  
18 Plaintiff cannot establish any of the other *Winter* elements necessary to attain preliminary  
19 injunctive relief – let alone mandatory preliminary injunctive relief.

20 **CONCLUSION**

21 For the reasons set forth above, the Court should deny Plaintiff’s motion.

22 **LEONE ALBERTS & DUUS**

23 /s/ Jimmie E. Johnson

24 BRIAN A. DUUS, ESQ.

25 JIMMIE E. JOHNSON, ESQ.

26 Attorneys for Defendants

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 12 in her official capacity; TOM LANDO, in his  
 official capacity; EILEEN ROBINSON, in her  
 13 official capacity; and MATT TENNIS,  
 in his official capacity

14 IN THE UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 AURORA REGINO,  
 17  
 Plaintiff,

18 vs.

19  
 20 SUPERINTENDENT KELLY STALEY, in  
 her official capacity; CAITLIN DALBY, in her  
 21 official capacity; REBECCA KONKIN, in her  
 22 official capacity; TOM LANDO, in his official  
 23 capacity; EILEEN ROBINSON, in her official  
 capacity; and MATT TENNIS, in his official  
 24 capacity,

25 Defendants.

**Case No.: 2:23-cv-00032-JAM-DMC**

**DEFENDANTS' REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO  
 PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**

Complaint Filed: January 6, 2023  
 Trial Date: Not Yet Set

1  
2 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

3 Defendants KELLY STALEY, CAITLIN DALBY, REBECCA KONKIN, TOM  
4 LANDO, EILEEN ROBINSON, MATT TENNIS (collectively, “Defendants”) hereby request,  
5 pursuant to Federal Rule of Evidence 201, that the Court take judicial notice of the following  
6 facts and items in connection with their contemporaneously-filed Opposition to Plaintiff’s  
7 Motion for Preliminary Injunction:

- 8 1. Exhibit A: California Department of Education (“CDE”) publication: “Frequently  
9 Asked Questions: School Success and Opportunity Act (Assembly Bill 1266)  
10 Frequently Asked Questions.” Exhibit A imposed guidance for public school  
11 districts to follow with regard to complying with A.B. 1266 and other  
12 transgender-related legal requirements.
- 13 2. Exhibit B: California School Boards Association (“CSBA”) sample “Regulation  
14 5145.3.” Exhibit B was circulated by the CSBA – a membership organization  
15 comprised of 962 local educational agencies (school districts, county offices of  
16 education, etc.) responsible for the education 99.9% of all K-12 public school  
17 students statewide – to its members for consideration to comply with anti-  
18 harassment laws, including those set forth in the CDE publication set forth in  
19 Exhibit A.
- 20 3. Exhibit C: The District’s Administrative Regulation 5145.3. Exhibit C is the  
21 District’s anti-harassment policy in force during the time in question, which is a  
22 revised version of the CSBA sample policy set forth in Exhibit B.

23 Under Federal Rule of Evidence 201, a court may take judicial notice a fact that is not  
24 subject to reasonable dispute if it: (1) is generally known with the trial court’s territorial  
25 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot  
26 reasonably be questioned. Specifically, a court may take judicial notice of government records,  
27 including when that information is posted on a government webpage. *Anderson v. Holder*, 673  
28 F.3d 1089, 1094 n. 1 (9th Cir. 2012); *Daniels-Hall v. National Educ. Ass’n.*, 629 F.3d 992, 998

1 (9th Cir. 2010). As set forth in the contemporaneously-filed declarations, the government  
2 records itemized above meet the requirements of Rule 201.

3  
4  
5 **LEONE ALBERTS & DUUS**

6 */s/ Jimmie E. Johnson* \_\_\_\_\_

7 BRIAN A. DUUS, ESQ.

8 JIMMIE E. JOHNSON, ESQ.

9 Attorneys for Defendants

10 SUPERINTENDENT KELLY STALEY,

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# EXHIBIT A



[Home](#) / [Resources](#) / [Department Information](#) / [Equal Opportunity & Access](#)

## Frequently Asked Questions

School Success and Opportunity Act (Assembly Bill 1266) Frequently Asked Questions.

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Consistent with our mission to provide a world-class education for all students, from early childhood to adulthood, the California Department of Education issues the following Frequently Asked Questions (FAQs) in an effort to (a) foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and (b) assist school districts with understanding and implementing policy changes related to AB 1266 and transgender student privacy, facility use, and participation in school athletic competitions.

These FAQs are provided to promote the goals of reducing the stigmatization of and improving the educational integration of transgender and gender nonconforming students, maintaining the privacy of all students, and supporting healthy communication between educators, students, and parents to further the successful educational development and well-being of every student.

[Expand All](#) | [Collapse All](#)

### 1. What is Assembly Bill (AB) 1266?

AB 1266, also known as the "School Success and Opportunity Act," was introduced by Assemblyman Tom Ammiano on February 22, 2013. It requires that pupils be permitted to participate in sex-segregated school programs, activities, and use facilities consistent with their gender identity, without respect to the gender listed in a pupil's records. AB 1266 was approved by Governor Brown on August 12, 2013.

According to Assemblyman Ammiano, "This bill is needed to ensure that transgender students are protected and have the same opportunities to participate and succeed as all other students." "AB 1266 clarifies California's student nondiscrimination laws by specifying that all students in K-12 schools must be permitted to participate in school programs, activities, and facilities in accordance with the student's gender identity."

As part of the analysis of AB 1266, Assemblyman Ammiano also stated, "Athletics and physical education classes, which are often segregated by sex, provide numerous well-documented positive effects for a student's physical, social, and emotional development. Playing sports can provide student athletes with important lessons about self-discipline, teamwork, success, and failure, as well as the joy and shared excitement that being a member of a sports team can bring. When transgender students are denied the opportunity to participate in physical education classes in a manner consistent with their gender identity, they miss out on these important benefits and suffer from stigmatization and isolation. In addition, in many cases, students who are transgender are unable to get the credits they need to graduate on time when, for example, they do not have a place to get ready for gym class."

### 2. When did this law go into effect?

AB 1266 became a provision within California Education Code, Section 221.5(f), on January 1, 2014. It is important to note that prior to the enactment of AB 1266, both state and federal law have prohibited gender-based discrimination for some time.

### **Federal Protection:**

Title IX prohibits sexual harassment and discrimination based on gender or sex stereotypes in every jurisdiction. While Title IX does not specifically use the terms “transgender” or “gender identity or expression,” courts have held that harassment and other discrimination against transgender and gender nonconforming people constitutes sex discrimination. This position has also been supported by the U.S. Department of Education. These rights were clarified in the October 26, 2010, “Dear Colleague Letter” and the April 29, 2014, guidance issued by the U.S. Department of Education, Office for Civil Rights, described in the “Recent Developments and Resources” section at the end of this document.

### **California Law:**

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. (Education Code Section 200.)

No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid. (Education Code Section 220.)

### 3. What specifically does AB 1266 provide?

Pre-existing state law prohibits public schools from discriminating on the basis of several characteristics, including sex, sexual orientation, and gender identity. Pre-existing state law also requires that participation in a particular physical education activity or sport, if required of pupils of one sex, be available to pupils of each sex. AB 1266 requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his or her gender identity, regardless of the gender listed on the pupil's records.

As amended, Education Code Section 221.5(f) provides that “a pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.”

### 4. How should a school district, teacher, school administrator or other employee define gender, transgender, or gender identity?

There are a number of developing terms used to describe transgender characteristics and experiences, which may differ based on region, age, culture, or other factors. Many of these terms are not currently defined by law. However, several common definitions have been used by the courts, the U.S. Department of Education, and a number of groups with educational equity expertise, including the Gay, Lesbian, Straight, Education Network, and the California School Boards Association. Any definitions provided in these materials are provided to facilitate the process of providing safe and nondiscriminatory learning environments and are not provided for the purpose of labeling any students.

"Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth. (*Education Code* Section 210.7.)

"Gender identity" refers to a person's gender-related identity, appearance or behavior whether or not different from that traditionally associated with the person's physiology or assigned sex at birth.

"Gender expression" refers to external cues that one uses to represent or communicate one's gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

"Transgender" describes people whose gender identity is different from that traditionally associated with their assigned sex at birth. "Transgender boy" and "transgender male" refer to an individual assigned the female sex at birth who has a male gender identity. "Transgender girl" and "transgender female" refer to an individual assigned the male sex at birth who has a female gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one's recognition as transgender.

"Gender nonconformity" refers to one's gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes "typically" associated with one's legal sex assigned at birth, such as "feminine" boys, "masculine" girls and those who are perceived as androgynous. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.

5. How can a teacher or school administrator determine whether a student is transgender or not?

The first and best option is always to engage in an open dialogue with the student and the student's parent or parents if applicable (but see FAQs 6 and 7). Gender identity is a deeply rooted element of a person's identity. Therefore, school districts should accept and respect a student's assertion of their gender identity where the student expresses that identity at school or where there is other evidence that this is a sincerely held part of the student's core identity. Some examples of evidence that the student's asserted gender identity is sincerely held could include letters from family members or healthcare providers, photographs of the student at public events or family gatherings, or letters from community members such as clergy.

If a student meets one or more of those requirements, a school may not question the student's assertion of their gender identity except in the rare circumstance where school personnel have a credible basis for believing that the student is making that assertion for some improper purpose. The fact that a student may express or present their gender identity in different ways in different contexts does not, by itself, undermine a student's assertion of their gender identity.

A school cannot require a student to provide any particular type of diagnosis, proof of medical treatment, or meet an age requirement as a condition to receiving the protections afforded under California's antidiscrimination statutes. Similarly, there is no threshold step for social transition that any student must meet in order to have his or her gender identity recognized and respected by a school.

6. May a student's gender identity be shared with the student's parents, other students, or members of the public?

A transgender or gender nonconforming student may not express their gender identity openly in all contexts, including at home. Revealing a student's gender identity or expression to others may compromise the student's safety. Thus, preserving a student's privacy is of the utmost importance. The right of transgender students to keep their transgender status private is grounded in California's antidiscrimination laws as well as federal and state laws. Disclosing that a student is transgender without the student's permission may violate California's antidiscrimination law by increasing the student's vulnerability to harassment and may violate the student's right to privacy.

- A. Public Records Act requests - The Education Code requires that schools keep student records private. Private information such as transgender status or gender identity falls within this code requirement and should not be released. (Education Code Section 49060.)
- B. Family Educational and Privacy Rights (FERPA) - FERPA is federal law that protects the privacy of students' education records. FERPA provides that schools may only disclose information in school records with written permission from a student's parents or from the student after the student reaches the age of 18. (20 U.S.C. Section 1232g.) This includes any "information that . . . would allow a reasonable person in the school community . . . to identify the student with reasonable certainty." (34 C.F.R. Section 99.3.)
- C. California Constitution - Minors enjoy a right to privacy under Article I, Section I of the California Constitution that is enforceable against private parties and government officials. The right to privacy encompasses the right to non-disclosure (autonomy privacy) as well as in the collection and dissemination of personal information such as medical records and gender identity (informational privacy). Even when information is part of a student's records and therefore covered by FERPA, the law provides several exceptions that permit appropriate communications under circumstances in which the student or others may be at risk of harm. Transgender or gender nonconforming students are often subject to stressors which can place them at risk of self-harm. FERPA expressly permits the disclosure of information from a student's records "...to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals." (34 C.F.R. Section 99.36(a).) "If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals." (*Id.* Section 99.36(c).)

Moreover, although FERPA restricts disclosures of information obtained from a student's records, it was never intended to act as a complete prohibition on all communications. One threshold point that is often overlooked is that FERPA limits only the disclosure of records and information from records about a student. It does not limit disclosure or discussion of personal observations.

In other words, if a school employee develops a concern about a student based on the employee's observations of or personal interactions with the student, the employee may disclose that concern to anyone without violating, or even implicating, FERPA. Of course, in most cases, the initial disclosure should be made to professionals trained to evaluate and handle such concerns, such as school student health or welfare personnel, who can then determine whether further and broader disclosures are appropriate.

7. What steps should a school or school district take to protect a transgender or gender nonconforming student's right to privacy?

To prevent accidental disclosure of a student's transgender status, it is strongly recommended that schools keep records that reflect a transgender student's birth name and assigned sex (e.g., copy of the birth certificate) apart from the student's school records. Schools should consider placing physical documents in a locked file cabinet in the principal's or nurse's office. Alternatively, schools could indicate in the student's records that the necessary identity documents have been reviewed and accepted without retaining the documents themselves. Furthermore, schools should implement similar safeguards to protect against

Pursuant to the above protections, schools must consult with a transgender student to determine who can or will be informed of the student's transgender status, if anyone, including the student's family. With rare exceptions, schools are required to respect the limitations that a student places on the disclosure of their transgender status, including not sharing that information with the student's parents. In those very rare circumstances where a school believes there is a specific and compelling "need to know," the school should inform the student that the school intends to disclose the student's transgender status, giving the student the opportunity to make that disclosure her or himself. Additionally, schools must take measures to ensure that any disclosure is made in a way that reduces or eliminates the risk of re-disclosure and protects the transgender student from harassment and discrimination. Those measures could include providing counseling to the student and the student's family to facilitate the family's acceptance and support of the student's transgender status. Schools are not permitted to disclose private student information to other students or the parents of those students.

A transgender student's right to privacy does not restrict a student's right to openly discuss and express their gender identity or to decide when or with whom to share private information. A student does not waive his or her right to privacy by selectively sharing this information with others.

8. What is a school or school district's obligation when a student's stated gender identity is different than the student's gender marker in the school's or district's official records?

A school district is required to maintain a mandatory permanent student record which includes the legal name of the student and the student's gender. If and when a school district receives documentation that such legal name or gender has been changed, the district must update the student's official record accordingly.

If the school district has not received documentation supporting a legal name or gender change, the school should nonetheless update all unofficial school records (e.g. attendance sheets, school IDs, report cards) to reflect the student's name and gender marker that is consistent with the student's gender identity. This is critical in order to avoid unintentionally revealing the student's transgender status to others in violation of the student's privacy rights, as discussed above in section 6.

If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with the student's gender identity, without the necessity of legal documentation or a change to the student's official district record. The student's age is not a factor. For example, children as early as age two are expressing a different gender identity. It is strongly suggested that teachers privately ask transgender or gender nonconforming students at the beginning of the school year how they want to be addressed in class, in correspondence to the home, or at conferences with the student's parents.

In addition to preserving a transgender student's privacy, referring to a transgender student by the student's chosen name and pronouns fosters a safe, supportive and inclusive learning environment. To ensure that transgender students have equal access to the programs and activities provided by the school, all members of the school community must use a transgender student's chosen name and pronouns. Schools should also implement safeguards to reduce the possibility of inadvertent slips or mistakes, particularly among temporary personnel such as substitute teachers.

If a member of the school community intentionally uses a student's incorrect name and pronoun, or persistently refuses to respect a student's chosen name and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community. Examples of this type of harassment

include a teacher consistently using the student's incorrect name when displaying the student's work in the classroom, or a transgender student's peers referring to the student by the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the circumstances, the school's failure to address known incidents of that type of harassment may violate California's antidiscrimination laws.

9. How does a school or school district determine the appropriate facilities, programs, and activities for transgender students?

A school may maintain separate restroom and locker room facilities for male and female students. However, students shall have access to the restroom and locker room that corresponds to their gender identity asserted at school. As an alternative, a "gender neutral" restroom or private changing area may be used by any student who desires increased privacy, regardless of the underlying reason. The use of such a "gender neutral" restroom or private changing area shall be a matter of choice for a student and no student shall be compelled to use such restroom or changing area.

If there is a reason or request for increased privacy and safety, regardless of the underlying reason, any student may be provided access to a reasonable alternative locker room such as:

- A. Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room).
- B. A separate changing schedule (either utilizing the locker room before or after the other students).
- C. Use of a nearby private area (i.e., a nearby restroom or a health office restroom).

It should be emphasized that any alternative arrangement should be provided in a way that keeps the student's gender identity confidential.

Schools cannot, however, require a transgender student to use those alternatives. Requiring a transgender student to be singled out by using separate facilities is not only a denial of equal access, it also may violate the student's right to privacy by disclosing the student's transgender status or causing others to question why the student is being treated differently.

Some students (or parents) may feel uncomfortable with a transgender student using the same sex-segregated restroom or locker room. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students and parents to address the discomfort and to foster understanding of gender identity, to create a school culture that respects and values all students.

10. How should a school or district determine the appropriate placement for transgender students related to sports and physical education classes?

Transgender students are entitled to and must be provided the same opportunities as all other students to participate in physical education and sports consistent with their gender identity. Participation in competitive athletic activities and contact sports are to be addressed on a case-by-case basis. For additional guidance, the California Interscholastic Federation issued new bylaws in 2013, which provide a detailed process for gender identity participation in interscholastic sports. (See, Recent Developments section below.)

11. May a school district or school enforce a gender-based dress code?

Nondiscriminatory gender segregated dress codes may be enforced by a school or school district pursuant to district policy. Students shall have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender and gender nonconforming students than other students.

12. How should school districts and schools address harassment, bullying and abuse of transgender students?

California law requires that schools provide all students with a safe, supportive and inclusive learning environment, free from discrimination, harassment, and bullying. Examples of harassment and abuse commonly experienced by transgender students include, but are not limited to, being teased for failing to conform to sex stereotypes, being deliberately referred to by the name and/or pronouns associated with the student's assigned sex at birth, being deliberately excluded from peer activities, and having personal items stolen or damaged. School district efforts to prevent and address harassment must include strong local policies and procedures for handling complaints of harassment, consistent and effective implementation of those policies, and encouraging members of the school community to report incidents of harassment. Beyond investigating incidents, schools should implement appropriate corrective action to end the harassment and monitor the effectiveness of those actions.

13. Should a school district or school generally review its gender-based policies?

As a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Examples of policies and practices that should be reconsidered include: gender-based dress code for graduation or senior portraits and asking students to line up according to gender. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. In some circumstances, these policies, rules, and practices may violate federal and state law. For these reasons, schools should consider alternatives to them.

Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate in such activities or conform to such rule, policy, or practice consistent with their gender identity.

## RECENT DEVELOPMENTS AND RESOURCES

The [California School Boards Association's \(CSBA\) Final Guidance Regarding Transgender Students, Privacy, and Facilities](#) 

CSBA has also promulgated a model board policy and administrative regulation that can be adopted by districts:

[Board Policy 5145.3](#)  (PDF; Posted 29-Jan-2016)

[Administrative Regulation 5145.3](#)  (PDF; Posted 29-Jan-2016)

CSBA also issued a [policy brief](#)  (PDF) on the issue of how schools can support transgender and gender nonconforming students

## Office for Civil Rights Complaint and Resolution Agreement

On July 24, 2013, the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Civil Rights Division entered into a Resolution Agreement with the Arcadia Unified School District to resolve a complaint alleging violations of Title IX. The case was brought on behalf of a transgender student who was denied access to the boys' restrooms and locker rooms, and required to sleep in a separate facility during an overnight field trip. The agreement requires

the school district to treat the student in a manner consistent with his gender identity for all purposes. Moreover, the school district agreed to retain a consultant to revise their policies to prohibit discrimination on the basis of gender identity and implement a district-wide training program for staff and students.

The [Resolution Agreement](#) (PDF; Posted 29-Jan-2016) between the Office for Civil Rights and Arcadia Unified School District

## California Interscholastic Federation

In February 2013, the California Interscholastic Federation (CIF) issued new bylaws which provide that all students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity. CIF Regulation 300 D, Gender Identify Participation, provides:

Participation in interscholastic athletics is a valuable part of the educational experience for all students. All students should have the opportunity to participate in CIF activities in a manner that is consistent with their gender identity, irrespective of the gender listed on a student's records. The student and/or the student's school may seek review of the student's eligibility for participation in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth, should either the student or the school have questions or need guidance in making the determination, by working through the procedure set forth in the "Guidelines for Gender Identity Participation."

NOTE: The student's school may make the initial determination whether a student may participate in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth.

The new [California Interscholastic Federation bylaws](#)

## Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, April 29, 2014

In April 2014, the U.S. Department of Education, Office for Civil Rights, issued guidance making clear that federal law prohibits discrimination against students on the basis of transgender status: "[Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation](#) (PDF; Posted 29-Jan-2016)."

## Office for Civil Rights Dear Colleague Letter, October 26, 2010

In October 2010, the U.S. Department of Education, Office for Civil Rights, issued a Dear Colleague Letter that, among other things, clarified that although Title IX does not prohibit discrimination on the basis of sexual orientation, harassment directed at a student because that student is gay, lesbian, bisexual, or transgender may constitute sexual harassment and sex discrimination prohibited by Title IX.

The [U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, October 26, 2010](#) (PDF; Posted 29-Jan-2016)

## Other Resources

Gay-Straight Alliance Network/Tides Center, Transgender Law Center and National Center for Lesbian Rights. (2004). [Beyond the Binary: A Tool Kit for Gender Identity Activism in Schools](#). San Francisco, CA: GSA Network (PDF; Posted 29-Jan-2016)

Gerald P. Mallon, "Practice with Transgendered Children," in *Social Services with Transgendered Youth* 49, 55-58 (Gerald P. Mallon ed., 1999)

Stephanie Brill & Rachel Pepper, *The Transgender Child*, 61-64 (2008).

Questions: School Health and Safety Office | [shso@cde.ca.gov](mailto:shso@cde.ca.gov) | 916-319-0914

Last Reviewed: Thursday, September 16, 2021

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# EXHIBIT B

CSBA Sample | AR 5145.3 Students

**Nondiscrimination/Harassment**

Note: The following mandated administrative regulation provides measures that may be implemented by a district to comply with state and federal law and regulations prohibiting, at school or in any school activity related to school attendance or under the authority of the district, discrimination, harassment, intimidation, and bullying against students based on actual or perceived characteristics, as specified in the accompanying Board policy.

Note: 5 CCR 4621 mandates the district to identify in its policies and procedures the person(s), position(s), or unit(s) responsible for ensuring compliance with applicable state and federal laws and regulations governing educational programs, including receiving and investigating complaints alleging noncompliance or discrimination, harassment, intimidation, or bullying. During the Federal Program Monitoring process, California Department of Education (CDE) staff will check to ensure that the district's procedures list the specific title(s) of the employee(s) responsible for investigating complaints. This individual may be the same person designated in the district's uniform complaint procedures to ensure compliance with specified programs and to receive complaints; see AR 1312.3 - Uniform Complaint Procedures. In addition, districts may designate more than one person to receive complaints (e.g., one person at each school).

The following position is designated Coordinator for Nondiscrimination to handle complaints regarding discrimination, harassment, intimidation, or bullying and to answer inquiries regarding the district's nondiscrimination policies: (Education Code 234.1; 5 CCR 4621)

\_\_\_\_\_  
(position title)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(telephone number)

(cf. 1312.1 - Complaints Concerning District Employees)

(cf. 1312.3 - Uniform Complaint Procedures)

To prevent discrimination, harassment, intimidation, and bullying of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education's Office for Civil Rights identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school. Item #1 below is optional and may be modified to reflect district practice.

1. Provide to employees, volunteers, and parents/guardians training and information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.

(cf. 1240 - Volunteer Assistance)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

2. Provide to students a handbook that contains age-appropriate information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior. (Education Code 234.1)

3. Annually notify all students and parents/guardians of the district's nondiscrimination policy and of the opportunity to inform the Coordinator whenever a student's participation in a sex-segregated school program or activity together with another student of the opposite biological sex would be against the student's religious beliefs and/or practices or a violation of his/her right to privacy. In such a case, the Coordinator shall meet with the student and/or parent/guardian to determine how best to accommodate the student.

(cf. 5145.6 - Parental Notifications)

Note: As part of its responsibility to monitor district compliance with legal requirements concerning discrimination pursuant to Education Code 234.1, the CDE is required to ensure that the district posts its nondiscrimination policies in all schools, offices, staff lounges, and student government meeting rooms. The following paragraph may be revised to specify the means by which the district posts its nondiscrimination policies.

4. Publicize the district's nondiscrimination policy and related complaint procedures to students, parents/guardians, employees, volunteers, and the

general public and post them on the district's web site and other locations that are easily accessible to students. (Education Code 234.1)

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

5. When 15 percent or more of a school's students speak a single primary language other than English, translate the nondiscrimination policy, related complaint procedures, and all forms for use in the complaint process into that other language. (Education Code 234.1, 48985)

6. At the beginning of each school year, inform school employees that any employee who witnesses any act of discrimination, harassment, intimidation, or bullying against a student is required to intervene if it is safe to do so. (Education Code 234.1)

Note: Item #7 below is optional and should be revised to reflect district practice. In some situations, the district may need to provide individualized accommodation to a student to protect him/her from harassment or bullying. Each situation will need to be analyzed to determine the most appropriate course of action to meet the needs of the student, based on the circumstances involved.

7. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate accommodation(s) to protect students' privacy rights and ensure their safety from threatened or potentially harassing, intimidating, or discriminatory behavior.

#### Process for Initiating and Responding to Complaints

Note: Education Code 234.1 requires that districts adopt a process for receiving and investigating complaints of discrimination, harassment, intimidation, and bullying based on specified actual or perceived characteristics. Such a process, which is required to be consistent with the uniform complaint procedures specified in 5 CCR 4600-4687, must include (1) a requirement that school personnel who witness an act take immediate steps to intervene when safe to do so, (2) a timeline for investigating and resolving complaints, (3) an appeal process, and (4) translation of forms when required by Education Code 48985.

Any student who feels that he/she has been subjected to discrimination, harassment, intimidation, or bullying should immediately contact the Coordinator, the principal, or any other staff member. In addition, any student who observes any such incident should report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Any school employee who observes an incident of discrimination, harassment, intimidation, or bullying or to whom such an incident is reported shall immediately report the incident to the Coordinator or principal, whether or not the victim files a complaint.

Upon receiving a complaint of discrimination, harassment, intimidation, or bullying, the Coordinator shall immediately investigate the complaint in accordance with the district's uniform complaint procedures specified in AR 1312.3 - Uniform Complaint Procedures.

## Transgender and Gender-Nonconforming Students

Note: The following section may be modified to reflect district practice. Pursuant to Education Code 221.5, as amended by AB 1266 (Ch. 85, Statutes of 2013), a district is required to permit a student to use facilities and participate in sex-segregated school programs and activities consistent with the student's gender identity, regardless of the gender listed on his/her educational records. However, an attempt is currently in progress to qualify a referendum on AB 1266 for the November 2014 ballot. Even as the eventual outcome is unknown as of this writing, the following guidelines are designed to implement other existing state and federal laws that prohibit discrimination, harassment, intimidation, and bullying against students based on their real or perceived gender identity and/or gender expression regardless of whether or not the referendum attempt is successful. The guidelines address certain issues and circumstances that may arise in relation to the needs of transgender and gender-nonconforming students and are by no means exhaustive. Consequently, each instance or situation should be addressed on a case-by-case basis to ensure that the safety, privacy, and other concerns of all students involved are appropriately addressed. For more information on the rights of transgender students, see CSBA's policy brief Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students and its Interim Guidance Regarding Transgender Students, Privacy, and Facilities. Districts should consult legal counsel about applicable standards for determining a student's gender identity.

Gender identity means a person's gender-related identity, appearance, or behavior, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

Gender expression means a person's gender-related appearance and behavior, whether or not stereotypically associated with the person's assigned sex at birth. (Education Code 210.7)

Transgender student means a student whose gender identity or gender expression is different from that traditionally associated with the assigned sex at birth.

Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

Note: Timelines included in items #1-2 below may be modified to reflect district practice.

1. Right to privacy: A student's transgender or gender-nonconforming status is his/her private information and the district will only disclose the information to others with the student's prior consent, except when the disclosure is otherwise required by law or is necessary to preserve the student's physical or mental well-being. Any district employee to whom a student discloses his/her transgender or gender-nonconforming status shall seek the student's permission to notify the Coordinator for Nondiscrimination. If the student refuses to give permission, the employee shall keep the student's

information confidential, unless he/she is required to disclose or report the student's information pursuant to law or district policy, and shall inform the student that it may be impossible to accommodate the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the Coordinator, the employee shall do so within three school days.

As appropriate, the Coordinator shall discuss with the student any need to disclose the student's transgender or gender-nonconformity status to his/her parents/guardians and/or others, including other students, teacher(s), or other adults on campus. Any decision to disclose the student's status to others shall be based on the student's best interest.

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

2. Determining a Student's Gender Identity: The Coordinator shall accept the student's assertion unless district personnel present a credible basis for believing that the student's assertion is for an improper purpose. In such a case, the Coordinator shall document the improper purpose and, within seven school days of receiving notification of the student's assertion, shall provide a written response to the student and, if appropriate, to his/her parents/guardians.

3. Addressing a Student's Transition Needs: The Coordinator shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify potential issues, including transition-related issues, and to develop strategies for addressing them. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the Coordinator shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it.

4. Accessibility to Sex-segregated Facilities, Programs, and Activities: The district may maintain sex-segregated facilities, such as restrooms and locker rooms, and sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs. A student shall be entitled to access facilities and participate in programs and activities consistent with his/her gender identity. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. However, a student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6153 - School-Sponsored Trips)

(cf. 7110 - Facilities Master Plan)

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this administrative regulation or the accompanying district policy.

7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

(cf. 5132 - Dress Code)

2/14

# EXHIBIT C



**Chico Unified School District**

1163 East Seventh Street, Chico, CA 95928-5999  
(530) 891-3000

**Administrative  
Regulation:**

**#5145.3**

**Section: 5000**

**Students**

**Page 1 of 7**

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**Nondiscrimination/Harassment**

The district designates the individual(s) identified below as the employee(s) responsible for coordinating the district's efforts to comply with applicable state and federal civil rights laws, and to answer inquiries regarding the district's nondiscrimination policies. The individual(s) shall also serve as the compliance officer(s) specified in AR 1312.3 - Uniform Complaint Procedures as the responsible employee to handle complaints alleging unlawful discrimination targeting a student, including discriminatory harassment, intimidation, or bullying, based on the student's actual or perceived race, color, ancestry, nationality, national origin, immigration status, ethnic group identification, ethnicity, age, religion, marital status, pregnancy, parental status, physical or mental disability, medical condition, sex, sexual orientation, gender, gender identity, gender expression, genetic information, or any other legally protected status or association with a person or group with one or more of these actual or perceived characteristics.. The coordinator/compliance officer(s) may be contacted at: (Education Code 234.1; 5 CCR 4621)

Kristine Keene  
Director of State and Federal Programs  
1163 East Seventh St.  
Chico, CA 95928  
(530) 891-3000

*(cf. 1312.1 - Complaints Concerning District Employees)*  
*(cf. 1312.3 - Uniform Complaint Procedures)*  
*(cf. 5145.7 - Sexual Harassment)*  
*(cf. 5145.71 - Title IX Sexual Harassment Complaint Procedures)*

**Measures to Prevent Discrimination**

To prevent unlawful discrimination, including discriminatory harassment, intimidation, retaliation, and bullying, of students at district schools or in school activities and to ensure equal access of all students to the educational program, the Superintendent or designee shall implement the following measures:

1. Publicize the district's nondiscrimination policy and related complaint procedures, including the coordinator/compliance officer's contact information, to students, parents/guardians, employees, volunteers, and the general public by posting them in prominent locations and providing easy access to them through district-supported communications.
2. Post the district's policies and procedures prohibiting discrimination, harassment, student sexual harassment, intimidation, bullying, and cyberbullying, including a section on social media bullying that includes all of the references described in Education Code 234.6 as possible forums for social media, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students (Education Code 234.6)

*(cf. 0410 - Nondiscrimination in District Programs and Activities)*  
*(cf. 1113 - District and School Web Sites)*  
*(cf. 1114 - District-Sponsored Social Media)*  
*(cf. 5131.2 - Bullying)*  
*(cf. 5145.9 - Hate-Motivated Behavior)*

3. Post the definition of sex discrimination and harassment as described in Education Code 230, including the rights set forth in Education Code 221.8, in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students (Education Code 234.6)

Regulation Approved: 06/15; 09/30/15; 01/17/17; 02/12/18; 02/25/19; 11/18/19; 03/01/21



**Chico Unified School District**

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- 
- 24 Post in a prominent location on the district web site in a manner that is easily accessible to parents/guardians and students information regarding Title IX prohibitions against discrimination based on a student's sex, gender, gender identity, pregnancy, and parental status, including the following: (Education Code 221.6, 221.61, 234.6)
- a. The name and contact information of the district's Title IX coordinator, including the phone number and email address
  - b. The rights of students and the public and the responsibilities of the district under Title IX, including a list of rights as specified in Education Code 221.8 and web links to information about those rights and responsibilities located on the web sites of the Office for Equal Opportunity and the U.S. Department of Education's Office for Civil Rights (OCR)
  - c. A description of how to file a complaint of noncompliance with Title IX, which shall include:
    - (1) An explanation of the statute of limitations within which a complaint must be filed after an alleged incident of discrimination has occurred and how a complaint may be filed beyond the statute of limitations
    - (2) An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint, including web links to this information on the OCR's web site
    - (3) A web link to the OCR complaints form and the contact information for the office, including the phone number and email address for the office
5. Post a link to statewide CDE-compiled resources, including community-based organizations, that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, or bullying and to their families. Such resources shall be posted in a prominent location on the district's web site in a manner that is easily accessible to parents/guardians and students. (Education Code 234.5, 234.6)
6. Provide to students a handbook that contains age-appropriate information that clearly describes the district's nondiscrimination policy, procedures for filing a complaint, and resources available to students who feel that they have been the victim of any such behavior.
7. Annually notify all students and parents/guardians of the district's nondiscrimination policy, including its responsibility to provide a safe, nondiscriminatory school environment for all students, including transgender and gender-nonconforming students. The notice shall inform students and parents/guardians that they may request to meet with the compliance officer to determine how best to accommodate or resolve concerns that may arise from the district's implementation of its nondiscrimination policies. The notice shall also inform all students and parents/guardians that, to the extent possible, the district will address any individual student's interests and concerns in private.
- (cf. 5145.6 - Parental Notifications)*
8. Ensure that students and parents/guardians, including those with limited English proficiency, are notified of how to access the relevant information provided in the district's nondiscrimination policy and related complaint procedures, notices, and forms in a language they can understand.



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If 15 percent or more of students enrolled in a particular district school speak a single primary language other than English, the district's policy, regulation, forms, and notices concerning nondiscrimination shall be translated into that language in accordance with Education Code 234.1 and 48985. In all other instances, the district shall ensure meaningful access to all relevant information for parents/guardians with limited English proficiency.

9. Provide to students, employees, volunteers, and parents/guardians age appropriate training and/or information regarding the district's nondiscrimination policy; what constitutes prohibited discrimination, including discriminatory harassment, intimidation, retaliation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include details of guidelines the district may use to provide a discrimination-free environment for all district students, including transgender and gender-nonconforming students.

*(cf. 1240 – Volunteer Assistance)*  
*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*

10. At the beginning of each school year, inform school employees that any employee who witnesses any act of unlawful discrimination, including discriminatory harassment, intimidation, or bullying against a student is required to intervene if it is safe to do so. (Education Code 234.1)

*(cf. 4112.9/4212.9/4312.9 - Employee Notifications)*

11. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate assistance or resources to protect students from threatened or potentially discriminatory behavior and ensure their privacy rights.

**Enforcement of District Policy**

The Superintendent or designee shall take appropriate actions to reinforce BP 5145.3 – Nondiscrimination/Harassment. As needed, these actions may include any of the following:

1. Removing vulgar or offending graffiti

*(cf. 5131.5 - Vandalism and Graffiti)*

2. Providing training to students, staff, and parents/guardians about how to recognize unlawful discrimination, and how to report it or file a complaint, and how to respond

3. Disseminating and/or summarizing the district's policy and regulation regarding unlawful discrimination

4. Consistent with the laws regarding the confidentiality of student and personnel records, communicating to students, parents/guardians, and the community the school's response plan to unlawful discrimination or harassment

*(cf. 4112.6/4212.6/4312.6 - Personnel Files)*  
*(cf. 4119.23/4219.23/4319.23 - Unauthorized Release of Confidential/Privileged Information)*  
*(cf. 5125 - Student Records)*

5. Taking appropriate disciplinary action against students, employees, and anyone determined to have  
Regulation Approved: 06/15; 09/30/15; 01/17/17; 02/12/18; 02/25/19; 11/18/19; 03/01/21



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engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that the student knew was not true

*(cf. 4118 – Dismissal/Suspension/Disciplinary Action)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process (Students with Disabilities))*

*(cf. 6159.4 - Behavioral Interventions for Special Education Students)*

**Process for Initiating and Responding to Complaints**

Students who feel that they have been subjected to unlawful discrimination described above or in district policy is strongly encouraged to immediately contact the Compliance Officer, principal, or any other staff member. In addition, students who observe any such incident are strongly encouraged to report the incident to the Compliance Officer or principal, whether or not the alleged victim files a complaint.

Any school employee who observes an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, or to whom such an incident is reported shall report the incident to the Compliance Officer or principal within a school day, whether or not the alleged victim files a complaint.

Any school employee who witnesses an incident of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, shall immediately intervene to stop the incident when it is safe to do so. (Education Code 234.1)

When a report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, the principal or compliance officer shall notify the student or parent/guardian of the right to file a formal complaint in accordance with AR 1312.3 - Uniform Complaint Procedures or, for complaints of sexual harassment that meet the federal Title IX definition, AR 5145.71 - Title IX Sexual Harassment Complaint Procedures. Once notified verbally or in writing, the compliance officer shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

Any report or complaint alleging unlawful discrimination by the principal, compliance officer, or any other person to whom a report would ordinarily be made or complaint filed shall instead be made to or filed with the Superintendent or designee who shall determine how the complaint will be investigated.

*(cf. 5141.4 - Child Abuse Prevention and Reporting)*

**Transgender and Gender-Nonconforming Students**

Gender identity of a student means the student's gender-related identity, appearance, or behavior, as determined from the student's internal sense, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.

Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7)

Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.



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Gender-nonconforming student means a student whose gender expression differs from stereotypical expectations.

Transgender student means a student whose gender identity is different from the gender assigned at birth.

The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature. Examples of the types of conduct which are prohibited in the district and which may constitute gender-based harassment include, but are not limited to:

1. Refusing to address a student by a name and the pronouns consistent with the student's gender identity
2. Disciplining or disparaging a student or excluding the student from participating in activities, for behavior or appearance that is consistent with his/her gender identity or that does not conform to stereotypical notions of masculinity or femininity, as applicable
3. Blocking a student's entry to the restroom that corresponds to the student's gender identity
4. Taunting a student because the student participates in an athletic activity more typically favored by a student of the other sex
5. Revealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent
6. Use of gender-specific slurs
7. Physical assault of a student motivated by hostility toward the student because of the student's gender, gender identity, or gender expression

The district's uniform complaint procedures (AR 1312.3) or Title IX sexual harassment procedures (AR 5145.71), as applicable, shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

Examples of bases for complaints include, but are not limited to, the above list, as well as improper rejection by the district of a student's asserted gender identity, denial of access to facilities that correspond with a student's gender identity, improper disclosure of a student's transgender status, discriminatory enforcement of a dress code, and other instances of gender-based harassment.

To ensure that transgender and gender-nonconforming students are afforded the same rights, benefits, and protections provided to all students by law and Board policy, the district shall address each situation on a case-by-case basis, in accordance with the following guidelines:

1. Right to privacy: A student's transgender or gender-nonconforming status is the student's private information and the district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR



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99.31. Any district employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to the student's status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.

As appropriate given the student's need for support, the compliance officer may discuss with the student any need to disclose the student's transgender or gender-nonconformity status or gender identity or gender expression to the student's parents/guardians and/or others, including other students, teacher(s), or other adults on campus. The district shall offer support services, such as counseling, to students who wish to inform their parents/guardians of their status and desire assistance in doing so.

*(cf. 1340 - Access to District Records)*

*(cf. 3580 - District Records)*

2. **Determining a Student's Gender Identity:** The Compliance Officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with that gender identity unless district personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
3. **Addressing a Student's Transition Needs:** The Compliance Officer shall arrange a meeting with the student and, if appropriate, the student's parents/guardians to identify and develop strategies for ensuring that the student's access to educational programs and activities is maintained. The meeting shall discuss the transgender or gender-nonconforming student's rights and how those rights may affect and be affected by the rights of other students and shall address specific subjects related to the student's access to facilities and to academic or educational support programs, services, or activities, including, but not limited to, sports and other competitive endeavors. In addition, the Compliance Officer shall identify specific school site employee(s) to whom the student may report any problem related to the student's status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it. Alternatively, if appropriate and desired by the student, the school may form a support team for the student that will meet periodically to assess whether the arrangements for the student are meeting the student's educational needs and providing equal access to programs and activities, educate appropriate staff about the student's transition, and serve as a resource to the student to better protect the student from gender-based discrimination.
4. **Accessibility to Sex-Segregated Facilities, Programs, and Activities:** When the district maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. To address any student's privacy concerns in using sex-segregated facilities, the district shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the district shall not require a student to utilize these options because the student is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with the student's



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gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with the student's gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

*(cf. 6145 - Extracurricular and Cocurricular Activities)*

*(cf. 6145.2 - Athletic Competition)*

*(cf. 6153 - School-Sponsored Trips)*

*(cf. 7110 - Facilities Master Plan)*

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed with proper documentation. When a student presents government-issued documentation of a name and/or gender change or submits a request for a name and/or gender change through the process specified in Education Code 49070, the district shall update the student's records. (Education Code 49062.5, 49070)

*(cf. 5125 - Student Records)*

*(cf. 5125.1 - Release of Directory Information)*

*(cf. 5125.3 - Challenging Student Records)*

6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronoun(s) consistent with the student's gender identity, without the necessity of a court order or a change to the student's official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns will, in general, not constitute a violation of this administrative regulation or the accompanying district policy.

7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with the student's gender identity, subject to any dress code adopted on a school site.

*(cf. 5132 - Dress Code)*

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 2 *(Of Counsel)*  
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 4 JIMMIE E. JOHNSON, ESQ. (SBN 209471)  
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8 Attorneys for Defendants  
 9 SUPERINTENDENT KELLY STALEY,  
 10 in her official capacity; CAITLIN DALBY,  
 11 in her official capacity; REBECCA KONKIN,  
 12 in her official capacity; TOM LANDO, in his  
 official capacity; EILEEN ROBINSON, in her  
 13 official capacity; and MATT TENNIS,  
 in his official capacity

14 IN THE UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 AURORA REGINO,  
 17  
 18 Plaintiff,

19 vs.

20 SUPERINTENDENT KELLY STALEY, in  
 her official capacity; CAITLIN DALBY, in her  
 21 official capacity; REBECCA KONKIN, in her  
 official capacity; TOM LANDO, in his official  
 22 capacity; EILEEN ROBINSON, in her official  
 23 capacity; and MATT TENNIS, in his official  
 24 capacity,

25 Defendants.

**Case No.: 2:23-cv-00032-JAM-DMC**

**DECLARATION OF JIMMIE E.  
 JOHNSON IN SUPPORT OF  
 REQUEST FOR JUDICIAL NOTICE IN  
 SUPPORT OF DEFENDANTS'  
 OPPOSITION TO PLAINTIFF'S MOTION  
 FOR PRELIMINARY INJUNCTION**

Complaint Filed: January 6, 2023  
 Trial Date: Not Yet Set

1 I, JIMMIE E. JOHNSON, declare as follows:

2 1. I am an attorney duly licensed to practice law before all state and federal courts  
3 in the State of California, and am an attorney with the law offices of Leone Alberts & Duus,  
4 attorneys of record for Defendants KELLY STALEY, CAITLIN DALBY, REBECCA  
5 KONKIN, TOM LANDO, EILEEN ROBINSON, MATT TENNIS (collectively,  
6 “Defendants”) in the above-captioned litigation. The matters stated herein are of my own  
7 personal knowledge, and if called as a witness, I could competently testify to the matters stated  
8 herein.

9 2. On or about January 25, 2022, I personally visited the official website of the  
10 California Department of Education (“CDE”), at  
11 <https://www.cde.ca.gov/re/di/eo/faqs.asp#accordionfaq>. At that time, I printed a copy of the  
12 publication “Frequently Asked Questions: School Success and Opportunity Act (Assembly Bill  
13 1266) Frequently Asked Questions” found on that web page. Attached to the  
14 contemporaneously-filed Request for Judicial Notice in Support of Defendants’ Opposition to  
15 Plaintiff’s Motion for Preliminary Injunction (“Request for Judicial Notice”) as Exhibit A is a  
16 true and correct copy of that publication.  
17

18 I declare under penalty of perjury under the laws of the United States and the State of  
19 California that the foregoing is true and correct, and that this declaration was executed on  
20 February 14, 2023 in Davis, California.

21 /s/ Jimmie E. Johnson

22 JIMMIE E. JOHNSON

1 LOUIS A. LEONE (SBN 099874)  
 2 *(Of Counsel)*  
 3 BRIAN A. DUUS, ESQ. (SBN 263403)  
 4 JIMMIE E. JOHNSON, ESQ. (SBN 209471)  
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8 Attorneys for Defendants  
 9 SUPERINTENDENT KELLY STALEY,  
 in her official capacity; CAITLIN DALBY,  
 10 in her official capacity; REBECCA KONKIN,  
 in her official capacity; TOM LANDO, in his  
 11 official capacity; EILEEN ROBINSON, in her  
 12 official capacity; and MATT TENNIS,  
 in his official capacity

13  
 14 IN THE UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 AURORA REGINO,  
 17  
 18 Plaintiff,

19 vs.

20 SUPERINTENDENT KELLY STALEY, in  
 her official capacity; CAITLIN DALBY, in her  
 21 official capacity; REBECCA KONKIN, in her  
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 23 capacity; EILEEN ROBINSON, in her official  
 capacity; and MATT TENNIS, in his official  
 24 capacity,

25 Defendants.

**Case No.: 2:23-cv-00032-JAM-DMC**

**DECLARATION OF KELLY STALEY IN  
 SUPPORT OF REQUEST FOR JUDICIAL  
 NOTICE IN SUPPORT OF  
 DEFENDANTS' OPPOSITION TO  
 PLAINTIFF'S MOTION FOR  
 PRELIMINARY INJUNCTION**

Complaint Filed: January 6, 2023  
 Trial Date: Not Yet Set

1 I, KELLY STALEY, declare as follows:

2 1. I am the Superintendent of the Chico Unified School District (“District”). I have  
3 personal knowledge of the matters stated herein and can competently testify thereto if called as  
4 a witness.

5 2. The District pays for a regular subscription to GAMUT, an online service  
6 through which the District purchases and receives model board policies and administrative  
7 regulations from the California School Boards Association (“CSBA”), including model CSBA  
8 Administrative Regulation (“AR”) 5145.3. A copy of the CSBA AR 5145.3 is attached as  
9 Exhibit B to the Request for Judicial Notice filed herewith.

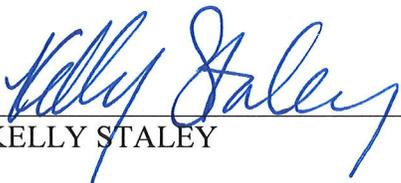
10 3. Our District purchased policies and regulations from CSBA with the  
11 understanding that they were the state of the law in California regarding those issues  
12 referenced therein, including the CSBA AR 5145.3.

13 4. Based upon the CSBA AR 5145.3, the District implemented its own AR 5145.3,  
14 which was in effect during the 2021/22 and 2022/2023 school years. A copy of the District AR  
15 5145.3 is attached as Exhibit C to the Request for Judicial Notice.

16 5. The District relied on the polices and regulations sold to the District by CSBA  
17 with respect to the operation of the District.

18 6. In my position as Superintendent, I am the custodian of the aforementioned  
19 documents that are Exhibits B and C, which are kept by the District in the regular course of its  
20 business.

21 I declare under penalty of perjury under the laws of the United States and the State of  
22 California that the foregoing is true and correct, and that this declaration was executed on  
23 February 14, 2023 in Chico, California.

24  
25   
26 KELLY STALEY

1 LOUIS A. LEONE (SBN 099874)  
 2 (Of Counsel)  
 3 BRIAN A. DUUS, ESQ. (SBN 263403)  
 4 JIMMIE E. JOHNSON, ESQ. (SBN 209471)  
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8 Attorneys for Defendants  
 9 SUPERINTENDENT KELLY STALEY,  
 in her official capacity; CAITLIN DALBY,  
 10 in her official capacity; REBECCA KONKIN,  
 in her official capacity; TOM LANDO, in his  
 11 official capacity; EILEEN ROBINSON, in her  
 12 official capacity; and MATT TENNIS,  
 in his official capacity

13  
 14 IN THE UNITED STATES DISTRICT COURT  
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16 AURORA REGINO,  
 17  
 18 Plaintiff,

19 vs.

20 SUPERINTENDENT KELLY STALEY, in  
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 24 capacity,

25 Defendants.  
 26  
 27  
 28

**Case No.: 2:23-cv-00032-JAM-DMC**

**DEFENDANTS' OBJECTIONS TO  
 EXPERT AFFIDAVIT OF DR. STEPHEN  
 B. LEVINE, MD**

Complaint Filed: January 6, 2023  
 Trial Date: Not Yet Set

1 Defendants KELLY STALEY, CAITLIN DALBY, REBECCA KONKIN, TOM  
2 LANDO, EILEEN ROBINSON, and MATT TENNIS (collectively, “Defendants”) hereby  
3 submit their Objections to the Expert Affidavit of Dr. Stephen B. Levine, MD (“Levine Decl.”)  
4 as follows:

5 Federal courts have repeatedly criticized the “expert” testimony proffered by Dr. Levine,  
6 and refused to give it any weight. For example, in *Norsworthy v. Beard*, the court commented  
7 that it “gives very little weight to the opinions of Levine, whose report misrepresents the  
8 Standards of Care; ... contains illogical inferences; and admittedly includes references to a  
9 fabricated anecdote.” 87 F. Supp. 3d 1164, 1188–89 (N.D. Cal. 2015). Similarly, in *Edmo v.*  
10 *Idaho Dep’t of Corr.*, the court found that “Dr. Levine is considered an outlier in the field of  
11 gender dysphoria and does not ascribe to the [World Professional Association for Transgender  
12 Health (“WPATH”)] Standards of Care. His training materials do not reflect opinions that are  
13 generally accepted in the field of gender dysphoria. [¶] Dr. Levine’s training [on whether gender  
14 confirmation surgery is medically necessary] includes additional criteria.... There are no  
15 scientific studies that support these additional requirements, and no professional associations or  
16 organizations have endorsed [the] proposed requirements.... ...Under these circumstances, the  
17 Court gives virtually no weight to the opinions of Defendants’ experts....” 358 F. Supp. 3d  
18 1103, 1125-26 (D. Idaho 2018), order clarified, No. 1:17-CV00151-BLW, 2019 WL 2319527  
19 (D. Idaho May 31, 2019), and vacated in part on other grounds sub nom. *Edmo v. Corizon, Inc.*,  
20 935 F.3d 757 (9th Cir. 2019); see also *Hecox v. Little*, 479 F.Supp.3d 930, 977 n.33 (D. Idaho.  
21 2020) (noting the criticisms raised in *Norsworthy* and *Edmo*).

22 Here, despite basing his expertise credentials in part on having been an early member of  
23 WPATH “and [having] served as the Chairman of the committee that developed the 5th version  
24 of its Standards of Care published in 1999,” Levine Decl., ¶ 5; Dr. Levine curiously proffers that  
25 “[t]here are no generally accepted ‘standards of care’ either internationally or within the United  
26 States” concerning gender dysphoria in children or adolescents, Levine Decl, ¶ 12.c. This  
27 testimony is curious given that the current “Standards of Care for the Health of Transgender and  
28 Gender Diverse People, Version 8” (“SOC 8”) published by WPATH has two entire chapters

1 dedicated to children and adolescents. See

2 <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>, Chapters 6, 7.<sup>1</sup> Indeed,  
3 WPATH first included a section for children and adolescents in the very 5th version of its  
4 Standards of Care for which Dr. Levine takes credit. See SOC 8, at 45. Notably, Dr. Levine  
5 admits that since 1974 only the “occasional child was seen” by his clinic. Levine Decl., ¶ 5.

6 In addition, Dr. Levine proffers that “[t]ransgender identity is not biologically  
7 determined. ... At best, it may be biologically influenced through temperament.” Levine Decl.,  
8 ¶ 12.d. Yet, WPATH’s SOC 8 highlights “[t]he substantial biological component underlying  
9 gender identity [which] is a critical factor that must be considered when offering psychosocial,  
10 medical, and surgical interventions for individuals with intersex conditions.” SOC 8, at 96; see  
11 SOC 8, at 46 (“[T]here is ample reason to suppose, apart from biological factors, psychological  
12 factors are also involved (Steensma, Kreukels et al., 2013). For some youth, gender identity  
13 development appears fixed and is often express from a young age, while for others there may be  
14 a development process that contributes to gender identity development over time.”)

15 Similarly, Dr. Levine proffers that “[t]here are *no studies* that show that affirmation of  
16 transgender identity in young children reduces suicide or suicidal ideation, or improves long term  
17 outcomes, as compared to other thereapeutic approaches.” Levine Decl., ¶ 12.i. (emphasis  
18 added). SOC 8, on the other hand, provides:

19 We recommend HCPs work with parents, schools, and other organizations/groups to  
20 promote acceptance and affirmation of TGD identities and expressions, *whether social or*  
21 *medical interventions are implemented or not* as acceptance and affirmation are  
22 associated with fewer negative mental health and behavioral symptoms and more positive  
23 mental health and behavioral functioning (*Day et al., 2015; de Vries et al., 2016;*  
24 *Greytak et al., 2013; Pariseau et al., 2019; Peng et al., 2019; Russell et al., 2018;*

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26 <sup>1</sup> Defendants proffer an electronic link rather than attaching a hard copy of SOC 8 to these  
27 objections because the document is 260 pages. However, Defendants will certainly provide a  
28 hard copy to the Court upon request.

1 *Simons et al., 2013; Taliaferro et al., 2019; Toomey et al., 2010; Travers et al., 2012).*  
2 *Russell et al. (2018)* found mental health improvement increases with more acceptance  
3 and affirmation across more settings (e.g., home, school, work, and friends). Rejection by  
4 family, peers, and school staff (e.g., intentionally using the name and pronoun the youth  
5 does not identify with, not acknowledging affirmed gender identity, bullying, harassment,  
6 verbal and physical abuse, poor relationships, rejection for being TGD, eviction) was  
7 strongly linked to negative outcomes, such as anxiety, depression, suicidal ideation,  
8 suicide attempts, and substance use (*Grossman et al., 2005; Klein & Golub; 2016;*  
9 *Pariseau et al., 2019; Peng et al., 2019; Reisner, Greytak et al., 2015; Roberts et al.,*  
10 *2013*). It is important to be aware that negative symptoms increase with increased levels  
11 of rejection and continue into adulthood (*Roberts et al., 2013*).

12 SOC, p. 54 (emphasis added).

13 The remaining 157 pages of Dr. Levine’s 160-page declaration are likewise inundated  
14 with inaccuracies.

15 Federal Rule of Evidence 702 (“Rule 702”) provides that only “[a] witness who is  
16 qualified as an expert by knowledge, skill, experience, training, or education may testify in the  
17 form of an opinion.” Fed. R. Evid. 72. Additionally, Rule 702 provides that any such opinion is  
18 admissible only if “the testimony is based on sufficient facts or data;” “the testimony is the  
19 product of reliable principles and methods;” and “the expert has reliably applied the principles  
20 and methods to the facts of the case.” Fed. R. Evid. 72(b)-(d). In short, Rule 702 “assign[s] to  
21 the trial judge the task of ensuring that an expert’s testimony both rests on a reliable foundation  
22 and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 597 (1993).  
23 In assessing whether an expert’s proposed testimony is reliable, the district court may consider  
24 “the general acceptance of the method within the relevant community.” *United States v.*  
25 *Johnson*, 875 F.3d 1265, 1280 n. 10 (9th Cir. 2017). Here, Dr. Levine’s approach to gender  
26 dysphoria flies in the face of that generally accepted by the relevant community. Indeed, this  
27 would not be the first time a federal court found that Dr. Levine “misrepresents the Standards of  
28 Care,” *Norsworthy*, 87 F. Supp. 3d at 1188–89; “does not ascribe to the WPATH Standards of

1 Care,” *Edmo*, 358 F. Supp. 3d at 1125-26; nor makes statements which “do not reflect opinions  
2 that are generally accepted in the field of gender dysphoria,” *id.*

3 For all of these reasons, the Court should sustain the instant objection and not consider  
4 Dr. Levine’s declaration in consideration of the pending motion for a preliminary injunction, nor  
5 any other purpose.

6  
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8 /s/ Jimmie E. Johnson

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