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12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

15 ELIZABETH MIRABELLI, an
 16 individual, and LORI ANN WEST, an
 17 individual,
 18 Plaintiffs,
 19 v.
 20 MARK OLSON, in his official capacity as
 21 President of the EUSD Board of
 22 Education, et al.,
 23 Defendants.

Case No.: 3:23-cv-0768-BEN-WVG
**Memorandum of Points & Authorities
 in Support of Plaintiffs’ Motion for a
 Preliminary Injunction**
 Judge: Hon. Roger T. Benitez
 Courtroom: 5A
 Hearing Date: June 26, 2023
 Hearing Time: 10:30 a.m.

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TABLE OF AUTHORITIES

CASES

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 632 F.3d 1127 (9th Cir. 2011)

Am. Beverage Ass’n v. City & County of San Francisco, 24
 916 F.3d 749 (9th Cir. 2019)

Arizona Dream Act Coal. v. Brewer, 20
 757 F.3d 1053 (9th Cir. 2014)

Beathard v. Lyons, 10
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Bible Club v. Placentia-Yorba Linda Sch. Dist., 25
 573 F. Supp. 2d 1291 (C.D. Cal. 2008)

Boardman v. Pac. Seafood Grp., 23
 822 F.3d 1011 (9th Cir. 2016)

Bosarge v. Edney, 17
 No. 1:22-cv-233, 2023 WL 2998484 (S.D. Miss. Apr. 18, 2023)

Bowen v. Roy, 17
 476 U.S. 693 (1986)

Brown v. Entertainment Merchs. Ass’n, 19
 564 U.S. 786 (2011)

Burwell v. Hobby Lobby Stores, Inc., 20
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California Chamber of Com. v. Council for Educ. & Rsch. on Toxics, 5
 29 F.4th 468 (9th Cir. 2022)

California v. Azar, 24
 911 F.3d 558 (9th Cir. 2018)

Chalk v. U.S. Dist. Ct. Cent. Dist. of California, 24
 840 F.2d 701 (9th Cir. 1988)

1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 14, 15
 4 508 U.S. 520 (1993)

5 *City of Boerne v. Flores*, 19
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7 *Dahl v. Bd. of Trustees of W. Michigan Univ.*, 17
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11 *Demers v. Austin*, 6, 7
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13 *Diamontiney v. Borg*, 23
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15 *Doctor John’s, Inc. v. Sioux City*, 25
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17 *Dodge v. Evergreen Sch. Dist. #114*, 5, 8, 12, 13
 18 56 F.4th 767 (9th Cir. 2022)

19 *Doe 1 v. Madison Metro. Sch. Dist.*, 2, 10
 20 976 N.W.2d 584 (Wis. 2022)

21 *Donovan v. Poway Unified Sch. Dist.*, 13, 14
 22 167 Cal. App. 4th 567 (2008)

23 *Drakes Bay Oyster Co. v. Jewell*, 24
 24 747 F.3d 1073 (9th Cir. 2014)

25 *Elrod v. Burns*, 23
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27 *Emp’t Div. v. Smith*, 15, 17
 28 494 U.S. 872 (1990)

1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *Eng v. Cooley*, 5, 6, 7, 14
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5 *Farrington v. Tokushige*, 10
 6 11 F.2d 710 (9th Cir. 1926)

7 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*,17, 23
 8 46 F.4th 1075 (9th Cir. 2022)

9 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*,17
 10 64 F.4th 1024 (9th Cir. 2023)

11 *Fields v. Palmdale Sch. Dist.*, 10
 12 427 F.3d 1197 (9th Cir. 2005)

13 *Fields v. Palmdale Sch. Dist.*, 10
 14 447 F.3d 1187 (9th Cir. 2006)

15 *Foothill Church v. Watanabe*, 17, 8
 16 No. 2:15-cv-2165, 2022 WL 3684900 (E.D. Cal. Aug. 25, 2022)

17 *Fulton v. City of Philadelphia*,15, 17, 19, 20
 18 141 S. Ct. 1868 (2021)

19 *Garcetti v. Ceballos*, 7, 8
 20 547 U.S. 410 (2006)

21 *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*,5
 22 546 U.S. 418 (2006)

23 *Green v. Miss United States of Am., LLC*, 6, 12, 19
 24 52 F.4th 773 (9th Cir. 2022)

25 *Hodge v. Antelope Valley Cmty. Coll. Dist.*, 6, 7
 26 No. CV 12-780, 2014 WL 12776507 (C.D. Cal. Feb. 14, 2014)

27 *Holt v. Hobbs*,20
 28 574 U.S. 352 (2015)

1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *Jackler v. Byrne*, 9
 4 658 F.3d 225 (2d Cir. 2011)

5 *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 8, 9, 12, 21
 6 138 S. Ct. 2448 (2018)

7 *Johnson v. Poway Unified Sch. Dist.*, 7
 8 658 F.3d 954 (9th Cir. 2011)

9 *Jorgensen v. Cassidy*, 25
 10 320 F.3d 906 (9th Cir. 2003)

11 *Kane v. De Blasio*, 17
 12 19 F.4th 152 (2d Cir. 2021)

13 *Kennedy v. Bremerton Sch. Dist.*, 6, 7, 8, 13, 16
 14 142 S. Ct. 2407 (2022)

15 *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 7
 16 385 U.S. 589 (1967)

17 *Klein v. City of San Clemente*, 23
 18 584 F.3d 1196 (9th Cir. 2009)

19 *Loudoun Cnty. Sch. Bd. v. Cross*, 6, 13, 23
 20 No. 210584, 2021 WL 9276274 (Va. Aug. 30, 2021)

21 *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 13
 22 141 S. Ct. 2038 (2021)

23 *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 13
 24 336 F.3d 185 (2d Cir. 2003)

25 *Meriwether v. Hartop*, 6, 7
 26 992 F.3d 492 (6th Cir. 2021)

27 *Merrifield v. Lockyer*, 20, 22, 23
 28 547 F.3d 978 (9th Cir. 2008)

1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *Meyer v. Nebraska*, 10
 4 262 U.S. 390 (1923)

5 *Miller v. Reed*, 15
 6 176 F.3d 1202 (9th Cir. 1999)

7 *Monteiro v. Tempe Union High Sch. Dist.*, 9, 10
 8 158 F.3d 1022 (9th Cir. 1998)

9 *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab.*, 24
 10 142 S. Ct. 661 (2022)

11 *NIFLA v. Becerra*, 19
 12 138 S. Ct. 2361 (2018)

13 *Oyama v. Univ. of Hawaii*, 7
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15 *Parham v. J.R.*, 17
 16 442 U.S. 584 (1979)

17 *Ramirez v. Collier*, 19, 20
 18 142 S. Ct. 1264 (2022)

19 *Ricard v. USD 475 Geary County, KS Sch. Bd.*, 2, 10, 19, 21, 23
 20 No. 5:22-cv-4015, 2022 WL 1471372 (D. Kan. May 9, 2022)

21 *Riley’s Am. Heritage Farms v. Elsasser*, 5, 13
 22 32 F.4th 707 (9th Cir. 2022)

23 *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 13
 24 605 F.3d 703 (9th Cir. 2010)

25 *Roman Cath. Diocese of Brooklyn v. Cuomo*, 15, 19
 26 141 S. Ct. 63 (2020)

27 *Romer v. Evans*, 20
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1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *Russo v. Cent. Sch. Dist. No. 1*, 9
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5 *Sambrano v. United Airlines, Inc.*, 23
 6 No. 21-11159, 2022 WL 486610 (5th Cir. Feb. 17, 2022)

7 *Save Our Sonoran, Inc. v. Flowers*, 25
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9 *Settlegoode v. Portland Pub. Sch.*, 12
 10 371 F.3d 503 (9th Cir. 2004)

11 *Shelton v. Tucker*, 9
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13 *Sweezy v. New Hampshire*, 7
 14 354 U.S. 234 (1957)

15 *Taking Offense v. State*, 22
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17 *Taking Offense v. State*, 22
 18 66 Cal. App. 5th 696 (2021)

19 *Tandon v. Newsom*, 16
 20 141 S. Ct. 1294 (2021)

21 *Tatel v. Mt. Lebanon Sch. Dist.*, 2, 11
 22 No. CV 22-837, 2022 WL 15523185 (W.D. Pa. Oct. 27, 2022)

23 *Thomas v. Review Board of Indiana*, 15
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25 *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 5, 13
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27 *Troxel v. Granville*, 2, 16, 17
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1 **TABLE OF AUTHORITIES—CONTINUED**

2 **CASES (CONT.)**

3 *United States v. McAdory*,7
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5 *United States v. Windsor*,20
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9 *W. Virginia State Bd. of Educ. v. Barnette*,9
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11 *Waln v. Dysart Sch. Dist.*, 16
 12 54 F.4th 1152 (9th Cir. 2022)

13 *Weiman v. Updegraff*, 9, 11, 12
 14 344 U.S. 183 (1952)

15 *Winter v. Natural Res. Def. Council*, 4
 16 555 U.S. 7 (2008)

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INTRODUCTION

1
2 Plaintiffs Elizabeth Mirabelli and Lori Ann West are long-time educators at
3 Rincon Middle School within the Escondido Union School District (“EUSD”).
4 (Verif. Compl., ¶¶75-90; Mirabelli Decl., ¶¶1-2; West Decl., ¶¶1-2.) Beginning with
5 the 2022-2023 school year, however, they found their teaching careers threatened
6 when they were confronted with EUSD’s Parental Exclusion Policies regarding gender
7 identity. Those policies convert the decision of whether to “socially transition” a
8 gender incongruent child from a reasoned medical one made by families and
9 psychologists, into a haphazard choice made by children pressured by peers and school
10 counselors. (Compl., ¶¶117-48 & Exs.1-5, 7-9; Anderson Decl., ¶¶82-86.)¹

11 Under the Parental Exclusion Policies, all EUSD teachers are required to
12 unhesitatingly accept a child’s self-medical-diagnosis as gender incongruent,
13 immediately begin referring to the child by any self-identified pronouns and preferred
14 name (including “it”) (*see* Compl., ¶164), and actively exclude parents from any
15 aspect of the decision-making process. EUSD teachers must carefully revert to
16 biological pronouns and legal names when speaking with parents to avoid apprising
17 them of the social transition. (*Id.*, ¶¶117-48 & Exs.1-5, 7-9.)

18 As attested to by Plaintiffs’ expert—a transgender woman and expert on child
19 gender incongruence—EUSD’s policies are extremely dangerous to the mental and
20 psychological well-being of children. (*See* Anderson Decl., ¶¶3-5, 56-86.) Engaging in a
21 social transition is an active, psychotherapeutic intervention that should not be
22 engaged in lightly. (*Id.* at ¶¶29-43.) Whether a child is gender incongruent may or may
23 not translate to being gender dysphoric, and only with the combined wisdom of parents
24 (who know their children best) and psychologists (who understand gender identity
25 best), can the optimal results be achieved for these children. (*Id.* at ¶¶12-28, 44-86.)

26
27 ¹ Exhibits 1-32 are attached to the Verified Complaint; Exhibits 33-37 are attached to
28 the declaration of Plaintiff Mirabelli; Exhibits 38-43 are attached to the declaration of
Plaintiff West. Unless otherwise noted, all quotations are “cleaned up” by omitting
citations, quotation marks, brackets, ellipses, and emphasis; all emphasis is added.

1 Further, the policies are egregiously unconstitutional attempts to interfere with
 2 parental rights. (Compl., ¶¶69-74.) The Supreme Court has time and again repeatedly
 3 affirmed the “fundamental right of parents to make decisions concerning the care,
 4 custody, and control of their children.” *Troxel v. Granville*, 530 U.S. 57, 66 (2000)
 5 (collecting cases). As such, these policies are unenforceable against Plaintiffs Mirabelli
 6 and West. Although similar policies are being quickly adopted across the Nation
 7 (Compl., ¶¶61-67), they are equally quickly being struck down. Courts in Kansas,
 8 Wisconsin, and Pennsylvania have already found similar policies unconstitutional, and
 9 other courts are poised to soon follow suit. *See Ricard v. USD 475 Geary County, KS*
 10 *Sch. Bd.*, No. 5:22-cv-4015, 2022 WL 1471372 (D. Kan. May 9, 2022); *Doe 1 v. Madison*
 11 *Metro. Sch. Dist.*, 976 N.W.2d 584, 589-90 (Wis. 2022); *Tatel v. Mt. Lebanon Sch. Dist.*,
 12 No. CV 22-837, 2022 WL 15523185 (W.D. Pa. Oct. 27, 2022).

13 Because Plaintiffs Mirabelli and West do not wish to be a party to the violation
 14 of parents’ fundamental constitutional rights, they initiated the present action and now
 15 move for a preliminary injunction. As ordered in *Ricard* and *Madison Metro.*, Plaintiffs
 16 seek leave to communicate truthfully with parents about their child’s gender identity.
 17 When speaking with parents, Plaintiffs wish to identify students by both their legal and
 18 preferred names to avoid any hint of deception. Plaintiffs do not challenge any other
 19 gender identity policies. (*See* Compl., ¶¶213-16.)²

20 **FACTUAL & PROCEDURAL BACKGROUND**

21 Plaintiffs Elizabeth Mirabelli and Lori Ann West are long-time and devoted
 22 educators. They greatly love their work and find inspiring young children to be a
 23 fulfilling vocation. As a result they pour themselves into their work, and in their several
 24 decades teaching seventh and eighth grade children, they have received numerous
 25 accolades. (Compl., ¶¶75-90; Mirabelli Decl., ¶¶1-2; West Decl., ¶¶1-2.)

26 ² EUSD has contended that its policies simply follow the guidance of the California
 27 Department of Education (“CDE”). (Compl., ¶¶187-98 & Exs.26-28.) As a result,
 28 Plaintiffs Mirabelli and West named the members of the State Board of Education as
 defendants and request that their injunction encompass the CDE.

1 But with the 2022-2023 school year, they discovered for the first time that they
2 were expected to deceive parents by withholding any information about a child’s
3 gender identity. (Compl., ¶¶117-48 & Exs.1-5, 7-9.) Presenting as a different gender in
4 public is called a “social transition” and is normally a reasoned medical decision made
5 by families in consultation with psychologists. (Anderson Decl., ¶¶56-86.) However,
6 EUSD ordered that children alone can make the decision whether to “socially
7 transition” and that under the child’s “Right to Privacy” teachers had to scrupulously
8 avoid “outing” a child to his parents. (Compl., ¶¶117-48, 208-12 & Exs.1-5, 7-9.) As
9 shown by the discipline of a fellow teacher (*id.*, ¶117), failure to comply with these
10 policies will lead to discipline, including eventually termination. (*Id.*, ¶129.)

11 This greatly bothered both Plaintiffs Mirabelli and West because, both morally
12 and religiously, they know that keeping this information from parents is wrong. They
13 believe that the relationship between parents and children is sacred and should not be
14 undermined through introducing deception and distrust. (*Id.*, ¶¶75-111 & Exs.24-25.)
15 Moreover, in seeking the best for their gender incongruent students, Plaintiffs believe
16 that life-altering decisions like whether to “socially transition” must be left in the
17 hands of parents, not children alone. (*Id.*) Thus, Plaintiffs sought a religious
18 accommodation under Title VII and the California Fair Employment & Housing Act.
19 EUSD agreed to grant Plaintiffs a partial accommodation, such that they could
20 personally refer to students in a gender-neutral manner. But EUSD held firm on its
21 Parental Exclusion Policies, leading to this lawsuit. (*Id.*, ¶¶177-216 & Exs.7-9, 27-28.)

22 After the lawsuit was filed, various Rincon Middle School personnel retaliated
23 against and harassed Plaintiffs Mirabelli and West. (Mirabelli Decl., ¶¶6-19 & Exs.33-
24 37; West Decl., ¶¶4-17 & Exs.38-43.) Teachers have begun wearing Rainbow Pride
25 colors to protest this lawsuit, and the band teacher even went so far as to coopt her
26 students into a protest. She filmed a video of her students waving Rainbow Pride flags
27 and singing a protest song. (*Id.*) By roping students into the protest, teachers ultimately
28 caused many students to verbally harass and threaten Plaintiff Mirabelli to the point

1 that she was forced to go on administrative leave for the rest of the school year.
 2 (Mirabelli Decl., ¶¶18-19.) However, both Plaintiffs Mirabelli and West fully intend to
 3 resume their teaching duties with the start of the 2023-2024 school year. Thus, they
 4 need effective relief from the Court in advance of **August 9, 2023**—the first day that
 5 they are required to report for work. (Mirabelli Decl., ¶20; West Decl., ¶¶17-19.)³

6 LEGAL STANDARD

7 Plaintiffs seeking a preliminary injunction must establish (1) that they are likely
 8 to succeed on the merits, (2) that they are likely to suffer irreparable harm without
 9 injunctive relief, (3) that the balance of harms tips in their favor, and (4) that a
 10 preliminary injunction is in the public interest. *See All. for the Wild Rockies v. Cottrell*,
 11 632 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Natural Res. Def. Council*, 555 U.S.
 12 7, 20 (2008)). Courts in the Ninth Circuit evaluate these factors through a “sliding
 13 scale approach.” *Id.* So, for example, “a stronger showing of irreparable harm to
 14 plaintiff might offset a lesser showing of likelihood of success on the merits.” *Id.*

15 ARGUMENT

16 I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

17 For the reasons discussed below, as applied to Plaintiffs Mirabelli and West,
 18 EUSD’s Parental Exclusion Policies cannot survive scrutiny under the Free Speech
 19 clause or the Free Exercise of Religion clause. Under the Free Speech clause, the
 20 Court must weigh EUSD’s legitimate interests as employer against Plaintiffs’
 21 constitutional interest in being a speaker on a matter of public interest. The balance
 22 strongly tips in Plaintiffs’ favor because none of EUSD’s legitimate interests would be
 23 hindered by Plaintiffs’ speech, but actually furthered. Under the Free Exercise clause,
 24 EUSD’s Parental Exclusion Policies are subject to (and cannot survive) strict scrutiny
 25 because they are riddled with de facto categorical and discretionary exemptions. In any
 26 event, because the policies violate parental rights, they fail even rational basis review.

27 _____
 28 ³ A lengthier recitation of the complex factual and procedural history is laid in the
 verified complaint, which is expressly incorporated herein.

1 **A. The Parental Exclusion Policies Violate Plaintiffs’ Free Speech Rights**
 2 **under the *Eng* Analysis for Government Employees**

3 The Free Speech clause protects the rights of government employees, including
 4 teachers, but is “applied *in light of* the special characteristics of the school
 5 environment.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).
 6 Thus, in determining the free speech rights of public employees, the Ninth Circuit
 7 generally reviews five questions which merge First Amendment and employment law
 8 analyses. *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009).

9 In this context, however, only the First Amendment questions are relevant.⁴
 10 Those Questions Nos. 1, 2, and 4 are: “(1) whether the plaintiff spoke on a matter of
 11 public concern; (2) whether the plaintiff spoke as a private citizen or public employee;
 12 [and] (4) whether the state had an adequate justification for treating the employee
 13 differently from other members of the general public.” *Eng*, 552 F.3d at 1070; *accord*
 14 *Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 776 (9th Cir. 2022). It is Plaintiffs’
 15 burden to establish the first two questions in their favor, and EUSD’s burden as to the
 16 last question. *Riley’s Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 721 (9th Cir. 2022).⁵

17 **1. Plaintiffs’ speech is related to the public debate over gender**
 18 **identity and parental rights**

19 The first *Eng* question is whether the “topic” matter of the speech (here,
 20 gender identity) is a matter of public concern. Here, the public debate about how to
 21 address gender dysphoria, especially among children, is undoubtedly a matter of public
 22 concern. *See Riley’s*, 32 F.4th at 723 (farm owner’s tweets about how planning for a
 23 “high school reunion” shows that his “may have been the last generation born with

24 ⁴ The employment law Questions Nos. 3 and 5 are only relevant after the government
 25 takes adverse action against an employee. Here, because Plaintiffs have not violated the
 26 policies, these questions are not relevant. (*See* Compl., ¶¶75-90.)

27 ⁵ This allocation of burden remains applies because “the burdens at the preliminary
 28 injunction stage track the burdens at trial.” *Gonzales v. O Centro Espirita Beneficente*
Uniao do Vegetal, 546 U.S. 418, 429 (2006); *accord California Chamber of Com. v.*
Council for Educ. & Rsch. on Toxics, 29 F.4th 468, 478 (9th Cir. 2022).

1 only two genders,” was speech related to a matter of public concern).⁶

2 Importantly, the employee need not be advocating a viewpoint through his
3 speech. For example, in *Kennedy*, the Supreme Court held that Coach Kennedy’s
4 private prayer was speech implicating a matter of public concern even though he was
5 privately praying by himself. *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2424
6 (2022). And in *Meriwether*, the refusal to use preferred pronouns was found to satisfy
7 the first *Eng* question because the issue is whether the “speech relates” in any way to a
8 “topic” being debated. *Meriwether v. Hartop*, 992 F.3d 492, 508-09 (6th Cir. 2021).

9 Here, the issues of gender identity, transgender children, and parental rights are
10 currently topics of significant public debate. Indeed, this lawsuit has already triggered
11 further debate at Rincon Middle School. (Mirabelli Decl., ¶¶6-19; West Decl., ¶¶4-
12 17.) Thus, because gender identity and parental rights is currently a topic of public
13 debate, EUSD’s requirements regarding how Plaintiffs may speak related to that topic
14 satisfies the first *Eng* question. This is a point EUSD has all but admitted. (*See* Compl.,
15 Ex. 28, p.3 (discussing the “debate”).)

16 **2. Plaintiffs are speaking as private citizens, not public**
17 **employees, due to the factual nature of their jobs and the**
18 **constitutional limits on the government**

19 *a. This Eng question is skipped in the academic context due to*
20 *the constitutional protection for academic freedom*

21 The second *Eng* question does not apply to teachers due to the constitutional
22 protection for academic freedom. Because “teaching and academic writing are at the
23 core of the official duties of teachers and professors,” such speech is “a special
24 concern of the First Amendment” and is exempt from the “public v. private” speech
25 analysis. *Demers v. Austin*, 746 F.3d 402, 411-12 (9th Cir. 2014); *see Hodge v. Antelope*
26 ⁶ *Meriwether v. Hartop*, 992 F.3d 492, 508-09 (6th Cir. 2021), *cited approvingly in Green*
27 *v. Miss United States of Am., LLC*, 52 F.4th 773, 784 n.12 (9th Cir. 2022) (refusal to use
28 preferred pronouns is exercising Free Speech rights on a matter of public concern);
Loudoun Cnty. Sch. Bd. v. Cross, No. 210584, 2021 WL 9276274, at *4 (Va. Aug. 30,
2021) (“*Cross*”) (teacher commenting in opposition to proposed gender identity
policies at school board meeting was speaking on a matter of public concern)

1 *Valley Cmty. Coll. Dist.*, No. CV 12-780, 2014 WL 12776507, at *5 & n.4 (C.D. Cal.
2 Feb. 14, 2014) (in the academic context, second *Eng* question should be skipped).

3 This is because of a long-line of cases which discuss the importance of
4 protecting academic freedom. See *Keyishian v. Bd. of Regents of the Univ. of the State of*
5 *N.Y.*, 385 U.S. 589, 603 (1967); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).
6 Respecting these Supreme Court cases, the Ninth Circuit has held that the second *Eng*
7 question “does not—indeed, consistent with the First Amendment, cannot—apply to
8 teaching and academic writing that are performed ‘pursuant to the official duties’ of a
9 teacher and professor.” *Demers*, 746 F.3d at 412; accord *Oyama v. Univ. of Hawaii*, 813
10 F.3d 850, 866 n.13 (9th Cir. 2015) (“[D]ue to considerations of academic freedom, we
11 have declined to extend *Garcetti* to the context of public school teachers.”).

12 Here, under Ninth Circuit case law, this question simply does not apply because
13 of the academic context. *Demers*, 746 F.3d at 412. In this exact factual context, the
14 Sixth Circuit concluded that a professor’s refusal to adhere to his university’s stated
15 position on gender identity—by refusing to use preferred pronouns—fit within the
16 academia exception such that this question was irrelevant. *Meriwether*, 992 F.3d at 504-
17 06. Rather, the parties’ respective interests should simply be weighed as part of
18 Question 4. See *Demers*, 746 F.3d at 413 (noting that weighing must account for
19 “whether the school in question is a public high school or a university”).⁷

20 ***b. As a matter of fact and constitutional law, compliance with***
21 ***the parental exclusion policies is not, and cannot be, within***
22 ***Plaintiffs’ official job duties***

23 Even outside the academic context, Plaintiffs Mirabelli’s and West’s speech
24 with parents on the topic of gender identity has not been, and cannot be, made part of
25 their official job duties. The constitution imposes careful limits on when and how the

26 ⁷ An earlier school case dealing with the *Eng* five-question analysis did not
27 substantively deal with the question of academic freedom. See *Johnson v. Poway*
28 *Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011), *abrogated by Kennedy v. Bremerton Sch.*
Dist., 142 S. Ct. 2407 (2022). The Ninth Circuit later addressed this question directly
in *Demers*, such that it controls. See *United States v. McAdory*, 935 F.3d 838, 843 (9th
Cir. 2019) (substantive analysis, not passing comments, constitute law of the circuit).

1 government can make speech part of the official job duty of an employee. Those limits
 2 are already reflected in many EUSD documents detailing Plaintiffs’ job duties. Thus,
 3 both factually and for First Amendment purposes, compliance with the Parental
 4 Exclusion Policies are not and cannot be made a part of Plaintiffs’ official job duties.

5 *i. Legal Background: The government cannot force*
 6 *employees to adhere to ideological orthodoxy or violate*
 7 *the law as a condition of employment*

8 Whether government employee speech *is understood by the First Amendment* as
 9 private citizen speech or public employee speech is a highly factual matter. This
 10 question first “depends on the scope and content of [the employee’s] job
 11 responsibilities.” *Dodge*, 56 F.4th at 778. But “[t]he proper inquiry is a practical one,”
 12 *concerning what is core to an employee’s job*, such that “the listing of a given task in an
 13 employee’s written job description is *neither necessary nor sufficient* to demonstrate that
 14 conducting the task is within the scope of the employee’s professional duties *for First*
 15 *Amendment purposes.*” *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006).

16 Under the First Amendment, the key issue is whether “there is [a] relevant
 17 analogue to speech by citizens who are not government employees.” *Id.* at 424. Thus,
 18 because “discussing politics with a co-worker” can be done by a private citizen, a
 19 private employee, and a public employee, when it is done by a public employee, it is
 20 First Amendment protected speech. *Id.* at 423-24. Only if it is made part of a specific
 21 “employee’s official duties” to “mouth a message on [the government’s] behalf” (*i.e.*,
 22 to serve as a spokesperson), will the speech be considered government speech. *Janus v.*
 23 *Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2473 (2018).

24 But, the government *cannot* impose “a blanket requirement that all employees
 25 subsidize [or engage in] speech with which they may not agree” if they are not
 26 spokespersons. *Id.* at 2472. Nor may the government “posit an excessively broad job
 27 description,” for example, by focusing on a teacher’s duty to serve as a “role model,”
 28 and thereby “treat[] everything teachers and coaches say in the workplace as
 government speech subject to government control.” *Kennedy*, 142 S. Ct. at 2411.

1 These limitations flows from the principle that “no official, high or petty, can prescribe
 2 what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”
 3 *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Thus, unless the
 4 government is hiring a spokesperson, the government cannot make it a job requirement
 5 that an employee take a side in a matter of public debate. *Janus*, 138 S. Ct. at 2473.⁸

6 Finally, a government employer may only “insist that the employee deliver a
 7 *lawful* message.” *Id.* Thus, a police department cannot insist that a police officer file a
 8 false police report. *See Jackler v. Byrne*, 658 F.3d 225, 240 (2d Cir. 2011), *cited*
 9 *approvingly in Dahlia v. Rodriguez*, 735 F.3d 1060, 1075 (9th Cir. 2013). Nor, in light of
 10 the Fourteenth Amendment, could a school district require its teachers “to
 11 indoctrinate their young charges with racist concepts.” *Monteiro v. Tempe Union High*
 12 *Sch. Dist.*, 158 F.3d 1022, 1032 (9th Cir. 1998).

13 *ii. Deceiving parents is not, and cannot be, within*
 14 *Plaintiffs’ job duties because it violates parental*
 15 *rights and is a litmus test of holding orthodox beliefs*

16 Here, both *factually* and *for First Amendment purposes*, it is not and cannot be a
 17 part of Plaintiffs’ official job duties of teaching English and Physical Education to
 18 deceive parents. Factually, during the religious accommodation process, EUSD
 19 already concluded that compliance with the Parental Exclusion Policies was not an
 20 “essential [job] function.” (Compl., ¶201; Ex. 27, p.4; Ex. 28, p.4.) That is the only
 21 possible conclusion. Other EUSD Board Policies expressly prohibit “[b]eing dishonest
 22 with students, parents/guardians, staff, or members of the public.” (*Id.*, ¶151; Ex. 14,
 23 BP 4119.21(9).) They also provide that “[p]arents/guardians have a right and an
 24 obligation to be engaged in their child’s education and to be involved in the
 intellectual, physical, emotional, and social development and well-being of their child.”

25 ⁸ *See, e.g., Weiman v. Updegraff*, 344 U.S. 183, 190-91 (1952) (government may not
 26 compel prospective employees to swear loyalty oaths as a condition of employment);
 27 *Shelton v. Tucker*, 364 U.S. 479, 489-90 (1960) (government may not compel teachers
 28 to disclose all of their recent associations in order to be hired at a public school); *Russo*
v. Cent. Sch. Dist. No. 1, 469 F.2d 623, 633-34 (2d Cir. 1972) (state violated First
 Amendment for firing teacher who refused to salute the flag).

1 (*Id.*, ¶151; Ex. 15, BP 0100(7).) This is also mandated by California law. *See* Cal. Educ.
2 Code § 51101(a). (*See id.*, ¶¶196-97.) EUSD cannot both acknowledge that parents
3 have a right to be involved in the development and well-being of their child, and take
4 the position that Plaintiffs’ official job duties include deceiving parents and blocking
5 their involvement. *See Beathard v. Lyons*, 620 F. Supp. 3d 775, 782 (C.D. Ill. 2022)
6 (noting clash in policies and interpreting them against the university employer).

7 For First Amendment purposes, just as it cannot be part of a teacher’s official
8 job duties to violate the Fourteenth Amendment by “indoctrinat[ing] their young
9 charges with racist concepts,” *Monteiro*, 158 F.3d at 1032, it cannot be part of a
10 teacher’s official duties to violate parental Fourteenth Amendment rights to direct the
11 upbringing of their children by deceiving parents about their child’s transgender status.
12 *Ricard*, 2022 WL 1471372, *8 & n.12; *see Madison Metro.*, 976 N.W.2d at 589-90 (trial
13 court entered injunction against school district “requir[ing] District staff to conceal
14 information or to answer untruthfully in response to any question that parents ask
15 about their child at school, including information about the name and pronouns being
16 used to address their child at school.”).

17 In the Ninth Circuit, parents’ quintessential right is the “fundamental right to
18 decide *whether* to send their child to a public school.” *Fields v. Palmdale Sch. Dist.*, 427
19 F.3d 1197, 1206 (9th Cir. 2005) (“*Fields I*”), *amended on denial of rehearing*, 447 F.3d
20 1187 (9th Cir. 2006) (“*Fields II*”). Parents have a right “to be free from state
21 interference with their choice of the educational forum itself.” *Fields I*, 427 F.3d at
22 1207. This right “extend[s] beyond the threshold of the school door.” *Fields II*, 447
23 F.3d at 1190-91. Thus, parents may not dictate the content of school curriculum, but
24 they must know what is happening behind school doors so they can choose whether the
25 school is right for their children. *See Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (state
26 may not “interfere ... with the power of parents to control the education of their
27 own”); *Farrington v. Tokushige*, 11 F.2d 710, 714 (9th Cir. 1926) (noting “the right of a
28 parent to educate his own child in his own way”).

1 Thus, by withholding information from parents that is critical to their decisions
2 about the upbringing of their children, including decisions about obtaining physical and
3 psychological health care for their children and where to send their children to school,
4 EUSD is intentionally interfering with that quintessential right and demanding that
5 Plaintiffs participate in the deception. This *cannot* be an official job duty.⁹

6 Finally, broadly, it is not and cannot be one of Plaintiffs' official job duties to
7 adhere to EUSD's view of gender identity. *Factually*, at the end of the religious
8 accommodation process, EUSD stated that if Plaintiffs are ever asked by a parent
9 about their child's gender identity, they must simply respond that they can only
10 discuss "information regarding the student's behavior as it relates to school, class
11 rules, assignments, etc." (Compl., ¶¶4, 209 & Ex.9.) In other words, the topic of
12 gender identity simply should not be part of Plaintiffs' official job duties at all.

13 This coheres with other EUSD policies which provide that, for "any public
14 problem which society ... is in the process of debating," teachers have "the right to
15 express his/her own opinion." (*Id.*, ¶154; Ex. 16, BP 6144 & AR 6144; *accord* Ex. 19,
16 BP 6142.3 (civics education policy); Ex. 20, BP 5145.2 (student speech policy).) And
17 Plaintiffs' employment contracts state that "academic freedom is essential" such that
18 EUSD employees are protected against "censorship or restraint, which might interfere
19 with their obligation to pursue truth." (*Id.*, ¶155; Ex. 17, art. XIV, §E.2.) As a result of
20 these policies, Rincon Middle School teachers have been allowed to display pro-LGBT
21 political messaging in their classrooms. (*Id.*, ¶156; Ex. 18; West Decl., ¶16 & Ex.43.)

22 In any event, *for first Amendment purposes*, any attempt to require teachers to
23 adhere to EUSD's new gender orthodoxy would simply be an impermissible litmus test
24 requiring employees to adhere to government orthodoxy. *See Weiman*, 344 U.S. at 190-

25 _____
26 ⁹ Notably, a circuit split exists over how much control a parent can exercise regarding
27 what occurs in schools. *See Tatel*, 2022 WL 15523185, at *13-16. But even under the
28 Ninth Circuit's narrow view of parental rights, the government may not actively
interfere with those rights by deceiving parents and thereby preclude any ability on
the part of a parent to opt their child out of the program. *Id.* at *21-23.

1 91. If permissible under the First Amendment, it would similarly permit EUSD (or a
 2 new Board of Trustees) to order that no teacher may ever affirm a student’s gender
 3 identity. The First Amendment prohibits the government from compelling or gagging
 4 speech in this manner as a condition of employment.

5 **3. EUSD lacks a “legitimate administrative interest” for treating**
 6 **Plaintiffs’ speech different from a private party’s speech**

7 This last question is the most important. The question is—in balancing the
 8 legitimate interests of EUSD *as employer* and Plaintiffs’ First Amendment rights *as*
 9 *citizens*—does EUSD have a sufficiently compelling interest to make restrictions on
 10 Plaintiffs’ constitutional rights a condition of employment?

11 On EUSD’s side, the inquiry is limited to a “*legitimate administrative interest.*”
 12 *See Dodge*, 56 F.4th at 781. Thus, EUSD—like all employers—has an interest in
 13 preventing the disruption of its provision of service. *See id.* at 781-82. It also has an
 14 interest in complying with state and federal law. But it does *not* have an interest in
 15 enforcing ideological conformity among its employees. *Janus*, 138 S.Ct. at 2473.
 16 Further, “[a]s compelling as the interest in preventing discriminatory conduct may be,
 17 speech is treated differently under the First Amendment.” *Green*, 52 F.4th at 792
 18 (preventing gender identity discrimination not a valid basis for compelling speech).

19 The disruption analysis proceeds on a sliding scale: “The government’s burden
 20 in proving disruption varies with the content of the speech. The more tightly the First
 21 Amendment embraces the speech the more vigorous a showing of disruption must be
 22 made.” *Dodge*, 56 F.4th at 782. Under this analysis, “[s]peech is disruptive only when
 23 there is an *actual, material and substantial disruption*, or there are reasonable predictions
 24 of disruption in the workplace.” *Id.* “Speech that outrages or upsets” but “without
 25 evidence of ‘any actual injury’ to school operations does not constitute a disruption.”
 26 *Id.* (quoting *Settlegoode v. Portland Pub. Sch.*, 371 F.3d 503, 514 & n.8 (9th Cir. 2004)).¹⁰

27 _____
 28 ¹⁰ With respect to “actual injury,” “where hundreds of parents threatened to remove
 their children from school,” due to “a public school teacher who was active in a

1 On Plaintiffs’ side, “the First Amendment affords the broadest protection to
 2 political expression,” *Dodge*, 56 F.4th at 782, such that discussion about issues of
 3 “gender identity” is “entitled to special protection.” *Riley’s*, 32 F.4th at 716, 727.
 4 Because “[p]olitical speech is the quintessential example of protected speech, and it is
 5 inherently controversial,” the government must show more than “the disruption that
 6 necessarily accompanies controversial speech.” *Dodge*, 56 F.4th at 782-83.

7 Indeed, for purposes of qualified immunity, many cases “clearly establish that
 8 disagreement with a disfavored political stance or controversial viewpoint, by itself, is
 9 not a valid reason to curtail expression of that viewpoint at a public school.” *Id.* at 786-
 10 87 & n.6 (collecting cases). In contrast, “schools have a strong interest in ensuring that
 11 future generations understand the workings in practice of the well-known aphorism, ‘I
 12 disapprove of what you say, but I will defend to the death your right to say it.’”
 13 *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2046 (2021).¹¹

14 _____
 15 pedophile association,” the school district’s legitimate interests in running a school
 16 could prevail over the teacher’s right to freedom of association. *See Riley’s*, 32 F.4th at
 17 726-27 (citing *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 336 F.3d 185,
 18 199 (2d Cir. 2003)). But the focus must be on actual “substantial disruption” itself—
 19 not merely finding a viewpoint offensive—and that finding of actual disruption cannot
 be based on “rank speculation or bald allegation.” *Id.* at 725-27 (a few complaints from
 parents was insufficient); *accord Cross*, 2021 WL 9276274, at *7.

20 ¹¹ *Accord, e.g., Kennedy*, 142 S. Ct. at 2416, 2430 (“The Constitution and the best of
 21 our traditions counsel mutual respect and tolerance, not censorship and suppression,”
 22 for “learning how to tolerate speech ... of all kinds is part of learning how to live in a
 pluralistic society, a trait of character essential to a tolerant citizenry.”); *Tinker*, 393
 23 U.S. at 509 (“Any word spoken, in class, in the lunchroom, or on the campus, that
 deviates from the views of another person may start an argument or cause a
 24 disturbance. But our Constitution says we must take this risk”); *Rodriguez v. Maricopa*
 25 *Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 710 (9th Cir. 2010) (failure to reprimand
 professor who sent “racially charged” emails against Dia de la Raza and in favor of
 26 Columbus Day could not create hostile educational environment because “emails
 27 were pure speech; they were the effective equivalent of standing on a soap box in a
 campus quadrangle and speaking to all within earshot. Their offensive quality was
 28 based entirely on their meaning”); *Donovan v. Poway Unified Sch. Dist.*, 167 Cal. App.

1 Here, EUSD has asserted two interests: (1) compliance with state and federal law
2 (Compl., ¶187; Ex. 27, p.3; Ex. 28, p.3); and (2) “creat[ing] safe and inclusive
3 campuses,” to “uphold[] a positive and diverse culture in our District.” (*Id.*, ¶119;
4 Ex. 4, p.1:11-12) Neither of those interests, however, is furthered by the policy. Nothing
5 in the California Constitution justifies deceiving parents about their child’s gender
6 identity or providing psychological treatment without parental consent (*see id.*, ¶¶189-
7 98), and even if it did, the Fourteenth Amendment prohibits EUSD from doing so. (*See*
8 § I.A.2.b.ii, *supra.*) With respect to student safety, keeping parents in the dark is far
9 more likely to harm students than keep them safe. (*See* Anderson Decl., ¶¶56-86.)

10 Thus, with Plaintiffs’ interests entitled to heightened protection, and EUSD’s
11 interests not actually undermined, the question of which side’s interests are
12 paramount is answered squarely in Plaintiffs’ favor. All of the *Eng* questions are rightly
13 resolved in favor of Plaintiffs Mirabelli and West, so the Court should enter an
14 injunction protecting their Free Speech rights.

15 **B. The Parental Exclusion Policies Violate Plaintiffs’ Free Exercise Rights**

16 As stated above, in addition to their Free Speech rights, EUSD’s transgender
17 policies violate Plaintiffs Mirabelli’s and West’s Free Exercise of Religion rights. As a
18 result of their faith, Mrs. Mirabelli and Mrs. West seek the absolute best for their
19 transgender or gender diverse students. This includes preventing gender identity-
20 based bullying or harassment. But it also involves including parents in any decision
21 regarding a child’s social transition. Mrs. Mirabelli and Mrs. West believe that the
22 parent-child relationship is sacred, and that they cannot come between parents and
23 their children by lying to parents. (Compl., ¶¶91-111, 215.)

24 Under the Free Exercise clause, if government policies burden religious exercise
25 and are “not neutral or not of general application,” *Church of the Lukumi Babalu Aye,*
26 *Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993), then they “must satisfy ‘strict
27 _____
28 4th 567, 591 (2008) (California Education Code follows Title IX standards, citing
Cal. Educ. Code § 201(g)).

1 scrutiny,’ and this means that they must be ‘narrowly tailored’ to serve a ‘compelling’
2 state interest.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020). In
3 contrast, with respect to “a neutral, generally applicable regulatory law,” that “merely
4 [has] the incidental effect” of burdening religion, courts only review whether it is
5 “otherwise valid.” *Emp’t Div. v. Smith*, 494 U.S. 872, 879-81 (1990). In other words,
6 courts review whether or not the law is “rationally related to [the government’s]
7 legitimate interests.” *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999).

8 Here, EUSD’s requirement that Plaintiffs comply with its Parental Exclusion
9 Policies as a condition of employment burdens their sincere religious beliefs. *Thomas v.*
10 *Review Board of Indiana*, 450 U.S. 707, 717-19 (1981) (losing job is severe burden);
11 (Compl., ¶202, Ex. 27, p.3; Ex. 28, p.3 (religious sincerity undisputed).) Yet, as
12 discussed below, EUSD’s Parental Exclusion Policies are not generally applicable and
13 therefore trigger strict scrutiny. And even under rational basis review, in the unique
14 context of this case, refusing to extend an exemption to Plaintiffs lacks any rational
15 connection to a legitimate government interest.

16 **1. The Parental Exclusion Policies Trigger Strict Scrutiny**
17 **Because of their *De Facto* Categorical Exemptions for**
18 **Classified Staff, Administrative Staff, and Students.**

19 The existence of secular exemptions from government-created burdens, without
20 offering a religious exemption, triggers strict scrutiny under the Free Exercise Clause if
21 the secular exemptions undermine the government’s asserted interests “in a similar or
22 greater degree” than a religious exemption would. *Lukumi*, 508 U.S. at 542-43. This is
23 called the problem of “underinclusiv[ity].” *Id.*; accord *Fulton v. City of Philadelphia*, 141
24 S. Ct. 1868, 1877 (2021) (a government policy “lacks general applicability if it prohibits
25 religious conduct while permitting secular conduct that undermines the government’s
26 asserted interests in a similar way”).

27 Stated differently, “government regulations are not neutral and generally
28 applicable, and therefore trigger strict scrutiny under the Free Exercise Clause,
whenever they treat *any* comparable secular activity more favorably than religious

1 exercise.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021) (original italics). But
 2 “whether two activities are comparable for purposes of the Free Exercise Clause must
 3 be judged against the asserted government interest that justifies the regulation at
 4 issue.” *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1159 (9th Cir. 2022) (quoting *Tandon*,
 5 141 S. Ct. at 1296). And “[g]eneral applicability requires, among other things, that the
 6 laws be enforced evenhandedly.” *Id.*

7 Here, although the Parental Exclusion Policy is framed as a student “right,” it
 8 only binds a very limited group: full-time teachers. (Compl., ¶135; Ex. 4, p.1:2.) It does
 9 not bind non-certificated administrative or classified staff, substitute teachers, or
 10 students, because the February 3, 2022 presentation was only given to teachers. (*See*
 11 *id.*, ¶¶136-43; Ex. 11, p.6; Ex. 12; Ex. 4, p.11:23-12:1; Ex. 13, pp.1:27-2:20.) Even if staff
 12 and students were technically bound by the Parental Exclusion Policies, because they
 13 do not exist in writing anywhere on the EUSD website, and because EUSD is
 14 apparently attempting to hide them, EUSD has created *de facto* exemptions for all of
 15 them. There is no practical way for those from whom EUSD has hidden the Parental
 16 Exclusion Policies to comply with them. Additionally, the Parental Exclusion Policies
 17 have important exemptions for unintentional violations, such as “inadvertent slips or
 18 honest mistakes.” (*Id.*, ¶147; Ex. 4, p.5:24-26.)

19 As noted above, the issue is whether secular exemptions and a religious
 20 exemption are comparable by “judg[ing them] against the asserted government
 21 interest that justifies the regulation at issue.” *Waln*, 54 F.4th at 1159. Here, the stated
 22 purpose of the policies is to “create safe and inclusive campuses,” and “uphold[] a
 23 positive and diverse culture in our District.” (Compl., ¶118; Ex. 4, p.1:11-12.)¹²

24 To be sure, EUSD has an interest in protecting transgender students from
 25 physical and emotional abuse from their peers. But “there is a presumption that fit
 26 parents act in the best interests of their children,” *Troxel v. Granville*, 530 U.S. 57, 68

27 ¹² *See Kennedy*, 142 S. Ct. at 2432 n.8 (“Government ‘justification[s]’ for interfering
 28 with First Amendment rights ‘must be genuine, not hypothesized or invented *post hoc*
 in response to litigation.’”)

1 (2000), that originates from the historical recognition that the natural bond between
 2 parent and child leads parents to act in the best interests of their children. *Parham v.*
 3 *J.R.*, 442 U.S. 584, 602 (1979). EUSD must presume that, if given information about
 4 their children, parents will use that information to the child’s benefit—which is a
 5 perfectly reasonable presumption. (*See* Anderson Decl., ¶¶61-86.) Thus, Plaintiffs seek
 6 to further EUSD’s interest, not undermine it.

7 **2. The Parental Exclusion Policies Trigger Strict Scrutiny**
 8 **Because of their Discretionary Exemptions if the Violation Had**
 9 **a “Legitimate” Purpose.**

10 EUSD’s Parental Exclusion Policies also trigger strict scrutiny because they
 11 contain a system of discretionary, “good cause” exemptions. Under this reasoning,
 12 “where the State has in place a system of individual exemptions, it may not refuse to
 13 extend that system to cases of ‘religious hardship’ without compelling reason.” *Smith*,
 14 494 U.S. at 884 (citing *Bowen v. Roy*, 476 U.S. 693, 708 (1986)). Stated differently,
 15 where a law “invites the government to decide which reasons for not complying with
 16 the policy are worthy of solicitude,” strict scrutiny is triggered. *Fulton*, 141 S. Ct. at
 17 1878-79. Importantly, it does not matter whether the system of exceptions has ever
 18 been used: “The creation of a formal mechanism for granting exceptions renders a
 19 policy not generally applicable, regardless whether any exceptions have been given[.]”
 20 *Id.* at 1879. But the formal mechanism is also not required. When the government has
 21 an “unspoken and ad hoc exemption practice,” that “poses a more insidious and
 22 severe danger” because it provides the government “unfettered and silent discretion
 23 to make exceptions,” thus triggering strict scrutiny. *Fellowship of Christian Athletes v.*
 24 *San Jose Unified Sch. Dist. Bd. of Educ.*, 46 F.4th 1075, 1096 (9th Cir. 2022) (“FCA”),
 25 *vacated but injunction granted pending en banc review*, 64 F.4th 1024 (9th Cir. 2023).¹³

26 ¹³ *Accord Kane v. De Blasio*, 19 F.4th 152, 169 (2d Cir. 2021) (COVID-19 vaccination
 27 mandate triggered strict scrutiny due to system of individualized exemptions); *Dahl*
 28 *v. Bd. of Trustees of W. Michigan Univ.*, 15 F.4th 728, 733 (6th Cir. 2021) (same);
Bosarge v. Edney, No. 1:22-cv-233, 2023 WL 2998484, at *10 (S.D. Miss. Apr. 18,
 2023) (same as to public schools); *Foothill Church v. Watanabe*, No. 2:15-cv-2165,

1 Here, EUSD has defined in its policies “revealing a student’s transgender status
2 or gender diverse status to individuals who do not have a legitimate need for the
3 information without the student’s consent, and this includes parents or caretakers,” as
4 “harassment of our gender diverse students.” (Compl., ¶144; Ex. 4, pp.6:25-26, 7:15-
5 17.) Because the policies are defined as “harassment,” whenever an EUSD official
6 investigates whether a violation has occurred, they have to individually determine
7 whether the conduct was “harassing.”

8 Definitionally, conduct is only “harassing” if it has no “legitimate purpose.”
9 Cal. Code Civ. Proc. § 527.6(b)(3); 18 U.S.C. § 1514(d)(1)(B)(ii). (*See* Compl., ¶¶145-
10 46.) Thus, EUSD’s policies inherently invite EUSD officials to decide whether
11 specific reasons for failing to comply with the Parental Exclusion Policies have a
12 “legitimate purpose” and are therefore worthy of solicitude. For example, it will not
13 be considered a violation of the Parental Exclusion Policies if the teacher believed that
14 individuals “have a legitimate need for the information” or if the teacher engaged in
15 “inadvertent slips or honest mistakes.” (*Id.*, ¶¶147-48; Ex. 4, pp.5:24-26, 7:16, 11:16-
16 23.) Because EUSD’s policies require individualized assessment of “legitimacy,” they
17 are not generally applicable, thus triggering strict scrutiny review.

18 **3. The Parental Exclusion Policies Cannot Satisfy Any Standard**
19 **of Review: Rational Basis or Strict Scrutiny**

20 For the reasons discussed above, EUSD’s refusal to offer a religious exemption
21 to Plaintiffs, despite its many secular exemptions, triggers strict scrutiny under the
22 Free Exercise clause. But even if the Court were to find that strict scrutiny is not
23 triggered, then EUSD’s policies remain subject to rational basis review. In the unique
24 context of this case, where EUSD is pursuing an interest that is not legitimate (let
25 alone compelling), and yet has so many secular exemptions undermining its interest,
26 failing to offer a religious exemption fails to satisfy even rational basis review. *See*
27 2022 WL 3684900, at *10 (E.D. Cal. Aug. 25, 2022) (department of health’s “good
28 cause” exemption for requiring health insurance plans to cover elective abortion
triggered strict scrutiny).

1 *Ricard v. USD 475 Geary Cnty., KS Sch. Bd.*, No. 5:22-cv-4015, 2022 WL 1471372, at
 2 *7-8 & nn.11-12 (D. Kan. May 9, 2022) (granting analogous injunction to teacher based
 3 on Free Exercise clause).

4 ***a. Legal Background on Strict Scrutiny: The government must***
 5 ***show it lacks other means of achieving its interests***

6 To satisfy “strict scrutiny,” government policies “must be ‘narrowly tailored’
 7 to serve a ‘compelling’ state interest.” *Diocese of Brooklyn*, 141 S. Ct. at 67. “Once a
 8 plaintiff has made out his initial case ..., it is the government that must show its policy
 9 is the least restrictive means of furthering [a] compelling governmental interest.”
 10 *Ramirez v. Collier*, 142 S. Ct. 1264, 1281 (2022). In other words, the government must
 11 show that “denying an exception” to “particular religious claimants,” *Fulton*, 141
 12 S. Ct. at 1882, is “‘narrowly tailored’ to serve a ‘compelling’ state interest.” *Diocese of*
 13 *Brooklyn*, 141 S. Ct. at 66. Strict scrutiny is “the most demanding test known to
 14 constitutional law.” *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).¹⁴

15 Even when the government has identified a problem in need of solving, the
 16 restriction “must be actually necessary to the solution,” for the “government does not
 17 have a compelling interest in each marginal percentage point by which its goals are
 18 advanced.” *Brown v. Entertainment Merchs. Ass’n*, 564 U.S. 786, 799, 803 n.9 (2011).
 19 The government may not assert generally that it has an interest in preventing “serious
 20 mental, financial, and emotional harm on transgender individuals,” but must show that
 21 denying an exception here is necessary to achieve that goal. *Green*, 52 F.4th at 791-92.
 22 “That is a demanding standard,” *Brown*, 564 U.S. at 799, and “because [the
 23 government] bears the risk of uncertainty, ambiguous proof will not suffice.” *Id.* at
 24 799-800. “[C]onjecture” and “hypothetical[s],” and other “[s]uch speculation is
 25 insufficient to satisfy’ [the government’s] burden.” *Ramirez*, 142 S. Ct. at 1280.

26 The “least-restrictive-means standard is exceptionally demanding” in that it

27 _____
 28 ¹⁴ “This allocation of respective burdens applies in the preliminary injunction context.”
Ramirez, 142 S. Ct. at 1277; accord *NIFLA v. Becerra*, 138 S. Ct. 2361, 2376 (2018).

1 requires the government to show that “it lacks other means of achieving its desired
 2 goal.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014). “[S]o long as the
 3 government can achieve its interests in a manner that does not burden religion, it must
 4 do so.” *Fulton*, 141 S. Ct. at 1881. “[A]t a minimum,” when other jurisdictions “offer
 5 an accommodation, [the government] must ... offer persuasive reasons why it believes
 6 that it must take a different course.” *Holt v. Hobbs*, 574 U.S. 352, 369 (2015). The
 7 government must “explore any relevant differences between [its] ... process and those
 8 of other jurisdictions,” and explain why it must diverge. *Ramirez*, 142 S. Ct. at 1279.

9 ***b. Legal Background on Rational Basis: The government’s***
 10 ***interest must be legitimate and logically coherent***

11 A government policy will fail rational basis review if it lacks a legitimate purpose,
 12 or if it is not rationally related to achieving the asserted purpose. Thus, ***first***, “[t]o
 13 survive rational basis review, Defendants’ disparate treatment of [religious objectors]
 14 must be ‘rationally related to a *legitimate state interest.*’” *Arizona Dream Act Coal. v.*
 15 *Brewer*, 757 F.3d 1053, 1065 (9th Cir. 2014). *See United States v. Windsor*, 570 U.S. 744,
 16 775 (2013) (“no legitimate purpose” inspired the federal Defense of Marriage Act).
 17 The illegitimacy of the government policy can be shown directly, *Arizona Dream Act*
 18 *Coal.*, 757 F.3d at 1067, or implicitly. *Romer v. Evans*, 517 U.S. 620, 635 (1996).

19 ***Second***, government policies also fail rational basis review if “the statute is
 20 [actually] unrelated to the[] [government’s] interests,” *Merrifield v. Lockyer*, 547 F.3d
 21 978, 986 (9th Cir. 2008), such that applying the regulation is “irrational and wholly
 22 arbitrary.” *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564-65 (2000). This can be
 23 shown where the government’s justification for applying a policy to certain individuals,
 24 and its justification for exempting other individuals from compliance, are inherently
 25 contradictory. *Merrifield*, 547 F.3d at 988-91.

26 ***c. Refusing to exempt Plaintiffs from the Parental Exclusion***
 27 ***Policies fails any level of scrutiny***

28 Here, refusing to grant an exemption from its Parental Exclusion Policies to

1 Plaintiffs Mirabelli and West fails both strict scrutiny and rational basis review because:
2 (1) EUSD has no legitimate interest in requiring their compliance; and (2) granting an
3 exemption will further, not undermine, EUSD’s legitimate interests.

4 **First**, EUSD’s Parental Exclusion Policies fail strict scrutiny and rational basis
5 review because EUSD does not have a *legitimate* interest (rational basis) in enforcing
6 them, let alone a *compelling* one (strict scrutiny). To be sure, preventing harassment
7 and bullying of transgender students is an admirable goal—but Plaintiffs solely wish to
8 not deceive parents and provide psychological treatment to their children without their
9 knowledge or consent. EUSD has *no legitimate interest* in violating parental rights, *see*
10 *Ricard*, 2022 WL 1471372, at *8 & n.11 (“It is difficult to envision why a school would
11 even claim—much less how a school could establish—a generalized interest in
12 withholding or concealing from the parents of minor children, information
13 fundamental to a child’s identity, personhood, and mental and emotional well-being
14 such as their preferred name and pronouns”), or enforcing ideological conformity
15 among its staff. *See Janus*, 138 S. Ct. at 2473 (“[I]t is not easy to imagine a situation in
16 which a public employer has a legitimate need to demand that its employees recite
17 words with which they disagree.”).

18 **Second**, EUSD’s refusal to grant an exemption to Plaintiffs from its Parental
19 Exclusion Policies fails strict scrutiny because the policies are both underinclusive and
20 overinclusive. The Parental Exclusion Policies are underinclusive because EUSD has
21 omitted thousands of individuals from them, including administrative staff, classified
22 staff, and students. (Compl., ¶¶135-43.) Surely, administrative staff, office staff and
23 students could just as easily “out” a transgender student in violation of the policies.

24 The Parental Exclusion Policies are overinclusive because, “[r]ather than
25 prohibiting conduct and speech amounting to actionable harassment or discrimination
26 as those terms are legally defined,” the policies prohibit all discussions with parents
27 about a student’s gender identity, without requiring that the discussion “amount to
28 harassing or discriminatory conduct” or actually “negatively affect” any student.

1 *Taking Offense v. State*, 66 Cal. App. 5th 696, 720 (2021), *not depublished pending grant*
2 *of review*, 498 P.3d 90 (Cal. 2021) (policy prohibiting all misgendering was
3 overinclusive). A narrowly tailored policy would prohibit *actual harassment*. *See id.*

4 Separate from strict scrutiny, under the Ninth Circuit’s holding in *Merrifield*,
5 the Parental Exclusion Policies’ lack of tailoring is so extreme as to preclude
6 satisfaction of even rational basis review. In that case, individuals working in the pest-
7 control industry had to obtain a difficult and expensive “Branch II” license to engage
8 in the removal of “mice, rats or pigeons,” even if they *only* used non-pesticide
9 methods to remove them. *Id.* at 980-81. The government explained that, although
10 Branch II licensure was focused on ensuring *pesticide knowledge*, applying it to non-
11 pesticide workers served two important interests: (1) the state created a framework to
12 monitor *all* pest-control workers; and (2) even if a worker did not use pesticides, he
13 should know about its risks and effectiveness in order to protect himself when entering
14 sites where pesticides were used, and in order to advise customers. *Id.* at 988.

15 However, the government did not require Branch II licensure if the pest-control
16 worker only engaged in non-pesticide removal of “bats, raccoons, skunks, and
17 squirrels.” *Id.* at 988-89. Those pest-control workers had lobbied for a unique licensing
18 category for themselves, arguing that Branch II licensure covered too large a field. But
19 instead of creating a new license, the government decided to not license such workers
20 at all, arguing that since such animals are only removed using non-pesticide methods,
21 licensure was not needed. *Id.* at 989-90. The Ninth Circuit noted that this was
22 irrational: that the rationale for *requiring* licensure of non-pesticide mice removal, and
23 the rationale for *not requiring* licensure of non-pesticide bat removal, were directly
24 contradictory, and so failed rational basis review. *Id.* at 991.

25 Here, similarly, the rationale for the various exemptions to the Parental
26 Exclusion Policies—*i.e.*, the teacher’s good faith belief that individuals “have a
27 legitimate need for the information” (Compl., ¶144; Ex. 4, p.7:16), and “inadvertent
28 slips or honest mistakes.” (*Id.*, ¶147; Ex. 4, pp.5:24-26)—entirely focuses on whether

1 the conduct would *actually be harassing*. Yet, EUSD refuses to extend a religious
 2 exemption because, allegedly, *all* violations of the Parental Exclusion Policies are *per se*
 3 harassing. This is simply logically impossible. EUSD “cannot hope to survive *rational*
 4 basis review by resorting to irrationality.” *Merrifield*, 547 F.3d at 991 (original italics);
 5 *see also FCA*, 46 F.4th at 1099 (the interest in preventing “discrimination and exclusion
 6 is weighty,” “But the School District cannot—and does not—advance its interest in
 7 [sexual orientation] non-discrimination by discriminating [on the basis of religion].”).

8 **II. THE OTHER INJUNCTION FACTORS FAVOR PLAINTIFFS**

9 The remaining preliminary injunction factors are irreparable harm, balance of
 10 harms, and the public interest. All three factors tilt strongly in Plaintiffs’ favor.

11 **A. Plaintiffs Are Suffering Irreparable Harm Due to the Loss of their** 12 **Constitutional Rights and Severe Emotional Stress**

13 With respect to irreparable harm, the harm need not be ongoing at the time of the
 14 motion. That is the key difference between an application for a temporary restraining
 15 order and a motion for a preliminary injunction. In the latter, “the injury need not have
 16 been inflicted when application is made;” rather, a showing of “irreparable injury *before*
 17 *trial* is an adequate basis.” *Diamontiney v. Borg*, 918 F.2d 793, 795 (9th Cir. 1990). Thus,
 18 the analysis is not whether there “is *immediate* danger,” but whether the plaintiff may
 19 suffer irreparable harm before trial and a permanent injunction can be entered.
 20 *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1023 (9th Cir. 2016) (original italics).

21 Nevertheless, Plaintiffs Mirabelli and West are currently suffering “[t]he loss of
 22 First Amendment freedoms [which], for even minimal periods of time, unquestionably
 23 constitutes irreparable injury.” *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th
 24 Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *accord Ricard*, 2022 WL
 25 1471372, at *9 (“Any deprivation of any constitutional right is an irreparable injury.”);
 26 *Cross*, 2021 WL 9276274, at *5, 9 (quoting and following *Elrod* in factually similar case);
 27 *Sambrano v. United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *8 (5th Cir. Feb.
 28 17, 2022) (quoting and following *Elrod* in employment religious discrimination case).

1 Plaintiffs Mirabelli and West are also suffering “emotional stress, depression
2 and reduced sense of well-being,” as a result of the coercive pressure to violate their
3 religious beliefs or lose their job (Compl., ¶¶174-76; Mirabelli Decl., ¶¶4-19 & Exs.33-
4 37; West Decl., ¶¶4-17 & Exs.38-43), which also constitutes irreparable injury. *Chalk v.*
5 *U.S. Dist. Ct. Cent. Dist. of California*, 840 F.2d 701, 709 (9th Cir. 1988).

6 **B. The Public Interest and the Balance of Harms Favors Plaintiffs:**
7 **Students Will Be Benefitted and Constitutional Rights Preserved**

8 When a party seeks a preliminary injunction against the government, the balance
9 of harms and public interest factors merge, because the government’s interest is the
10 public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). On
11 EUSD’s side, alleged adverse consequences are irrelevant because it is always in the
12 public interest to make sure that the government is following the law. *Nat’l Fed’n of*
13 *Indep. Bus. v. Dep’t of Lab.*, 142 S. Ct. 661, 666 (2022) (refusing to weigh allegation that
14 OSHA vaccine mandate “will save over 6,500 lives” because “[i]n our system of
15 government, that is the responsibility of those chosen by the people through the
16 democratic process”). But, in any event, Plaintiffs do not seek to harass or discriminate
17 against any transgender or gender diverse child—simply to be exempted from actively
18 violating the Fourteenth Amendment rights of their parents by lying to them and
19 participating in the psychological medical treatment of their children at school.

20 On Plaintiffs Mirabelli’s and West’s side, in a case where the plaintiffs “have
21 raised serious First Amendment questions,” that “compels a finding that the balance
22 of hardships tips sharply in Plaintiffs’ favor.” *Am. Beverage Ass’n v. City & County of*
23 *San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019). This is because “it is always in the
24 public interest to prevent the violation of a party’s constitutional rights.” *Id.*; *see also,*
25 *e.g., California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018) (“Protecting religious liberty
26 and conscience is obviously in the public interest.”).

27 In sum, because Plaintiffs are suffering severe irreparable injury in the form
28 having to abandon their constitutional rights to keep their jobs, and severe emotional

1 distress over the coercion to abandon those rights, in the absence of any actual harm
2 that will be suffered by EUSD, the other injunction factors clearly favor Plaintiffs.

3 **III. THE COURT SHOULD DISPENSE WITH A BOND REQUIREMENT**

4 Finally, the federal rules provide that a preliminary injunction may be issued
5 only if the plaintiff posts an appropriate bond. Fed. R. Civ. P. 65(c). Even so, this Court
6 has discretion over whether any security is required and, if so, the amount. *Jorgensen v.*
7 *Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). There is “long-standing precedent that
8 requiring nominal bonds is perfectly proper in public interest litigation,” especially
9 “where requiring security would effectively deny access to judicial review.” *Save Our*
10 *Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) (collecting cases).

11 Here, Plaintiffs request that the Court waive any bond requirement because
12 enjoining EUSD from unconstitutionally enforcing its Parental Exclusion Policies in
13 the face of First Amendment objections will not financially affect EUSD. A bond
14 would, however, be burdensome on already burdened Plaintiffs under these
15 circumstances. *See, e.g., Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d
16 1291, 1302 n.6 (C.D. Cal. 2008) (waiving requirement of student group to post a bond
17 where case involved “the probable violation of [the club’s] First Amendment rights”
18 and minimal damages to the District of issuing injunction); *Doctor John’s, Inc. v. Sioux*
19 *City*, 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004) (“[R]equiring a bond to issue
20 before enjoining potentially unconstitutional conduct by a governmental entity simply
21 seems inappropriate, because the rights potentially impinged by the governmental
22 entity’s actions are of such gravity that protection of those rights should not be
23 contingent upon an ability to pay.”).

24 **CONCLUSION**

25 For the foregoing reasons, Plaintiffs respectfully request that this Court grant
26 their motion for a preliminary injunction in full and dispense with a bond requirement.
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Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: May 15, 2023

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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

14 ELIZABETH MIRABELLI, an individual,
15 and LORI ANN WEST, an individual,

16 Plaintiffs,

17 v.

18 MARK OLSON, in his official capacity as
19 President of the EUSD Board of
20 Education, et al.,

21 Defendants.

Case No.: 3:23-cv-0768-BEN-WVG

**Declaration of Dr. Erica E.
Anderson, PhD, in Support of
Plaintiffs' Motion for a
Preliminary Injunction**

Judge: Hon. Roger T. Benitez
Courtroom: 5A
Hearing Date: June 26, 2023
Hearing Time: 10:30 a.m.

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1 I, Dr. Erica E. Anderson, declare and state as follows:

2 1. I am a clinical psychologist currently practicing in Berkeley, California. I
3 received a Ph.D. in clinical psychology from Fuller Theological Seminary in 1978. I
4 have been actively working as a clinical psychologist for over 40 years, with extensive
5 experience working with clients of all ages. I am licensed in California, Minnesota,
6 and formerly Pennsylvania (no longer active there).

7 2. I have been retained by Plaintiffs to provide an expert medical opinion in
8 this matter regarding the Escondido Union School District’s gender identity policies
9 as related to excluding parents from any decision-making. I have reviewed the
10 Plaintiffs’ complaint filed in this matter on April 27, 2023, including its exhibits, and
11 the memorandum of points and authorities in support of Plaintiffs’ motion for a
12 preliminary injunction. My opinions are below. They are based on my own personal
13 knowledge, as applied to the facts of this case, and I could and would testify to them
14 in court if called upon to do so.

15 **I. CREDENTIALS & SUMMARY OF OPINIONS**

16 3. For the past seven years, my work has focused primarily on children and
17 adolescents dealing with gender-identity related issues. Between 2016 and 2021, I
18 served as a clinical psychologist and member of the medical staff with a behavioral
19 pediatrics appointment at the Child and Adolescent Gender Clinic at Benioff
20 Children’s Hospital at the University of California, San Francisco. From 2016 to the
21 present, I have also operated a private consulting and clinical psychology practice
22 serving children and adolescents and their parents, as well as adults and couples.
23 During the past seven years, I estimate that I have seen hundreds of children and
24 adolescents for gender-identity-related issues. Many, though not all, have
25 transitioned—either socially, medically, or both—to a gender identity that differs
26 from their natal sex, with my guidance and support.

27 4. I am a life member of the American Psychological Association and a
28 member of the World Professional Association for Transgender Health (WPATH). I

1 served as the President of the United States Professional Association for
2 Transgender Health (USPATH) and as a board member for WPATH between 2019
3 and 2021.

4 5. I myself am a transgender woman. I was born a natal male, but
5 transitioned to living openly in a female identity in 2011. As a result, I have a unique
6 perspective and shared experience with those exploring their gender identity.

7 6. A more thorough overview of my professional experience, publications,
8 and list of prior cases I have testified in is provided in my curriculum vitae, a copy of
9 which is attached as Exhibit A.

10 7. I am being compensated for my time spent in connection with this case
11 at a rate of \$500.00 per hour/\$750.00 per hour for depositions and time in court.

12 8. A summary of my opinions is as follows:

13 a. A child or adolescent who exhibits a desire to change name
14 and pronouns should receive a careful professional assessment prior to
15 transitioning. (Section III).

16 b. A request to change name and pronouns may be the first
17 visible sign that the child or adolescent may be dealing with gender
18 dysphoria or related coexisting mental-health issues. (Section III.A).

19 c. A child or adolescent's experience of gender incongruence
20 may be influenced by societal or cultural factors and may or may not
21 persist. (Sections III.B, III.C).

22 d. A careful assessment by professionals prior to transitioning
23 is critical to understand the causes of the child's or adolescent's feelings
24 of gender incongruence, the likelihood that those feelings will persist, to
25 provide guidance about the implications of any kind of transition, to
26 diagnose and treat any gender dysphoria or coexisting conditions, and to
27 provide ongoing support to both youth and parents during any
28 transition. (Section III.D).

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e. Social transition itself is an impactful psychotherapeutic intervention that has the potential to increase the likelihood of persistence of gender incongruence. Transitioning socially can also be psychologically hard to reverse for a child or adolescent. (Section IV).

f. For some children experiencing gender incongruence, social transition is not the best approach. Some cease desiring to transition after an exploratory process and/or therapy to understand the source of their feelings, and some who do transition later come to regret it. (Sections V.A, V.B).

g. Social transition often leads to other medical interventions later in life, some of which are irreversible. (Section V.C).

h. No professional medical association that I am aware of recommends social transition of children and adolescents without a careful assessment and treatment plan. (Section V.D).

i. Parental involvement is necessary to obtain professional assistance for a child or adolescent experiencing gender incongruence, to provide accurate diagnosis, and to treat any gender dysphoria or other coexisting conditions. (Sections VI.A, VI.B, VI.C).

j. A school-facilitated transition without parental consent interferes with parents' ability to pursue a careful assessment and/or therapeutic approach prior to transitioning, prevents parents from making the decision about whether a transition will be best for their child, and creates unnecessary tension in the parent-child relationship. Nor is facilitating a double life for some children, in which they present as transgender in some contexts but cisgender in other contexts, in their best interests. (Sections VI.D, VI.E).

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1 k. No professional medical association that I am aware of
2 recommends that school officials facilitate the social transition of a child
3 or adolescent without parental knowledge and consent. (Section VI.F).

4 l. The Escondido Union School District’s gender identity
5 policies, as attached to the complaint, are inconsistent with the best
6 practices of all leading mental health professional associations and are
7 more likely to lead to student harm than safety. (Section VII).

8 **II. BACKGROUND ON TERMS AND SOURCES**

9 9. Throughout this report, I use the term “social transition” (and
10 variations) to refer primarily to adopting a new name and/or pronouns that differ
11 from one’s natal sex. A social transition can include more than just name-and-
12 pronoun changes—individuals adopting a transgender identity sometimes change
13 their hairstyle, clothing, or their appearance in other ways, begin using opposite-sex
14 facilities, and/or make other social changes. In the literature, however, the phrase
15 “social transition” is primarily used to refer to name-and-pronoun changes. “Social
16 transition” is used as a contrast to medical transition, which refers to various medical
17 interventions to bring one’s physical appearance closer into alignment with one’s
18 asserted gender identity, such as puberty blockers, cross-sex hormone therapy, and
19 various surgical interventions.

20 10. The term “gender dysphoria,” as defined in the American Psychiatric
21 Association’s current *Diagnostic and Statistical Manual of Mental Disorders* (“DSM-
22 5”), refers to “clinically significant distress or impairment related to gender
23 incongruence” (i.e., a mismatch between one’s natal sex and one’s felt, perceived, or
24 desired gender identity). I use the phrases “gender incongruence” or “gender
25 variance” as broad catch-all terms for those who experience, perceive, or desire a
26 gender identity that differs from their natal sex. As the DSM-5 notes, not everyone
27 who is gender variant experiences gender dysphoria, in the sense of clinically
28 significant distress.

1 11. WPATH is a scientific, professional, and educational organization that,
2 among other things, produces a set of recommendations for transgender health care.
3 It’s “Standards of Care” document (“SOC”) is one of the more widely known and
4 cited set of guidelines for transgender care, though its recommendations are not
5 universally agreed upon by professionals in the field. As noted above, I recently
6 served as the president of USPATH (the United States arm of WPATH) and on the
7 board of WPATH. In late 2021, however, I resigned from my offices within
8 USPATH and WPATH because I disagreed in important respects with some of the
9 directions the organization was going. Until September last year (2022), the latest
10 version of WPATH’s SOC was its 7th version, released in 2012 (“SOC7”).¹ The 8th
11 version was released publicly on September 6, 2022 (“SOC8”).² How the SOC8 will
12 be received by the wider mental health community beyond the WPATH membership
13 remains to be seen. For this reason, and given how recently SOC8 was released, its
14 size, and the time it will take to fully process and consider its recommendations, I rely
15 more heavily in this report on SOC7, though I quote from SOC8 as well.

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23 ¹ The World Professional Association for Transgender Health, *Standards of Care for*
24 *the Health of Transsexual, Transgender, and Gender Nonconforming People* (Version 7,
25 2012), available at <https://www.wpath.org/publications/soc> (“WPATH SOC7”).

26 ² *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*,
27 WPATH, *International J. Trans. Health* 2022, Vol. 23, No. S1, S1–S258 (2022),
28 available at <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644> (“WPATH SOC8”).

1 **III. A CHILD OR ADOLESCENT WHO EXHIBITS A**
2 **DESIRE TO CHANGE NAME AND PRONOUNS**
3 **SHOULD RECEIVE A CAREFUL PROFESSIONAL**
4 **ASSESSMENT BEFORE TRANSITIONING**

5 **A. A child’s or adolescent’s request or desire to go by a different**
6 **name and pronouns is a sign that may indicate the presence of**
7 **gender dysphoria—and may be the first specific sign.**

8 12. As WPATH notes, “many adolescents and adults presenting with
9 gender dysphoria do not report a history of childhood gender nonconforming
10 behaviors,” so “it may come as a surprise to others (parents, other family members,
11 friends, and community members) when a youth’s gender dysphoria first becomes
12 evident in adolescence.”³

13 13. As WPATH’s more recent SOC8 acknowledges, a recent “phenomenon
14 occurring in clinical practice is the increased number of adolescents seeking care who
15 have not seemingly experienced, expressed (or experienced and expressed) gender
16 diversity during their childhood years.”⁴ Such “late-onset gender dysphoria and
17 [transgender] identification may come as a significant surprise” to parents and others.⁵

18 **B. The recent surge of children and adolescents reporting a**
19 **transgender identity suggests that social and cultural factors**
20 **may play a significant role.**

21 14. Recent surveys indicate that the number of children and adolescents
22 asserting a transgender identity has dramatically increased in recent years. As
23 WPATH’s SOC8 notes, there has been a “sharp increase in the number of

24 ³ WPATH SOC7 at 12.

25 ⁴ WPATH SOC8 at S45.

26 ⁵ American Psychological Association, *Guidelines for Psychological Practice With*
27 *Transgender and Gender Nonconforming People*, APA 70(9):832–64, at 843 (2015)
28 (“APA Guidelines”).

1 adolescents requesting gender care” recently, both in the United States and
2 internationally.⁶

3 15. Recent surveys also show a significantly higher percentage of young
4 people asserting a transgender identity than older adults. A recent survey by the Pew
5 Research Center reported that 5.1% of adults ages 18–29 identify as transgender or
6 non-binary, whereas only 1.6% of adults ages 30–49 identify as transgender or non-
7 binary.⁷ Similarly, a 2021 Gallup poll reported that 2.1% of Gen Z adults (born 1997-
8 2003) identify as transgender (up from 1.8% in 2020), while only 1% of Millennials
9 (born 1981-1996), .6% of Gen X adults (born 1965-1980), and .1% of Baby Boomers
10 (born 1946-1964) reported a transgender identity.⁸

11 16. These changes are consistent with what I have seen in my clinical
12 practice in recent years. While I have not attempted to quantify this, the number of
13 youth and parents of youth contacting me for assistance with gender-identity issues
14 has increased in recent years, and continues to increase year after year.

15 17. Various surveys and studies have also shown an increase in the ratio of
16 natal female adolescents reporting gender incongruence. Until recently, more natal
17 male children and adolescents have presented with gender incongruence than natal
18 females, but that ratio has flipped in recent years, with far more adolescent girls

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21 ⁶ WPATH SOC8 at S43.

22 ⁷ Anna Brown, *About 5% of young adults in the U.S. say their gender is different from their*
23 *sex assigned at birth*, Pew Research Center (June 7, 2022),
24 <https://www.pewresearch.org/fact-tank/2022/06/07/about-5-of-young-adults-in-the-u-s-say-their-gender-is-different-from-their-sex-assigned-at-birth/>.

25 ⁸ Jeffrey M. Jones, *LGBT Identification in U.S. Ticks Up to 7.1%*, Gallup (Feb. 17,
26 2022), <https://news.gallup.com/poll/389792/lgbt-identification-ticks-up.aspx>;
27 Jeffrey M. Jones, *LGBT Identification Rises to 5.6% in Latest U.S. Estimate*, Gallup
28 (Feb. 24, 2021), <https://news.gallup.com/poll/329708/lgbt-identification-rises-latest-estimate.aspx>.

1 experiencing gender incongruence than adolescent boys.⁹ WPATH’s SOC8, for
2 example, notes that gender clinics in recent years have reported natal female
3 adolescents “initiating care 2.5-7.1 times more frequently as compared to” natal male
4 adolescents.¹⁰

5 18. That change in the sex ratios of children and adolescents asserting a
6 transgender identity is consistent with my experience in my clinical practice. In the
7 last few years, I estimate that I see roughly twice as many natal female adolescents for
8 gender-identity-related issues than natal male adolescents. I also conduct parent
9 consultations for gender-related issues much more often for natal female youth.

10 19. To my knowledge, to date these dramatic changes in the population of
11 children and adolescents reporting a transgender identity and the differences between
12 age cohorts have not been adequately studied or explained, but these statistics
13 suggest that cultural and/or societal factors may contribute—even substantially—to a
14 young person’s experience of gender variance.¹¹ Indeed, WPATH SOC8
15 acknowledges that the recent phenomenon of “adolescents seeking care who have
16 not seemingly experienced, expressed (or experienced and expressed) gender
17 diversity during their childhood years” suggests that for some young people,
18 “susceptibility to social influence impacting gender may be an important differential
19 to consider.”¹²

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23 ⁹ E.g., Kenneth J. Zucker, *Adolescents with Gender Dysphoria: Reflections on Some*
24 *Contemporary Clinical and Research Issues*, Archives of Sexual Behavior 48(7) at 1983–
1992 (2019).

25 ¹⁰ WPATH SOC8 at S43.

26 ¹¹ See WPATH SOC8 at S44 (noting that “research [has] demonstrated [that]
27 psychosocial and social factors also play a role”).

28 ¹² WPATH SOC8 at S45.

1 **C. A child’s or adolescent’s experience or perception of a**
2 **transgender identity may or may not persist.**

3 20. Multiple studies across different groups and times have reported that,
4 for the vast majority of children, gender incongruence does not persist (most of these
5 studies involved children who did not transition). As WPATH notes, these studies
6 show a persistence rate between 6% and 27%.¹³ One researcher summarized these
7 studies as follows: “every follow-up study of [gender diverse] children, without
8 exception, found the same thing: Over puberty, the majority of [gender diverse]
9 children [identifying before puberty] cease to want to transition.”¹⁴

10 21. In my clinical practice, I have worked with youth who, after a period of
11 exploration and therapy as appropriate, ultimately conclude that they no longer
12 desire to transition to a different gender identity.

13 **D. When children or adolescents begin to experience gender**
14 **incongruence, they should receive a careful evaluation and**
15 **assessment by a professional mental health provider before**
16 **transitioning, for a variety of reasons.**

17 22. Given the broad variety of factors that can contribute to a child’s or
18 adolescent’s experience of gender incongruence and the reality that those feelings
19 may be transitory, a mental health provider’s first job is a careful evaluative process
20 to understand the causes of the child’s or adolescent’s gender incongruence, assess
21 the likelihood that those feelings will persist, and to help the child or adolescent and
22 their parents process those feelings and make decisions about next steps.¹⁵

23 ¹³ WPATH SOC7 at 11.

24 ¹⁴ James M. Cantor, *Transgender and Gender Diverse Children and Adolescents: Fact-*
25 *Checking of AAP Policy*, *Journal of Sex & Marital Therapy*, 46(4), 307–313 (2019).

26 ¹⁵ See WPATH SOC8 at S45 (“Since it is impossible to definitively delineate the
27 contribution of various factors contributing to gender identity development for any
28 given young person, a comprehensive clinical approach is important and
necessary.”).

1 23. WPATH’s SOC7, for example, recommends a “thorough assessment”
2 of “gender dysphoria and mental health” to “explore the nature and characteristics
3 of a child’s or adolescent’s gender identity,” as well as a “psychodiagnostic and
4 psychiatric assessment” that covers “areas of emotional functioning, peer and other
5 social relationships, and intellectual functioning/school achievement,” “an
6 evaluation of the strengths and weaknesses of family functioning,” any “emotional or
7 behavioral problems,” and any “unresolved issues in a child’s or youth’s
8 environment.”¹⁶ Similarly, the Endocrine Society recommends “a complete
9 psychodiagnostic assessment” including “an assessment of the decision-making
10 capability of the youth.”¹⁷ Endocrinology is the subspecialty in medicine having to do
11 with hormones. Pediatric endocrinologists are the physicians who prescribe puberty
12 blockers or cross-sex hormones in the gender clinics.

13 24. While young people sometimes “self-transition,” responsible mental
14 health practice requires that this assessment should occur *before* a child or adolescent
15 socially transitions. WPATH SOC7 notes that mental health professionals “should
16 strive to maintain a therapeutic relationship with gender nonconforming
17 children/adolescents and their families throughout any *subsequent* social changes,”
18 (i.e., after the diagnostic process it recommends), which “ensures that decisions
19 about gender expression and the treatment of gender dysphoria are thoughtfully and
20 recurrently considered.”¹⁸ Similarly, the Endocrine Society’s Guidelines “advise
21 that decisions regarding the social transition of prepubertal youths with GD/gender
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24 ¹⁶ WPATH SOC7 at 15.

25 ¹⁷ Wylie C. Hembree, et al., *Endocrine Treatment of Gender-Dysphoric/Gender-*
26 *Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, Endocrine
27 Society, *J Clin Endocrinol Metab*, 102(11):3869–3903 at 3877 (Nov. 2017)
28 (“Endocrine Society Guidelines”).

¹⁸ WPATH SOC7 at 16.

1 incongruence are made with the assistance of [a mental health provider] or another
2 experienced professional.”¹⁹

3 25. In my practice, consistent with WPATH’s recommendations, I employ
4 a comprehensive evaluative and exploratory process before recommending any form
5 of transition, including a social transition, and I certainly would never recommend
6 any kind of medical interventions before a careful assessment. My clients often find
7 this process helpful—and many of them seek it out—even if they ultimately
8 transition, which many do.

9 26. Another reason for a comprehensive assessment by a mental health
10 professional is to determine whether and to what extent the child or adolescent is
11 experiencing gender dysphoria (i.e., clinically significant distress associated with their
12 experience of gender incongruence). As noted above, not every child or adolescent
13 who exhibits gender variance experiences distress about that variance, but many do,
14 and, as WPATH notes and I have personally encountered in my practice, children
15 and adolescents can be “intensely distressed about it” and require professional
16 support.²⁰

17 27. Yet another reason for a professional assessment is to identify and
18 address any coexisting mental health concerns. Gender incongruence is often
19 accompanied by other mental health issues, like anxiety, depression, self-harm, and
20 others. WPATH’s SOC8, for example, notes studies showing that transgender youth
21 have higher rates of depression, emotional and behavioral problems, suicide attempts
22 and ideation, self-harm, eating disorders, autism spectrum disorders/characteristics,
23 and other mental health challenges than the general population.²¹ Thus, WPATH
24 and other professional associations recommend screening children and adolescents

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26 ¹⁹ Endocrine Society Guidelines at 3870.

27 ²⁰ WPATH SOC7 at 12.

28 ²¹ WPATH SOC8 at S62.

1 presenting with gender incongruence for coexisting mental health issues and treating
2 those as necessary.²²

3 28. The assistance of a mental-health professional can also be critically
4 important *during* any social transition. As the Endocrine Society’s Guidelines note, a
5 social transition “may test the person’s resolve, the capacity to function in the
6 affirmed gender, and the adequacy of social, economic, and psychological supports,”
7 and processing the transition is often “a major focus of the counseling” during the
8 transition.²³ I have seen firsthand the benefits of having professional support during a
9 social transition. In my experience, youth are not always prepared for all of the
10 challenges associated with transitioning.

11 **IV. SOCIAL TRANSITION IS AN IMPORTANT**
12 **PSYCHOTHERAPEUTIC INTERVENTION THAT CAN**
13 **CHANGE OUTCOMES IN CHILDREN AND**
14 **ADOLESCENTS**

15 **A. Multiple respected voices agree that social transition does or**
16 **may affect gender identity outcomes, increasing the likelihood**
17 **that identification with a transgender identity will persist.**

18 29. As noted above, numerous studies prior to the widespread adoption of
19 social transition reported that gender incongruence did not persist through
20 adolescence for a majority of children who experience it.

21 30. By contrast, a recent study of 317 transgender youth found that, 5 years
22 after transitioning, 94% continued to identify as transgender, whereas only 6% had
23 retransitioned back to a cisgender or nonbinary identity.²⁴ A significant difference
24 between this study and the prior studies is that all of the children in this study had

25 ²² WPATH SOC7 at 24–25; Endocrine Society Guidelines at 3876; APA Guidelines
26 at 845.

27 ²³ Endocrine Society Guidelines at 3877.

28 ²⁴ Kristina R. Olson, *Gender Identity 5 Years After Social Transition*, *Pediatrics*
2022;150(2):e2021056082 (Aug. 2022), <https://doi.org/10.1542/peds.2021-056082>.

1 already socially transitioned. The dramatic difference in persistence rates reported in
2 prior studies and this and similar studies of children who have transitioned demands
3 an explanation and raises multiple questions. While there are a variety of possible
4 explanations for this difference in persistence rates, one possible explanation that
5 cannot yet be ruled out is that social transition itself has a causal effect on persistence
6 rates by reinforcing a child’s or adolescent’s beliefs about their identity.

7 31. Indeed, multiple well-respected researchers in this area have raised this
8 concern. A study in 2013, which reported higher persistence rates among children
9 who had transitioned, noted that “[c]hildhood social transitions were important
10 predictors of persistence, especially among natal boys. Social transitions were
11 associated with more intense GD in childhood, but have never been independently
12 studied regarding the *possible impact of the social transition itself on cognitive*
13 *representation of gender identity or persistence.*”²⁵ The authors went on to note that “the
14 hypothesized link between social transitioning and the cognitive representation of the
15 self” may “influence the future rates of persistence.”²⁶ “Until there is more
16 knowledge about this mechanism,” the authors wrote, they endorsed the approach in
17 WPATH SOC7 of deferring to parents and helping them “weigh the potential
18 benefits and challenges” and “make decisions regarding the timing and process of
19 any gender role changes for their young children.”²⁷

20 32. Another well-known researcher and long-time practitioner in this field,
21 Dr. Kenneth J. Zucker, commented on this study as follows: “With the emergence in
22 the last 10–15 years of a pre-pubertal gender social transition as a type of psychosocial
23 treatment [citations omitted]—initiated by parents on their own (without formal

24 ²⁵ Steensma, T. D., at al., *Factors Associated with Desistence and Persistence of Childhood*
25 *Gender Dysphoria: A Quantitative Follow-Up Study*. *Journal of the American Academy*
26 *of Child & Adolescent Psychiatry*, 52(6), 582–590, at 588 (2013).

27 ²⁶ *Id.* at 589.

28 ²⁷ *Id.* (quoting WPATH SOC7 at 17).

1 clinical consultation) or with the support/advice of professional input—it is not clear
2 if the desistance rates reported in the four core studies will be ‘replicated’ in
3 contemporary samples. Indeed, the data for birth-assigned males in Steensma et al.
4 (2013a) already suggest this: of the 23 birth-assigned males classified as persisters, 10
5 (43%) had made a partial or complete social transition prior to puberty compared to
6 only 2 (3.6%) of the 56 birth-assigned males classified as desisters. Thus, *I would*
7 *hypothesize that when more follow-up data of children who socially transition prior to*
8 *puberty become available, the persistence rate will be extremely high.*”²⁸ Dr. Zucker then
9 adds that, in his view, “parents who support, implement, or encourage a gender
10 social transition (and clinicians who recommend one) are implementing a
11 psychosocial treatment that will increase the odds of long-term persistence.”

12 33. The Endocrine Society Guidelines also recognize that “[s]ocial
13 transition is associated with the persistence of GD/gender incongruence as a child
14 progresses into adolescence. It may be that the presence of GD/gender incongruence
15 in prepubertal children is the earliest sign that a child is destined to be transgender as
16 an adolescent/adult (20). However, social transition (in addition to GD/gender
17 incongruence) has been found to contribute to the likelihood of persistence.”²⁹

18 34. A recent, comprehensive review by Dr. Hillary Cass of the U.K.’s model
19 of transgender care, notes that “it is important to view [social transition] as an active
20 intervention because it may have significant effects on the child or young person in
21 terms of their psychological functioning. There are different views on the benefits
22 versus the harms of early social transition. Whatever position one takes, it is
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24

25 ²⁸ Zucker, K., *The myth of persistence: Response to “A critical commentary on follow-up*
26 *studies and ‘desistance’ theories about transgender and gender non-conforming children”*
27 *by Temple Newhook et al.*, *International Journal of Transgenderism* 19(2) 231–245
28 (2018).

²⁹ Endocrine Society Guidelines at 3879.

1 important to acknowledge that it is not a neutral act, and better information is needed
2 about outcomes.”³⁰

3 35. I share the concerns of these researchers and writers that transitioning
4 may affect the likelihood of persistence, *especially* transitions without a careful
5 assessment by a mental health professional prior to transitioning.

6 36. Again, the effects of social transition on a child’s or adolescent’s
7 psychological development are still open to conjecture and hypothesis, since, to my
8 knowledge, there have not yet been adequate long-term studies of social transitions
9 during childhood or adolescence, as this is a relatively recent phenomenon. Indeed,
10 WPATH’s SOC8, released last year acknowledges that “there is a dearth of
11 empirical literature regarding best practices related to the social transition process.”³¹

12 37. WPATH and others have acknowledged that, in light of the paucity of
13 long-term evidence about the effects, social transitions during childhood and
14 adolescence are a controversial issue among mental-health professionals in this field.
15 WPATH’s SOC7, for example, notes that “[Social transition in early childhood] is a
16 controversial issue,” that “divergent views are held by health professionals,” and
17 that “[t]he current evidence base is insufficient to predict the long-term outcomes of
18 completing a gender role transition during early childhood.”³² Another group of
19 researchers that is attempting to study this recently wrote: “Relatively unheard-of
20 years ago, early childhood social transitions are a contentious issue within the clinical,
21 scientific, and broader public communities. [citations omitted]. Despite the
22 increasing occurrence of such transitions, we know little about who does and does not
23

24 ³⁰ Cass, H., *Independent review of gender identity services for children and young people: Interim report* (2022), <https://cass.independent-review.uk/publications/interim-report/>.

27 ³¹ WPATH SOC8 at S76.

28 ³² See WPATH SOC7 at 17.

1 transition, the predictors of social transitions, and *whether transitions impact children’s*
2 *views of their own gender.*”³³

3 38. Thus, while social transition is too often described as nothing more than
4 a harmless “exploration” of gender and identity, at this time we cannot rule out that
5 a social transition may have a causal effect on a child’s or adolescent’s future
6 development of their internal sense of identity. On the contrary, the early research we
7 have is consistent with the hypothesis that social transition causes some children to
8 persist who otherwise might have desisted from experiencing gender dysphoria and
9 transgender identification.

10 **B. Social transition erects psychosocial barriers to potential**
11 **desistence.**

12 39. One way in which social transition may *decrease desistence* is the
13 psychological difficulty children and adolescents may face in transitioning back to an
14 identity aligned with their natal sex after publicly transitioning to a transgender
15 identity.

16 40. One group of researchers, in a qualitative study of 25 gender variant
17 youth, found that “some girls, who were almost (but not even entirely) living as boys
18 in their childhood years, experienced great trouble when they wanted to return to the
19 female gender role.”³⁴ In light of that possibility, they “suggest[ed] a cautious
20 attitude towards the moment of transitioning.” I agree.

21 41. WPATH also recognizes that “[a] change back to the original gender
22 role can be highly distressing and even result in postponement of this second social
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25 ³³ James R. Rae, *Predicting Early-Childhood Gender Transitions*, Psychological Science
26 Vol. 30(5) 669–681 at 669–70 (2019).

27 ³⁴ Steensma, T. D., et al., *Desisting and persisting gender dysphoria after childhood: A*
28 *qualitative follow-up study*, Clin. Child. Psychol. Psychiatry (Jan. 7, 2011),
<http://ccp.sagepub.com/content/early/2011/01/06/1359104510378303>.

1 transition on the child’s part.”³⁵ So does the Endocrine Society: “If children have
2 completely socially transitioned, they may have great difficulty in returning to the
3 original gender role upon entering puberty.”³⁶

4 42. In short, a social transition represents one of the most difficult
5 psychological changes a person can experience. For all these reasons embarking upon
6 a social transition based solely upon the self-attestation of the youth without
7 consultation with parents and appropriate professionals is unwise.

8 43. Further to place teachers in the position of accepting without question
9 the preference of a minor and further direct such teachers to withhold the
10 information from parents concerning their minor children is hugely problematic.

11 **V. SOCIAL TRANSITION IS NOT ALWAYS THE BEST**
12 **OPTION FOR A CHILD OR ADOLESCENT**

13 **A. Some children and adolescents stop wanting to transition after**
14 **an exploratory process to understand the cause of their**
15 **feelings and self-perceptions.**

16 44. As discussed above, multiple studies have reported that many children
17 who experience gender incongruence ultimately revert to identifying with their natal
18 sex. I personally have worked with youth, who, after an exploratory and therapeutic
19 process, ultimately decided that transitioning was not the best approach for them.

20 45. WPATH’s SOC8 argues that “recognition that a child’s gender may be
21 fluid and develop over time [citations omitted] is not sufficient justification to negate
22 or deter social transition for a pre-pubescent child when it would be beneficial.”³⁷ I
23 understand the SOC8’s caveat, “when it would be beneficial,” as an implicit

24 ³⁵ WPATH SOC7 at 17; *see also* WPATH SOC8 at S78 (“Another often identified
25 social transition concern is that a child may suffer negative sequelae if they revert to
26 the former gender identity that matches their sex designated at birth.”).

27 ³⁶ Endocrine Society Guidelines at 3879.

28 ³⁷ WPATH SOC8 at S76.

1 recognition that a social transition is not *always* beneficial for every child or
2 adolescent experiencing gender incongruence. Indeed, SOC8 repeatedly
3 “emphasizes the importance of a nuanced and individualized clinical approach to
4 gender assessment,”³⁸ both for children and for adolescents.³⁹ While SOC8’s focus is
5 on medical interventions, the same is true for social transitions.

6 46. WPATH’s SOC8 asserts that the fluidity of gender variance during
7 youth is not a reason to “negate or deter social transition,” however, the reality that
8 gender variant feelings can be fluid for many young people warrants caution before
9 making any significant changes, including a social transition. Part of a mental-health
10 provider’s role is to counsel patients to exercise caution and explore what they are
11 feeling before making major changes.⁴⁰

12 **B. We are becoming more aware of cases in which young people**
13 **have transitioned and later desist or are detransitioning.**

14 47. Yet another reason for caution is the growing awareness of
15 “detransitioners”—youth who previously transitioned to a transgender identity but
16 later decide to revert to an identity that aligns with their natal sex. Many of these
17 youth express regret about their prior transition.⁴¹ Some go further and express anger
18 at providers who they feel gave them an inadequate evaluation.⁴²

19 _____
20 ³⁸ WPATH SOC8 at S68.

21 ³⁹ WPATH SOC8 at S45 (“Given the emerging nature of knowledge regarding
22 adolescent gender identity development, an individualized approach to clinical care is
considered both ethical and necessary.”).

23 ⁴⁰ *E.g.*, APA Guidelines at 843 (noting that, for adolescents in which “late-onset
24 gender-dysphoria and TGNC identification [] come[s] as a significant surprise,”
“[m]oving more slowly and cautiously in these cases is often advisable.”).

25 ⁴¹ WPATH SOC8 at S47.

26 ⁴² *E.g.*, Grace Lidinsky-Smith, *There’s No Standard for Care When it Comes to Trans*
27 *Medicine*, Newsweek (June 25, 2021), [https://www.newsweek.com/theres-no-
28 standard-care-when-it-comes-trans-medicine-opinion-1603450](https://www.newsweek.com/theres-no-standard-care-when-it-comes-trans-medicine-opinion-1603450).

1 48. This population has not yet been adequately studied or quantified—
2 indeed it has only recently been acknowledged in the literature—but the existence of
3 this population is undeniable at this point.⁴³ WPATH’s SOC8 recognizes that
4 “detransitioning may occur in young transgender adolescents and health care
5 professionals should be aware of this.”⁴⁴

6 49. In a recent survey of 237 detransitioners (92% of which were natal
7 females), 70% reported that one reason for their detransition was the realization that
8 their “gender dysphoria was related to other issues.”⁴⁵ Half reported that transition
9 did not help with the dysphoria, and 34% reported that their dysphoria “resolved
10 itself over time.” Nearly half of those surveyed (45%) reported “not feeling properly
11 informed about the health implications of the accessed treatments and interventions
12 before undergoing them.” And 60% listed “learning to cope with feelings of regret”
13 as one of their psychological needs during the detransitioning process.

14 50. The recent and dramatic increase in the number of natal female
15 adolescents who assert a transgender identity, and the reality reflected in the study
16 above that a subset of these later detransition and regret transitioning, also warrants
17 caution before rushing into a social transition. As WPATH acknowledges, this recent
18 trend among adolescent girls may be driven in part by “excessive peer and social
19 media influence.”⁴⁶ A number of recent surveys have documented a significant
20 deterioration in the health of adolescents in recent years, especially during the
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22 _____
23 ⁴³ E.g., Irwig, M.S., *Detransition Among Transgender and Gender-Diverse People—An*
24 *Increasing and Increasingly Complex Phenomenon*, J. Clin. Endocrinology & Metab.
(June 9, 2022), <https://doi.org/10.1210/clinem/dgac356>.

25 ⁴⁴ WPATH SOC8 at S47.

26 ⁴⁵ Vandebussche, E., *Detransition-Related Needs and Support: A Cross-Sectional*
27 *Online Survey*, Journal of Homosexuality, 69:9, 1602–1620 (2022).

28 ⁴⁶ WPATH SOC8 at S58.

1 pandemic and among adolescent girls.⁴⁷ We are also becoming increasingly aware of
2 the effect of social media on adolescent girls in particular—that population appears to
3 be uniquely susceptible to negative mental health outcomes and imitations of
4 behavior related to heavy social media use.⁴⁸

5 51. I regularly monitor an online community of detransitioners on reddit
6 (/r/detrans), and have observed many similar stories reported in that online
7 community.

8 52. The potential for a difficult detransition process in the future and regret
9 over a prior transition are important considerations that a mental-health provider
10 should help a child or adolescent and their parents understand before they decide to
11 undertake a social transition.

12 **C. Social transition sets children down a path that often leads to**
13 **medical interventions.**

14 53. Yet another reason for caution is that social transition often leads to
15 medical interventions, many of which have permanent, long-term effects (or the
16 effects are not yet fully known).⁴⁹ Not everyone who socially transitions goes on to
17 pursue medical interventions, but many do.

18 54. In the Olson study discussed above, only 37 of the 317 participants
19 (11.7%) had started puberty blockers when the study began. By the end of the study
20

21 _____
22 ⁴⁷ E.g., CDC, *Adolescent Behaviors and Experiences Survey* (Mar. 31, 2022),
<https://www.cdc.gov/healthyyouth/data/abes.htm>

23 ⁴⁸ E.g., Amy Orben, *Windows of development sensitivity to social media*, *Nature*
24 *Communications* 13, 1649 (2022); Robert H. Shmerling, *Tics and TikTok: Can social*
25 *media trigger illness?*, Harvard Health Publishing, Harvard Medical School (Jan. 18,
26 2022), <https://www.health.harvard.edu/blog/tics-and-tiktok-can-social-media-trigger-illness-202201182670>.

27 ⁴⁹ E.g., WPATH SOC8 at S46 (noting the “lifelong implications of medical
28 treatment”).

1 (five years later), 190 of the 317 participants (59.9%) had started either puberty
2 blockers and/or cross-sex hormones.⁵⁰

3 55. The fact that a high percentage of children who socially transition later
4 feel the need to undergo medical interventions to maintain or further align their
5 appearance with the identity adopted during a social transition further highlights the
6 fact that social transition is itself a major health and mental health decision that may
7 lead to important long-term consequences in the life of the child, for good or ill. This
8 is itself an important consideration that children and adolescents, and their parents,
9 should understand and weigh when deciding whether to undertake a social transition.
10 Without the involvement of a mental health professional, they are unlikely to obtain
11 the information and counsel necessary to make an informed decision.

12 **D. Social transition upon request without assessment and a**
13 **treatment plan is not endorsed by *any* medical or mental**
14 **health organization.**

15 56. For the reasons I have explained above, an assessment process and plan
16 can be critically important *before* a child or adolescent transitions. I recognize that
17 some children and adolescents do socially transition before meeting with a mental-
18 health professional. But the fact that some individuals and families disregard sound
19 practice is a problem that mental health professionals and schools should work to
20 address, not a reason to ignore sound practice.

21 57. As far as I am aware, no medical or mental health organization
22 recommends that adults facilitate a social transition upon a child or adolescent's
23 request without a careful evaluation by an appropriately trained mental health
24 professional. WPATH's SOC7 recommends a careful, psychological assessment and
25 guidance from a mental health professional to help parents "weigh the potential
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28 ⁵⁰ Olson (2022) at 2, 4.

1 benefits and challenges” of a social transition.⁵¹ The Endocrine Society’s Guidelines
2 “advise that decisions regarding the social transition of prepubertal youths with
3 GD/gender incongruence are made with the assistance of an MHP or another
4 experienced professional” (the guidelines do not say anything different about
5 adolescents).⁵² The American Psychological Association recommends that
6 “[p]sychologists are encouraged to complete a comprehensive evaluation and ensure
7 the adolescent’s and family’s readiness to progress,” to discuss “the advantages and
8 disadvantages of social transition during childhood and adolescence” with parents
9 and their children, and to assist parents and their children with “developmentally
10 appropriate decision-making about their education, health care, and peer networks, as
11 these relate to children’s and adolescent’s gender identity and gender expression.”⁵³

12 58. While its recommendations focus on medical interventions, WPATH’s
13 SOC8 likewise recognizes that “a comprehensive clinical approach is important and
14 necessary” and recommends “a comprehensive biopsychosocial assessment of
15 adolescents who present with gender-identity concerns.”⁵⁴ SOC8 even emphasizes
16 that “[t]reatment in this context (e.g., with limited or no assessment) has no
17 empirical support and therefore carries the risk that the decision to start gender-
18 affirming medical interventions may not be in the long-term best interest of the young
19 person at that time.”⁵⁵

20 59. In a few places, although it is not entirely clear about this, certain
21 statements in SOC8 could be read to suggest that social transition should be

22 ⁵¹ WPATH SOC7 at 14–15, 17.

23 ⁵² Endocrine Society Guidelines at 3870.

24 ⁵³ APA Guidelines at 843.

25 ⁵⁴ WPATH SOC8 at S45, S50; *see also id.* (“Given the emerging nature of knowledge
26 regarding adolescent gender identity development, an individualized approach to
27 clinical care is considered both ethical and necessary.”).

28 ⁵⁵ WPATH SOC8 at S51.

1 implemented immediately upon the request of a child or adolescent. SOC8 says that
2 “social transition should originate from the child and reflect the child’s wishes in the
3 process of making the decision to initiate a social transition process,”⁵⁶ and that any
4 “efforts at blocking reversible social expression or transition [like] choosing not to
5 use the youth’s identified name and pronouns” are “disaffirming behaviors” that are
6 always inappropriate and equivalent to conversion therapy.⁵⁷

7 60. To the extent that one reads these statements as an endorsement of the
8 view that children and adolescents should always immediately be allowed to socially
9 transition upon request, this goes too far. As I have noted above, social transition may
10 not in fact be easily “reversible.” As a result, it can be appropriate for parents to say
11 “no” to a social transition (whether at school or elsewhere) to, among other things,
12 allow time for assessment and exploration with the help of a mental health
13 professional before making such a significant change. Part of parents’ job is to help
14 their children avoid making bad decisions. That ordinary parental role is not remotely
15 comparable to or properly characterized as “conversion therapy.” As WPATH’s
16 SOC7 recognizes, it is appropriate for parents to decide whether to “allow” a social
17 transition for their children.⁵⁸ Neither SOC 7 nor SOC 8 suggest that school
18 personnel should decide whether a minor should socially transition, let alone doing so
19 and hiding this information from parents.

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26 ⁵⁶ WPATH SOC8 at S76.
27 ⁵⁷ WPATH SOC8 at S53.
28 ⁵⁸ WPATH SOC7 at 17.

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VI. PARENTAL INVOLVEMENT IS ESSENTIAL AT EVERY STAGE IN THE PROCESS

A. Parental involvement is essential as a practical matter in order for a child or adolescent to be seen by a mental-health provider.

61. Aside from a few limited exceptions, medical and mental-health providers generally cannot see or treat a minor without informed consent from the parent(s)/legal guardian(s), both as a matter of state laws and as a matter of medical ethics.⁵⁹

62. As WPATH’s section on adolescents recognizes, many adolescents lack the “skills for future thinking, planning, big picture thinking, and self-reflection” that are necessary for informed decision-making.⁶⁰ Adolescents’ decisions are often influenced by factors that are unrelated to their long-term best interests, like “a sense of urgency that stems from hypersensitivity to reward,” a “heightened focus on peer relationships,” and “increased risk-taking behaviors.”⁶¹ In light of the ongoing and unfinished development of emotional and cognitive maturity during adolescence, “[i]n most settings, for minors, the legal guardian is integral to the informed consent process.”⁶²

63. Parental involvement is also necessary as a practical matter. Many children and adolescents could not get to any appointments with a mental-health provider without their parents’ assistance. And most children and adolescents do not

⁵⁹ *E.g.*, WPATH SOC8 at S61 (“In most settings, for minors, the legal guardian is integral to the informed consent process: if a treatment is to be given, the legal guardian (often the parent[s]/caregiver[s]) provides the informed consent to do so.”).

⁶⁰ WPATH SOC8 at S62.

⁶¹ WPATH SOC8 at S44.

⁶² WPATH SOC8 at S61.

1 have their own health insurance and would have no way to pay for those
2 appointments.

3 64. For these and other reasons, in my practice, I will not (nor have I ever,
4 that I can recall) see a minor child or adolescent without informed consent from a
5 parent/legal guardian. During my years at the Child and Adolescent Gender Clinic at
6 UCSF, we routinely would decline to see minors without a parent present. And our
7 standard practice was to obtain an informed consent form from a parent prior to
8 initiating any form of treatment. If a minor presented for treatment without a parent
9 present or if there were questions about which parent had decision-making authority,
10 we would cease further contact until we could confirm that we had proper informed
11 consent from the parent or parents with decision-making authority.

12 **B. Parental involvement is important for accurate diagnosis, as**
13 **parents often have a critical perspective on the history and**
14 **likely causes of a child’s or adolescent’s gender questioning**
15 **feelings.**

16 65. Parents are often the only people who have frequently and regularly
17 interacted with a child or adolescent throughout the child’s or adolescent’s entire
18 life, and therefore they have a unique view of the child’s development over time.
19 Indeed, parents often have more knowledge than even the child or adolescent does of
20 whether their child or adolescent exhibited any signs of gender incongruence or
21 gender dysphoria during the earliest years of life.

22 66. Thus, parental involvement is a critical part of the diagnostic process to
23 evaluate how long the child or adolescent has been experiencing gender
24 incongruence, whether there might be any external cause of those feelings, and a
25 prediction of how likely those feelings are to persist.

26 67. WPATH, for example, notes that “parent(s)/caregiver(s) may provide
27 key information for the clinical team, such as the young person’s gender and overall
28 developmental, medical, and mental health history as well as insights into the young

1 person’s level of current support, general functioning, and well-being.”⁶³

2 68. And, as WPATH notes, “a parent/caregiver report may provide critical
3 context in situations in which a young person experiences very recent or sudden self-
4 awareness of gender diversity and a corresponding gender treatment request, or when
5 there is concern for possible excessive peer and social media influence on a young
6 person’s current self-gender concept.”⁶⁴ In my practice, it is a common occurrence
7 that the reconstructed history from a child or adolescent does not match the reported
8 history from the parent. Likewise, children and adolescents often acknowledge that
9 they have consumed many hours of social media from other transgender youth and
10 have absorbed these experiences in some personal way.

11 69. Indeed, WPATH’s SOC8 recommends “involving parent(s) or primary
12 caregiver(s) in the assessment process ... in almost all situations,” and adds that
13 “including parent(s)/caregiver(s) in the assessment process to encourage and
14 facilitate increased parental understanding and support of the adolescent may be one
15 of the most helpful practices available.”⁶⁵ In my practice, I find it critical that I, the
16 parents, and the child come to consensus about the truth about each individual child.

17 70. In assessing an individual child or adolescent, it is my own practice to
18 meet with the parent(s) before seeing a child or adolescent, to get their perspective
19 on when, where, and how their child’s feelings began, and I will often meet with
20 parents throughout the assessment process as well, as necessary.

21 **C. Parental involvement is necessary for treatment of gender**
22 **dysphoria and/or other diagnosed coexisting conditions.**

23 71. Given the need for informed consent, as explained above, parental
24 involvement is a necessary prerequisite for any kind of treatment by a medical

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26 ⁶³ WPATH SOC8 at S58.

27 ⁶⁴ WPATH SOC8 at S58.

28 ⁶⁵ WPATH SOC8 at S58.

1 professional, whether for gender dysphoria or any coexisting mental-health condition.
2 For example, a child experiencing depression/anxiety related to gender incongruence
3 ordinarily could not receive counseling or medication to treat the depression/anxiety
4 without the informed consent of a parent/guardian.

5 72. Parents should also be involved to make important decisions about next
6 steps for their minor child or adolescent, especially given the somewhat complicated
7 risk-benefit calculus in this context and the limited knowledge about long-term effects
8 and outcomes. WPATH’s SOC7, for example, recommends that mental health
9 professionals “help *families* to make decisions regarding the timing and process of
10 any gender role changes for their young children,” and to provide “counsel and
11 support” even “[i]f parents do not allow their young child to make a gender role
12 transition.”⁶⁶ Similarly, WPATH’s SOC8 recommends that mental health providers
13 “should provide guidance to *parents/caregivers* and supports to a child when a social
14 gender transition is being considered” and to “facilitate the parents/caregivers’
15 success in making informed decisions about the advisability and/or parameters of a
16 social transition for their child.”⁶⁷

17 73. In my practice, I always contact the parent(s) at the end of the
18 assessment process to share my thoughts and recommendations so that they can
19 ultimately make the decision about what is best for their child.

20 **D. A school-facilitated transition without parental consent and**
21 **buy-in interferes with the parents’ ability to pursue a careful,**
22 **investigative assessment before undergoing a gender identity**
23 **transition.**

24 74. If a school facilitates a social transition at school without parental
25 consent and buy-in, it necessarily interferes with the parents’ ability to take a

26 ⁶⁶ WPATH SOC7 at 17.

27 ⁶⁷ WPATH SOC8 at S78.

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1 cautious approach and pursue an evaluation and assessment before allowing their
2 child or adolescent to make significant changes to their identity.

3 75. A school-facilitated transition without parental consent also interferes
4 with parents’ ability to pursue a treatment approach that does not involve an
5 immediate transition—such as an exploratory process to understand the cause of the
6 feelings or self-perceptions of gender incongruence.

7 76. Finally, a school-facilitated transition without parental consent
8 necessarily interferes with the parent(s)’ ability to say “no” to a social transition,
9 which can be appropriate in some circumstances.

10 **E. A school-facilitated transition without parental consent and**
11 **buy-in creates unnecessary and additional tension in the**
12 **parent-child relationship.**

13 77. A school-facilitated transition over the objection of parents (or possibly
14 worse, without their knowledge) necessarily creates tension in the parent-child
15 relationship. A common principle in the training for psychotherapists who work with
16 children and adolescents is to never create or aggravate any tensions in the parent-
17 child relationship. By facilitating a social transition at school over the parents’
18 objection, a school would drive a wedge between the parent and child.

19 78. Similarly, facilitating a double life for some children, in which they
20 present as transgender in some contexts but cisgender in other contexts, is not in
21 their best interest.

22 79. WPATH recognizes that “social transition for children typically can
23 only take place with the support and acceptance of parents/caregivers.”⁶⁸ Likewise,
24 “adolescents are typically dependent on their caregivers/parents for guidance in
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28 ⁶⁸ WPATH SOC8 at S77.

1 numerous ways,” including as they “navigate[] through the process of deciding
2 about treatment options.”⁶⁹

3 80. As WPATH notes elsewhere, “[p]arent and family support of TGD
4 youth is a primary predictor of youth well-being.”⁷⁰ Circumventing, bypassing, or
5 excluding parents from decisions about a social transition undermines the main
6 support structure for a child or adolescent who desperately needs support.

7 **F. No professional body that I am aware of has endorsed school-**
8 **facilitated social transition of minors without parental**
9 **knowledge and consent.**

10 81. I am not aware of any professional body that has endorsed school-
11 facilitated social transitions without parental consent. As noted above, WPATH’s
12 SOC7 recommends that *mental-health professionals* advise, but ultimately defer to,
13 parents whether or not they “allow their young children to make a social transition to
14 another gender role.”⁷¹ The Endocrine Society’s Guidelines “advise that decisions
15 regarding the social transition of prepubertal youths with GD/gender incongruence
16 are made with the assistance of an MHP or another experienced professional” (which
17 would require the informed consent of the parents).⁷² And the American
18 Psychological Association advises psychologists to discuss “the advantages and
19 disadvantages of social transition during childhood and adolescence” with parents
20 and their children, to promote discussion between parents and their children about
21 “developmentally appropriate decision making.”⁷³

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24 ⁶⁹ WPATH SOC8 at S49.

25 ⁷⁰ WPATH SOC8 at S58.

26 ⁷¹ WPATH SOC7 at 17.

27 ⁷² Endocrine Society Guidelines at 3870.

28 ⁷³ APA Guidelines at 843.

1 **VII. CONCLUDING SUMMATION OF OPINIONS**

2 82. In light of the above, it is my expert opinion that Escondido Union
3 School District’s policies excluding parental involvement and decision-making
4 regarding the care of their gender incongruent or gender dysphoric children is
5 contrary to widely accepted mental health principles and practice. I am not aware of
6 any professional body that would endorse EUSD’s policies which envision adult
7 personnel socially transitioning a child or adolescent without evaluation of mental
8 health professionals and without the consent of parents or over their objection.

9 83. Rather, when a child presents with a desire to use a new name or
10 pronouns, the very first step should be a careful professional assessment by a mental
11 health professional with expertise in child gender incongruence. The first step should
12 not be, as EUSD’s policies provide, the immediate and unhesitating affirmance of the
13 child’s request without parental involvement or knowledge.

14 84. Social transition, undertaken by EUSD school personnel, is an impactful
15 psychotherapeutic intervention. It may or may not be the best therapeutic approach
16 for any specific child. EUSD’s policies, which require immediate social transition of
17 children who request it, may increase persistence among children who have desisted
18 had they received evaluation by a competent mental health professional. Persistence
19 for such children is not in their best long-term interest.

20 85. Finally, EUSD’s policies are contrary to best practices regarding
21 maintaining the relationship between parents and their children. Best mental health
22 practices abhor activity that drives a wedge between parents and children, creating
23 distrust and tension. In all cases, parental consent is required to provide medical and
24 psychological treatment to minors. In part, this is because the science of mental
25 health recognizes that the best evidence regarding a minor’s mental and emotional
26 well-being comes from first-hand accounts by parents, rather than biased accounts
27 from immature children.

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1 86. In sum, the Escondido Union School District’s gender identity policies
2 which exclude parental involvement and decision-making regarding the care of their
3 children are contrary to best mental health practices. Rather than ensuring student
4 safety and overall mental-health well-being, EUSD’s policies are discordant with the
5 practices of all mental health professional associations and are more likely to lead to
6 student harm.

7 I declare under penalty of perjury under the laws of the United States and the
8 State of California that the foregoing is true and correct.

9 Executed on May 11, 2023, in Berkeley, California.

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DocuSigned by:
Dr. Erica Anderson
DE472E04315D410...
Erica E. Anderson, PhD

EXHIBIT A

Curriculum Vitae
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Summary

Educator, academic administrator, clinical psychologist, consultant, and healthcare executive with experience in the development, promotion, and operation of health, human service, and information technology businesses and professional educational programs. Practicing clinical psychologist, media resource, expert witness and consultant..

Education

- 1973 – 1978 Ph.D. (Clinical Psychology) Graduate School of Psychology, Fuller Theological Seminary, Pasadena, California
- 1973 – 1977 M.A. (Theology) Graduate School of Theology, Fuller Theological Seminary
- 1970 – 1973 B.A. Summa Cum Laude (Honors Psychology), University of Minnesota
- 1969 – 1970 Whittier College (Dean’s List)

Licenses Held

- Licensed Psychologist
- State of California
- State of Minnesota
- Commonwealth of Pennsylvania (inactive)

Clinical Training in Psychology

- 1978 – 1979 Program in Health Psychology, Health Sciences Center (Hospital) University of Minnesota
- 1977 – 1978 Veterans Administration Hospital, Long Beach, California
- 1977 Andrus Gerontology Center, University of Southern California
- 1976 – 1977 Los Angeles County Medical Center, University of Southern California
- 1975 – 1978 Child Development Clinic, The Psychological Center, Pasadena, CA
- 1975 Children’s Health Center (Hospital), Minneapolis, Minn.

Academic/Teaching Positions Held

- 2019 – Present Global Education Institute, World Professional Association for Transgender Health
- 2018 – Present University of California, Berkeley, Adjunct faculty

- 2012 – 2018 John F. Kennedy University
 - 2012 – 2018 Professor of Clinical Psychology
 - 2014 Uber Chair of Graduate Psychology & Professor of Psychology
 - 2013 – 2014 Interim Dean, College of Graduate and Professional Studies
 - 2012 – 2013 Professor and Chair, Doctoral Program in Clinical Psychology (Psy.D)
- 2009 – 2012 Thomas Jefferson University, School of Population Studies, Senior Fellow
- 2006 – 2012 Immaculata University, Health Science and Services Department, Associate Professor of Healthcare Management
- 2005 – 2006 Chestnut Hill College, School of Graduate Studies, Adjunct Professor
- 1998 – 2001 Widener University Psy.D./ MBA program, Adjunct Clinical Professor
- 1989 Fuller Theological Seminary, Graduate School of Psychology, Adjunct Associate Professor
- 1979 – 1983 University of Minnesota Minneapolis, Minnesota, School of Public Health, Program in Health Psychology, Assistant Professor
- 1975 – 1977 Pasadena City College, Instructor in Psychology

Experience

- 2016 – present Private Clinical and Consulting Practice, Oakland/Berkeley, California
- 2016 – 2021 Medical Staff in Pediatric Endocrinology/Behavioral Pediatrics, supporting the Child and Adolescent Gender Clinic at the University of California San Francisco Benioff Children’s Hospital
- 2009 – 2012 Thomas Jefferson University, Senior Fellow, School of Population Health
- 2006 – 2012 Immaculata University, Chair, Health Science and Services Department
- 2001 – 2006 Anderson Health Strategies, L.L.C., Consulting
- 1997 – 2001 Integra, Inc., President, Chief Executive Officer, Board Member
- 1996 – 1997 Anderson Health Strategies, L.L.C., Consulting
- 1994 – 1996 Merck-Medco/Merit Behavioral Care Corporation, Executive Vice President & General Manager
- 1991 – 1994 College Health Enterprises, Senior Vice President
- 1986 – 1991 Pacificare Health Systems & Columbia General Life, Lifelink, Inc., Chief Operating Officer (Lifelink) & Vice President (Columbia General)
- 1979 – 1986 Kiel Professional Services, Inc., President & Chief Operating Officer
- 1979 – 1986 Private Practice, Licensed Consulting Psychologist, Minneapolis/St. Paul, Minnesota

Selected Memberships & Awards

- American Psychological Association Life member
- American College of Healthcare Executives (previous)
- World Professional Association for Transgender Health
- Phi Beta Kappa
- American Academy of Achievement – Outstanding Achievement Award
- Summa Cum Laude Graduate Honors in Psychology
- National Register of Health Service Providers in Psychology
- American Public Health Association (previous)
- Association of University Programs in Healthcare Administration(previous)

Selected Scholarly & Professional Consultancies

- 2021 – present American Psychological Association, Task Force on Guidelines for transgender and non-binary persons
- 2013 – 2016 Accreditation Site Visitor, Commission on Accreditation, American Psychological Association
- 2015 – 2018 Clinical Criteria Reviewer World Health Organization ICD-XI
- 2012 – 2016 Editorial Consultant Professional Psychology Research and Practice
- 2009 – 2011 Academy of Management, Independent Reviewer
- 1993 – 1995 Behavior Healthcare Tomorrow Journal, Editorial Consultant
- 1982 – 1984 Hennepin County District Court, Minneapolis MN, First Examiner (Psychiatric & Substance Abuse Involuntary Commitments)
- 1981 – 1985 Wilder Foundation St. Paul, Minnesota Psychologist Consultant
- 1981 – 1983 Journal of Gerontology. Editorial Consultant
- 1979 – 1983 Ebenezer Society Minneapolis, Minnesota, Psychologist Consultant

Organizations and Boards Served:

- 2019 – present Past President, Northern California Group Psychotherapy Society
- 2019 – 2021 USPATH (United States Affiliate of WPATH), President
- 2019 – 2021 WPATH World Professional Association for Transgender Health, Board Member
- 2016 – 2020 Joan's House (not for profit shelter/transitional program for homeless and recently incarcerated transgender persons), Board Chair
- 2014 – 2017 American Transpersonal Psychology Association, Board Member
- 2012 – 2014 Committees served at John F. Kennedy University
 - Faculty Quality Committee (Chair)
 - Graduate & Professional Studies
 - Continuing Education Committee

- 2007–2012 Advisory Group, Nuclear Medicine Program Lancaster General
- 2007–2012 Advisory Group, Surgical Technology Program Lancaster General
- 2007–2012 Chester County Healthcare Task Force, Chester County, Pennsylvania
- 2006 – 2012 Committees served at Immaculata University:
 - College of Undergraduate Studies Curriculum & Policy Committee
 - President’s Council, Entrepreneurship Committee
 - College of Lifelong Learning Curriculum Committee
 - Advisory Group MSN Program Division of Nursing
- 1998 – 2001 Integra, Inc., Board of Directors
- 1992 – 1999 Track Advisor Behavioral Health & Hospital Tracks
National Managed Health Care Congress (NMHCC)
- 1990 – 1992 Industrial Social Work Advisory Board, School of Social
Work, University of Southern California, Los Angeles
- 1988 – 1990 Promotions Committee, Self Insurance Institute
of America, Phoenix, Arizona
- 1991 – 1993 Reimbursement & Managed Care Committee-Co
Chair, California Psychological Association
- 1991 – 1994 Board of Directors Division I (Clinical), California Psychological
Association
- 1982 Mental Health and Aging Task Force, Hennepin County Human Services
Minneapolis
- 1981 – 1983 Board of Directors-Community Services Division, Ebenezer Society
& American Lutheran Church
- 1980 – 1985 Examiner, District Court, Involuntary Commitments, Hennepin
County
- 1984 – 1986 Public Information-Chair Minnesota Psychological Association
- 1983 – 1985 Ethics Committee Minnesota Psychological Association
- 1979 – 1983 Committees served at the University of Minnesota
 - All University Council on Aging-Policy Committee
 - Ethics Committee
 - Education Committee School of Public Health
 - Dean’s Ad Hoc Promotion Committee-Dean’s Appointment

Television credits:

- 2021 CBS 60 Minutes
- 2017 Gaygalen (Sweden)
- 2016 All for Sverige (Sweden)

Expert Testimony at Trial or By Deposition Within the Last 4 Years:

- *Spry v. Costco Wholesale Company*, No. 19-2-14927-2, Superior Court, State of
Washington, County of King, Expert testimony via affidavit and deposition (2019
– 2021)
- *Monroe v. Jeffreys*, No. 18-156-NJR United States District Court, Southern
District of Illinois, Expert testimony at trial (August 2021)

Publications in the Last 10 Years:

- Erica Anderson, Jacob R. Eleazer, Zoe Kristensen, Colt M. St. Amand, Abigail M. Baker, Anthony N. Correro II, Maria Easter Cottingham, Kate L. M. Hinrichs, Brett A. Parmenter, Julija Stelmokas & Emily H. Trittschuh (2022): *Affirmative neuropsychological practice with transgender and gender diverse individuals and communities*, *The Clinical Neuropsychologist*, DOI:10.1080/13854046.2022.2073915
- Alireza Hamidian Jahromi, Sydney R. Horen, Amir H. Dorafshar, Michelle L. Seu, Asa Radix, Erica Anderson, Jamison Green, Lin Fraser, Liza Johannesson, Giuliano Testa & Loren S.M. Schechter, Loren Schechter (2021) *Uterine transplantation and donation in transgender individuals; proof of concept*, *International Journal of Transgender Health*, 22:4, 349-359, DOI:10.1080/26895269.2021.1915635
- Erica Anderson, *A new and poorly understood group of gender-questioning youth are overwhelming the system. We need to pause and accept that we may be in UNCHARTED territory, writes clinical psychologist and transgender woman DR. ERICA ANDERSON*, *Daily Mail* (May 2022), <https://www.dailymail.co.uk/news/article-10826793/New-poorly-understood-group-gender-questioning-youth-overwhelming-DR-ERICA-ANDERSON.%E2%80%A6>
- Jenny Jarvie, *A transgender psychologist reckons with how to support a new generation of trans teens*, *Los Angeles Times* (April 2022), <https://www.latimes.com/world-nation/story/2022-04-12/a-transgender-psychologist-reckons-with-how-to-support-a-new-generation-of-trans-teens>
- Erica Anderson, *Opinion: The health establishment is failing young adults who question their gender*, *San Francisco Examiner* (March 2022), https://www.sfexaminer.com/archives/opinion-the-health-establishment-is-failing-young-adults-who-question-their-gender/article_52832479-1ddd-596b-b64b-6c7b60addbdf.html
- Erica Anderson, *Opinion: When it comes to trans youth, we're in danger of losing our way*, *San Francisco Examiner* (January 2022), https://www.sfexaminer.com/archives/opinion-when-it-comes-to-trans-youth-we-re-in-danger-of-losing-our-way/article_833f674f-3d88-5edf-900c-7142ef691f1a.html
- Lisa Selin Davis, *A Trans Pioneer Explains Her Resignation from the US Professional Association for Transgender Health*, *Quillette* (January 2022), <https://quillette.com/2022/01/06/a-transgender-pioneer-explains-why-she-stepped-down-from-us-path-and-w-path/>
- Laura Edwards-Leeper and Erica Anderson, *The mental health establishment is failing trans kids*, *Washington Post* (November 2021), <https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/>
- Lawrence Rubin, *Erica Anderson on Working Therapeutically Across the Gender Spectrum*, *Psychotherapy.net* (2019), <https://www.psychotherapy.net/interview/lgbt/therapy-across-gender-spectrum>

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 11
 12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 ELIZABETH MIRABELLI, an individual,
 15 and LORI ANN WEST, an individual,

16 Plaintiffs,

17 v.

18 MARK OLSON, in his official capacity as
 19 President of the EUSD Board of
 20 Education, et al.,

21 Defendants.

Case No.: 3:23-cv-0768-BEN-WVG

**Declaration of Plaintiff Elizabeth
 Mirabelli in Support of Motion for a
 Preliminary Injunction**

Judge: Hon. Roger T. Benitez
 Courtroom: 5A
 Hearing Date: June 26, 2023
 Hearing Time: 10:30 a.m.

1 I, Elizabeth Mirabelli, declare and state as follows:

2 1. I am a plaintiff in this action. I am a primary school teacher employed by
3 the Escondido Union School District. I have been teaching middle-school English
4 with EUSD for 25 years, with the most recent 17 at Rincon Middle School. The
5 matters discussed below are based on my own personal knowledge. I could and would
6 testify to them if called upon to do so in court.

7 **REACTION TO THE LAWSUIT**

8 2. I am submitting this declaration to update the testimony that I provided
9 in the verified complaint. As stated in the complaint, I have been teaching English to
10 middle-school students for 25 years. I am double-board certified by the National
11 Board for Professional Teaching Standards; I am a Master Teacher; and I have been
12 named the Rincon Middle School Teacher of the Year. I currently teach seventh
13 grade English.

14 3. Also as stated in the complaint, I am a devout Roman Catholic. The
15 teachings of my faith are extremely important to me. Because of my faith, I have
16 always sought the best for my students. For 25 years, I have done everything I can to
17 make a positive impact in the lives of young people, guiding them to be upstanding,
18 responsible, and courteous citizens.

19 4. When the Escondido Union School District first advised me of its new
20 gender identity policies, I became extremely distraught. My initial instinct was that
21 the policies were not good for children—and in that sense—I was worried about how
22 I could comply with the policies without violating my faith, including its teaching that
23 I always seek the best for the children in my care. Secondarily, I was worried about
24 any liability I might have for deceiving parents. It seemed to me that the Escondido
25 Union School District was asking me to do something illegal.

26 5. However, I was also very afraid of bullying and retaliation at Rincon
27 Middle School if I spoke up. Various teachers and staff at Rincon Middle School have
28 been very outspoken about their views on gender identity. I was afraid that—even if

1 district administrators did not take any adverse action against me—various Rincon
2 personnel would take it into their own hands to retaliate.

3 6. Since Lori and I filed this lawsuit on Thursday, April 27, 2023, my fears
4 were proven justified. Thankfully, neither of us were teaching on Friday, April 28,
5 but a co-worker reported to us that a significant number of Rincon Middle School
6 teachers came to school wearing Rainbow Pride colors. Many of them were wearing
7 Rainbow t-shirts; others simply wore Rainbow ribbons or pins. It was very clear that
8 the teachers were all protesting our lawsuit, which they somehow viewed as anti-gay.

9 7. On Monday, May 1, when I returned to class, matters quickly
10 deteriorated. On that day, I was able to confirm that many teachers were indeed
11 conspicuously wearing Rainbow Pride colors. It also seemed to me that various
12 teachers were spreading false rumors about this lawsuit and what it is about. For me,
13 this lawsuit is about not stepping between parents and their children. That
14 relationship is sacred. I never want to deceive parents or teach children that it is okay
15 to lie to their parents. At its most basic, I cannot provide the moral example to
16 children that it is okay to hide important matters from their parents. As stated above,
17 I teach seventh graders. **They are predominantly 12 year old children.**

18 8. On Monday, I arrived in my classroom to find 15 small posters set up
19 around my classroom. It is unclear when these posters were put up. Either they were
20 put up on Friday, April 28, when a substitute teacher was handling my classroom, or
21 the students obtained access to the classroom at other times, when it should have
22 been locked. However it happened, it necessarily required various school personnel
23 to have coordinated with the children.

24 9. The small posters were notes written by my students on 8.5x11 sheets of
25 paper or napkins. The posters included political slogans, crude images, or offensive
26 statement such as:

- 27 a. “Mrs. Miraflaty + Mrs. West #Power Couple!”
28 b. “[H]ave a despicable day.”

1 c. "I thought school was a place where we can be accepted, not judged
2 by sexists and racists."

3 True and correct copies of photographs of these posters are attached as **Exhibit 33**.

4 10. If these posters were not enough, throughout the day on Monday,
5 May 1, several students also verbally expressed their disagreement with this lawsuit.
6 Several students called me "homophobic" or a "hater," or made statements such as
7 "You hate gays," "You are an old hag," and "You are against trans people."

8 11. During the last period of the day, several students angrily confronted
9 and screamed at me. One student mentioned carrying a baseball bat to protect her
10 homosexual brother (who is not transgender). Other students also stated that
11 transgender children will "commit suicide" due to this lawsuit. This included the
12 direct statement by one student that his friend was going to climb to the top of the
13 P.E. building and jump off.

14 12. On May 2, 3, and 4, I sent emails to Rincon Middle School Principal
15 Steve White and Assistant Principal Katelyn Sylvester, asking them to send an
16 administrator to check on my classroom during the last periods of the day (the most
17 disrupted periods) and to have an administrator meet with certain students. I was
18 hoping that by the school meeting with the students, administrators could calm them
19 down and explain that my lawsuit was about protecting the relationship between
20 parents and children, not attacking any student because of their identity. A true and
21 correct copy of these three emails is attached as **Exhibit 34**.

22 13. All during that week, various Rincon Middle School teachers continued
23 wearing Rainbow Pride paraphernalia to protest this lawsuit. On Thursday, May 4,
24 eight teachers also wore a specific t-shirt to the monthly teachers' meeting. That t-
25 shirt states "Equality Hurts No One" with the letters of "Equality" shaded with the
26 following flag stripes or changed into the following symbols:

- 27 E = Bisexual Pride Flag
28 Q = Disability Rights Symbol

- 1 U = Pansexual Pride Flag
- 2 A = Traditional Pride Flag (six colors)
- 3 L = Lesbian Pride Flag
- 4 I = Black Lives Matter Fist
- 5 T = Reproductive Rights Symbol
- 6 Y = Transgender Pride Flag

7 A true and correct copy of an image of this t-shirt is attached as **Exhibit 35**.

8 14. Also during this week, I discovered that teachers at Rincon Middle
9 School had been circulating a video apparently filmed by the band teacher during
10 band class on Friday, April 28. In that video, approximately twenty students are
11 shown singing the song “This is Me.” That song was featured in the film “The
12 Greatest Showman” and is about various circus performers proudly announcing that
13 they will not hide their presence.

14 15. During the video, at least eight students are waving various small Pride
15 Flags and one student repeatedly runs back and forth wearing a large Pride Flag as a
16 cape. When I saw the video, I was extremely saddened. It appeared to me that the
17 students were being used as pawns to make a political point. Children should never
18 be used in this way—which is part of the reason that I filed this lawsuit.

19 16. I greatly care for all of my students. They all come to me with extremely
20 varied backgrounds and experiences. I do not care about their race, sex, sexual
21 orientation, national origin, or immigration status. What I care about is doing my job
22 to help them grow to be the best person they can be, the best critical thinker, and the
23 most fluent speaker and writer of English that they can be. I never want them to feel
24 attacked or targeted, as I have been. I wish they knew that, in large part, this lawsuit
25 was filed for their benefit—not my own.

26 17. A true and correct copy of the lyrics of “This is Me” is attached as
27 **Exhibit 36**. A true and correct copy of screenshots from the video, with students’
28 faces redacted, is attached as **Exhibit 37**. A copy of the video will also be lodged with

1 the Court, with a motion to seal to protect the students' privacy.

2 18. Instead of protecting me and attempting to calm things down, Rincon
3 Middle School allowed various teachers to either directly harass me for this lawsuit or
4 use students as intermediaries to harass me. Thus, at the end of the day on Monday,
5 May 1, my attorney had written the attorney for the Escondido Union School District
6 to ask that I be placed on paid administrative leave.

7 19. When things deteriorated, as the week continued, this became more
8 urgent and the school district agreed on Thursday, May 4, effective immediately. I
9 did not return to work on Friday, May 5 and will be on administrative leave for the
10 rest of the school year.

11 20. However, I fully intend to resume my teaching duties with the 2023
12 2024 school year. So I need effective relief from this Court in advance of the first day
13 of school. On August 9, 2023, all certificated staff are required to report for workshop
14 days in advance of the first day of classes on August 15, 2023.

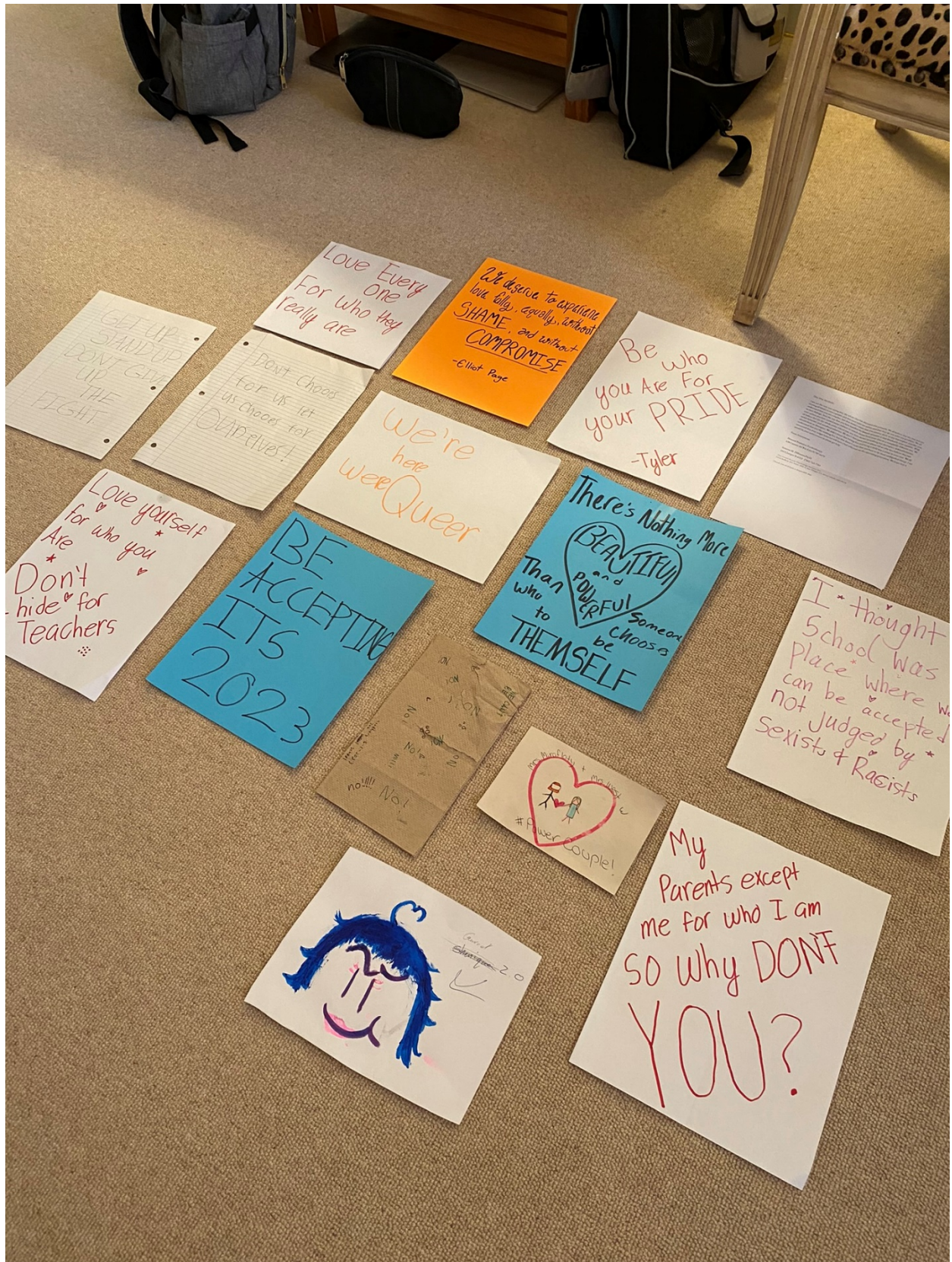
15 I declare under penalty of perjury under the laws of the United States and the
16 State of California that the foregoing is true and correct.

17 Executed on May 11, 2023, in Escondido, California.

18 
19 Elizabeth Mirabelli
20

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EXHIBIT 33



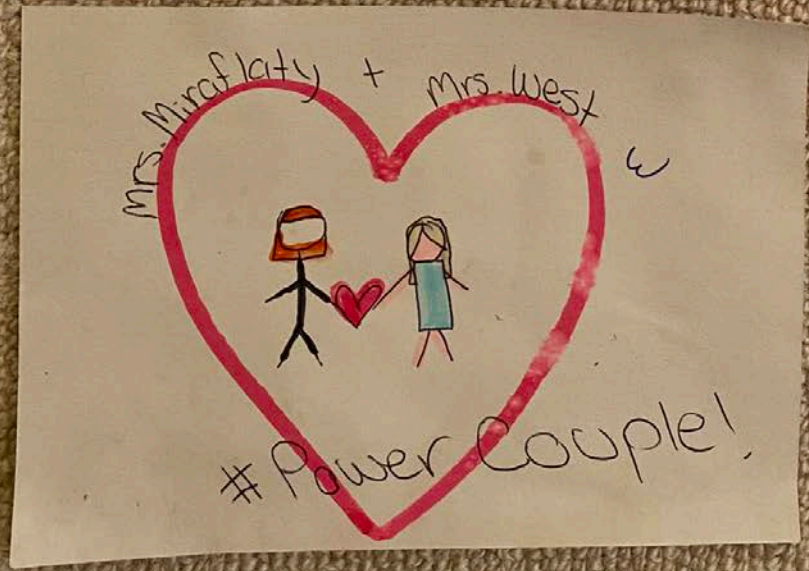
There's Nothing More
BEAUTIFUL
and
POWERFUL
Than who to be Someone chooses to be
THEMSELF

I* thoi
School
place*
can be
not ju
Sexists

Love yourself
♥ *
for who you
Are ♥

*
Don't
* hide ♥ for
Teachers ❖

My
Parents
me for
SO
✓





We're
here
were **Q**ueer

BE
ACCEPTING
ITS
2023

The
(A)
Tha
who
T

Love
♥
for u
Are
*
Do
hi

GET UP
STAND UP
DONT GIVE
UP
THE
FIGHT.

DONT Chooses
for us let
us Chooses for
Ourselves!

We deserve to experience
love fully, equally, without
SHAME, and without
COMPROMISE

-Elliot Page

Be who
you are for
your PRIDE

-Tyler

Dear Mrs, Mirabelli,

I am not the only one saying this, the whole class has discussed this privately. We all believe that the way you are treating all blocks is unacceptable and that your rules are unfair and that they do not solve any problem. We all understand that you are a teacher, but that doesn't mean that you need to show us any less respect. Just like you, we have feelings. And the way that you have handled the lawsuit situation is also absolutely unacceptable. With your actions you have caused many children to switch classes from your class to a completely different one. We all believe that for the whole entire school year, you have shown us nothing but disrespect, unkind behavior, unfair behavior, and unrefined solutions. We don't disrespect you so please tell us why you believe that you should show us disrespect. We didn't know that having fun and being a child was a crime in your eyes. We all understand that you like nothing fun, but that doesn't mean that you have to do these undignified things. I am concerned that your vulgar behavior will have a bad influence on the upcoming generation. We hope that it would be your achievement to please get help.

From Anonymous.

Personal Evolution Psychotherapy
438 Camino del Rio S (619) 787-6676

Susanne M. Dillmann, Psy.D.
210 S Juniper St #213 (760) 743-7789

The Green Room Psychology Services Inc
5252 Balboa Ave Suite 502-A San Diego, Ca 92117 (858) 480-9118.

Thank you and have a despicable day.

I* thought
School was a
place* where we
can be accepted
not judged by*
Sexists & Racists

My
Parents except
me for who I am
SO WHY DONT
YOU?

EXHIBIT 34



E. Mirabelli <[redacted]>

URGENT Request for Admin Support Safe Environment

2 messages

Mrs. Mirabelli <[redacted]>
To: Steven White <[redacted]>, Katelyn Sylvester <[redacted]>

Tue, May 2, 2023 at 11:39 AM

Good morning Steve,

Yesterday (Monday 5/1), when I returned to work, there were 15 messages tapped on the walls of my classroom. This happened on Friday while our guest teacher was here. Some of the messages were derogatory. Monday during period 6 & 7 several students confronted me, screamed slurs and called me derogatory names. Given the gravity of the situation, I am wondering why my room was not checked before my return. I hope this will not be allowed to continue, and that I will be protected by the admin. I am in need of your support starting today to protect my safety and well-being. The fact that this targeting occurred is a new set of issues that needs to be addressed immediately by your team and mine.

Of course we need to prioritize student safety. Some children may feel upset over the controversy. I would like to note: *This is the unfortunate consequence of admin allowing school staff to widely promote controversial issues (against board policy), including in the classroom learning environment.* That is fallout from Lesbian, gay, bisexual, transgender, queer, questioning, plus identities (LGBTQ+) messaging going unchecked and even being advanced rather than allowed with balanced and appropriate limitations, for example one campus display box and one designated club area. With this approach no one group is favored, while another group is excluded. Now, students of various religious backgrounds cannot attend this school without being subjected to a daily campus-wide campaign which mandates acceptance. **People** will always be accepted and supported. Moral **claims** of right and wrong may rightly be considered. Tragically, our students are being put through this unnecessarily.

I request action be taken by you, as you're in charge of this campus and responsible for all of our safety. Please ask an administrator to visit my classroom daily during periods 6 and 7. Further, I request that an administrator meet with the offending students as soon as possible. I will forward an email with their student ID numbers. Please reinforce expectations of respect and to let them know that you will be monitoring the situation. Also, if I call the office I ask for an immediate response. With a lack of protection this could easily become a hostile work environment.

Thank you for your ongoing support as we navigate this challenging situation.



Warm Regards,

Mrs. Mirabelli, NBCT

Rincon Middle School

ext. [REDACTED]

Visit Our Class Web Site

Believe * Achieve * Respect * Kindness

queer/questioning plus **sexual** identities (LGBTQ+) on the front board when teacher had stepped to the back of the room.

EC - 810985 Waving *Lesbian, gay, bisexual, transgender, queer/questioning plus sexual identities* (LGBTQ+) at teacher. Also placed one on teacher's desk.

DM - 725390 (insulted teacher/name calling)

Thank you both,



Warm Regards,
Mrs. Mirabelli, NBCT
Rincon Middle School
[redacted] ext. [redacted]
Visit Our Class Web Site
Believe * Achieve * Respect * Kindness

Mrs. Mirabelli <[redacted]> Thu, May 4, 2023 at 11:37 AM
To: Katelyn Sylvester <[redacted]>, Elizabeth Mirabelli <[redacted]>
Cc: Steven White <[redacted]>

Thank you Katelyn,

I am adding some pictures to document the situation. These items were placed in my classroom specifically to confront me after the filing of the Federal Lawsuit. I am confident that if students understand that there is a time, place, and manner to discuss controversial issues that we will be able to maintain our learning. Please note I have requested an administrator to stop by briefly on a daily basis during period 6. This is to support the students as they try to understand why teachers (and parents) have significant differences on issues that matter to them. Thank you for your support and follow through.

On Thu, May 4, 2023 at 10:56 AM Katelyn Sylvester <[redacted]> wrote:

Thank you for your communication Elizabeth. I am following up with an investigation of your report here.

Katelyn Sylvester (she/her)

Assistant Principal, Rincon Middle School
Escondido Union Elementary School District

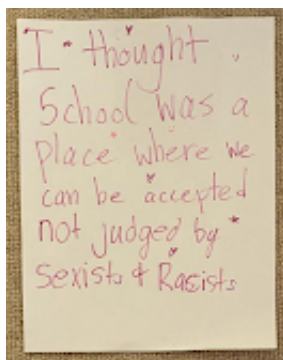
[Quoted text hidden]

[Quoted text hidden]

5 attachments



5-1-23 Posted in Hallway at Rm 13.png
854K



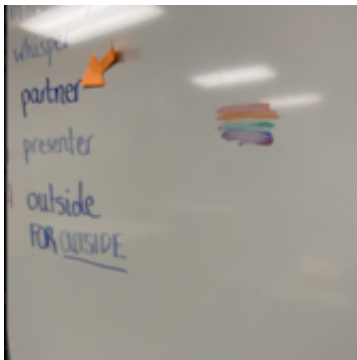
Posted on wall of Rm 13 4-28-23 .png
367K



Fan Being Popped in Class 5-2-23.png
935K



Flag Given to Teacher 5-1-23.png
693K



Left on Whiteboard 5-3-23
395K

by CA, EC, RW.png

EXHIBIT 35



EXHIBIT 36

“This is Me” by Keala Settle

I am not a stranger to the dark
Hide away, they say
‘Cause we don’t want your broken parts
I’ve learned to be ashamed of all my scars
Run away, they say
No one’ll love you as you are

But I won’t let them break me down to dust
I know that there’s a place for us
For we are glorious

When the sharpest words wanna cut me down
I’m gonna send a flood, gonna drown ‘em out
I am brave, I am bruised
I am who I’m meant to be, this is me
Look out ‘cause here I come
And I’m marching on to the beat I drum
I’m not scared to be seen
I make no apologies, this is me

Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh, oh-oh-oh, oh-oh-oh, oh, oh

Another round of bullets hits my skin
Well, fire away ‘cause today, I won’t let the shame sink in
We are bursting through the barricades and
Reaching for the sun (we are warriors)
Yeah, that’s what we’ve become (yeah, that’s what we’ve become)

I won’t let them break me down to dust
I know that there’s a place for us
For we are glorious

When the sharpest words wanna cut me down
I’m gonna send a flood, gonna drown ‘em out

I am brave, I am bruised
I am who I'm meant to be, this is me
Look out 'cause here I come
And I'm marching on to the beat I drum
I'm not scared to be seen
I make no apologies, this is me

Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh-oh
Oh-oh-oh, oh-oh-oh, oh-oh-oh, oh, oh
This is me

and I know that I deserve your love
(Oh-oh-oh-oh) there's nothing I'm not worthy of
(Oh-oh-oh, oh-oh-oh, oh-oh-oh, oh, oh)
When the sharpest words wanna cut me down
I'm gonna send a flood, gonna drown 'em out
This is brave, this is bruised
This is who I'm meant to be, this is me

Look out 'cause here I come (look out 'cause here I come)
And I'm marching on to the beat I drum (marching on, marching, marching on)
I'm not scared to be seen
I make no apologies, this is me

When the sharpest words wanna cut me down
I'm gonna send a flood, gonna drown 'em out
I'm gonna send a flood
Gonna drown 'em out
Oh
This is me

EXHIBIT 37



