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official capacity; EILEEN ROBINSON, in her
official capacity; and MATT TENNIS,
in his official capacity

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AURORA REGINO,
Plaintiff,

vs.

SUPERINTENDENT KELLY STALEY, in
her official capacity; CAITLIN DALBY, in her
official capacity; REBECCA KONKIN, in her
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

**REPLY IN SUPPORT OF NON-MOOTED
PORTIONS OF MOTION TO DISMISS**

(Fed. R. Civ. Proc. 12)

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

REPLY

I. THE FIRST AMENDED COMPLAINT DOES NOT RENDER THE INSTANT MOTION ENTIRELY MOOT

A. An Amended Complaint Only Renders Moot those Portions of a Pending Motion Affected by the Revisions Made

In their moving papers, Defendants CAITLIN DALBY, REBECCA KONKIN, TOM LANDO, EILEEN ROBINSON, and MATT TENNIS (collectively, “Board Member Defendants”) sought dismissal from the above-captioned matter on the ground that they are redundantly and unnecessarily named as defendants in their official capacities, given that the pleading also names Superintendent KELLY STALEY (“Superintendent Staley”) as a defendant in her official capacity, as well. Dkt., “Motion to Dismiss,” Mar. 27, 2023 (ECF 40) (“Motion”), at 20:14-21:18. In addition, the Board Member Defendants and Superintendent Staley (collectively, “Defendants”) together sought dismissal of each cause of action within the pleading on various grounds. Most pertinently, as one of their arguments, Defendants sought dismissal of the procedural due process claims on account of the regulation in question – Administrative Regulation 5145.3 – applying to all parents, not just Plaintiff; and therefore, Plaintiff was not entitled to any procedural due process aside from Superintendent Kelly enacting that regulation pursuant to standard procedures. Motion, at 19:6-20:13.

Rather than file a full opposition to the instant motion to dismiss, Plaintiff AURORA REGINO (“Plaintiff”) filed a first amended complaint instead. See Dkt., “First Amended Complaint,” Apr. 10, 2023 (ECF 42) (“FAC”). Concurrent therewith, Plaintiff also filed a short opposition to the instant motion, asserting that the amended complaint rendered the *entire* motion moot. See Dkt., “Opposition,” Apr. 10, 2023 (ECF 43) (“Opposition”), at 2:4-8. However, the party asserting a mootness defense bears the burden of establishing that there is no possibility of effective relief remaining. *GATX/Airlog Co. v. United States Dist. Ct.*, 192 F.3d 1304, 1306 (9th Cir. 1999). To that end, as District Courts within California and throughout the rest of the nation have repeatedly found, “[a] motion to dismiss that attacks the original complaint for deficiencies that persist in the amended complaint should not necessarily always be denied as moot. Rather

1 the court has the discretion to apply the original motion to dismiss to the amended complaint.”
2 *Cooper v. Canidae Corp.*, 2020 U.S. Dist. LEXIS 265744, *6-7 (N.D. Tex. Dec. 17, 2020)
3 (internal grammatical marks and citation omitted); see also *Zuckerman v. Green Earth*, 2010
4 U.S. Dist. LEXIS 152027, *5-13 (C.D. Cal. Apr. 30, 2010); Cal. Prac. Guide: Fed. Civ. Proc.
5 Before Trial (Rutter Group) ¶ 9:262 (2023); 6 Fed. Prac. & Proc. Civ., § 1476 (3d ed. 2020).

6 B. The Revisions to the Amended Complaint Do Not Address the Redundancy of
7 Naming the Board Member Defendants to this Litigation

8 As set forth in the moving papers, “[a] suit against a governmental officer in their official
9 capacity is equivalent to a suit against the governmental entity itself.” *Larez v. City of Los*
10 *Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). As such, in effect, Plaintiff has redundantly named
11 the Chico Unified School District (“District”) as a defendant to this litigation six times over by
12 naming Superintendent Staley and each of the Board Member Defendants in their official
13 capacities only. Redundant public agent defendants are subject to dismissal from the litigation.
14 *Luke v. Abbott*, 954 F.Supp. 202, 203 (C.D. Cal. 1997). As further set forth in the moving
15 papers, both California law and the District’s Board Policies have empowered Superintendent
16 Staley as the District agent charged with developing and administering administrative regulations
17 – including the AR 5145.3 in question; and therefore, all equitable relief sought by Plaintiff in
18 this matter can be attained through Superintendent Staley, in her official capacity, alone.
19 Motion, at 21:2-18.

20 Finally, none of the revisions made to the pleadings in the FAC address this redundancy
21 issue. The FAC still names each of the Board Member Defendants as defendants to this
22 litigation, FAC, ¶¶ 20-24; and nowhere does the FAC raise any factual allegation attempting to
23 explain why their redundant inclusion in this matter is appropriate, see generally, FAC. As such,
24 the Court should dismiss the Board Member Defendants notwithstanding the newly-filed FAC
25 because the amended pleading does not address the deficiencies raised in this motion.

26 C. The Revisions to the Amended Complaint Do Not Address the Fact that AR 5145.3 Is
27 Generally Applied to the Public, not Plaintiff Individually, for the Purposes of Her
28 Procedural Due Process Claims

1 The original complaint raised four causes of action: (1) a facial substantive due process
2 claim; (2) an as-applied substantive due process claim; (3) a facial procedural due process claim;
3 and (4) an as-applied procedural due process claim. Defendants sought dismissal of each action
4 on various grounds. In the interim, Plaintiff filed her FAC which generally adds the following:
5 (1) several factual allegations in relation to the substantive due process claims asserting that AR
6 5145.3 is bad public policy because it raises the possibility of “substandard psychological
7 treatment,” FAC, ¶¶ 2, 5, 10, 29-30, 35-50, 54, 101, 108 (quoted language in paragraphs 101 and
8 108); and (2) two additional substantive due causes of action (one facial, one as-applied) alleging
9 that AR 5145.3 also interferes with Plaintiff’s purported constitutional right to form a “personal
10 bond” with her children, FAC, ¶¶ 123-133. However, notably, the revisions made to the FAC do
11 not address the manner in which the District enacted AR 5145.3.

12 As set forth in the moving papers, “[w]ith respect to Procedural Due Process, assuming
13 that Plaintiffs have a protected liberty interest, under *Halverson v. Skagit Cnty*, 42 F.3d 1257 (9th
14 Cir. 1994), ‘governmental decisions which affect large areas and are not directed at one or a few
15 individuals do not give rise to the constitutional procedural due process requirements of
16 individual notice and hearing.’ Rather, for actions that are legislative in nature, due process is
17 satisfied when officials perform their responsibilities in the normal manner prescribed by law.”
18 *Culinary Studios, Inc. v. Newsom*, 517 F.Supp.3d 1042, 1052 (E.D. Cal. 2021). Motion, at 19:6-
19 20:13. To that end, nowhere does the FAC address the original complaint’s pleading deficiency
20 of failing to raise a single allegation that AR 5145.3 was not enacted in the normal manner
21 prescribed by law. See generally, FAC. Accordingly, the Court should dismiss the procedural
22 due process claims raised in the Third and Fourth Causes of Action notwithstanding the newly-
23 filed FAC because the amended pleading does not address the deficiencies raised in this motion.

24 D. The Revisions to the Amended Complaint Do Not Address the Fact Students Have a
25 Constitutional Right of Privacy Recognized by Federal Courts

26 Finally, as noted above, Defendants concede that the FAC does raise new factual
27 allegations in connection with the substantive due process claims raised in the First and Second
28 Causes of Action. However, again, those new factual allegations merely regard public policy

1 arguments that AR 5145.3 is a bad idea because of concerns that it will lead to “substandard
2 psychological treatment,” FAC, ¶¶ 2, 5, 10, 29-30, 35-50, 54, 101, 108 (quoted language in
3 paragraphs 101 and 108). As discussed in the moving papers, the federal constitution provides
4 students a right of privacy from their parents concerning their sexual orientation and gender
5 identity. *Nelson v. NASA*, 568 F.3d 1028, 1037-38 (9th Cir. 2009) (J. Wardlaw concurring);
6 *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000); *C.N. v. Wolf*, 410
7 F.Supp.2d 894, 903 (C.D. Cal. 2005); *Nguon v. Wolf*, 517 F.Supp.2d 1177, 1191, 1195-96 (C.D.
8 Cal. 2007); *John & Jane Parents I v. Montgomery Cnty. Bd. of Educ.*, 2022 U.S. Dist. LEXIS
9 149021 (D. Md. Aug. 18, 2022) (appeal pending); Order, *Jane Doe v. Manchester Sch. Dist.*,
10 Case No. 216-2022-CV-00117, at **6-7 (N.H. Superior Court, Hillsborough County, Northern
11 District, Sept. 5, 2022). Motion, at 11:26-13:6. Plaintiff’s public policy concerns do not affect
12 this constitutionally-protected right.

13 As such, the Court should further dismiss the First and Second Causes of Action, as well.

14 **CONCLUSION**

15 For the reasons set forth above, and in the moving papers, the Court should grant the
16 instant motion to dismiss, in its entirety, with prejudice.

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18 Dated: April 11, 2023

LEONE ALBERTS & DUUS

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