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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

**Supplemental Request for Judicial  
 Notice, in Opposition to the State  
 Defendants’ Motion for Judgment on  
 the Pleadings**

**[Fed. R. Civ. P. 12(c)]**

Judge: Hon. Roger T. Benitez  
 Courtroom: 5A  
 Hearing Date: January 8, 2024  
 Hearing Time: 2:00 p.m.

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## INTRODUCTION

On January 8, 2024, this Court heard argument on the State Defendants’ motion for judgment on the pleadings, and took the motion under submission. *See* ECF Nos. 53, 62, 68, 70, 72, 75. Since that time, new evidence has come into existence that is relevant to the issues in that motion.

That new evidence is the issuance of a final Investigation Report, on February 1, 2024, in the CDE’s administrative investigation *In Re Investigation of Rocklin Unified School District*, CDE No. 2023-0202 (complaint filed Sep. 7, 2023). A copy of that report is attached hereto. That investigation concerns a complaint made against a local school district for adopting a policy of informing parents when their child socially transitions to a new gender at school. *See* Attch., p.3.

## LEGAL STANDARDS

“The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). “The court . . . must take judicial notice if a party requests it and the court is supplied with the necessary information.” *Id.* at subd. (c)(2); *see also Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1075 (9th Cir. 2010) (abuse of discretion to not take judicial notice “when a party requests it and supplies all necessary information”).

## ARGUMENT

With respect to the State Defendants’ motion to dismiss, the State Defendants argued that they were not proper defendants because “the plaintiffs have not pointed to one instance where there’s been a loss of funding from a local school district or there’s any kind of repercussions from not following these FAQ’s. There’s no fact here that would actually establish that.” ECF No. 39 at 124:19-23; *see also id.* at p.125:25-126:3 (“Nor is there any fact that’s been plead that would point to a loss of funding or the CDE pulling funding from any school district that didn’t abide by these

1 FAQ’s. So that’s what we would argue.”). At the hearing on the State Defendants’  
2 motion for judgment on the pleadings, they continued to argue similarly: “There’s  
3 several pieces there, your honor. The first is—I believe I answered the question  
4 directly the last time, and I would answer it the same way today—they’re not  
5 binding.” ECF No. 75 at 5:5-8.

6 This argument is rebutted by the CDE’s final Investigation Report in *In Re*  
7 *Investigation of Rocklin Unified School District*, CDE No. 2023-0202 (complaint filed  
8 Sep. 7, 2023). As a general matter, “[g]overnment investigation reports ... are ...  
9 judicially noticeable.” *United States v. Kiewit Pac. Co.*, No. 12-cv-2698, 2013 WL  
10 5770514, at \*5 (N.D. Cal. Oct. 24, 2013); *accord Iorio v. Allianz Life Ins. Co. of N. Am.*,  
11 No. 05-cv-633, 2010 WL 11508761, at \*7 (S.D. Cal. Jan. 27, 2010).

12 That final Investigation Report concludes with an order to the school district to  
13 notify all staff and students that its parental notification policy will not be enforced. If  
14 the school district refuses to do so, the report states that CDE will take action under  
15 Cal. Code Regs., tit. 5, § 4670. That provision permits “[t]he withholding of all or part  
16 of the local agency’s relevant state or federal fiscal support...” *Id.* at subd. (a)(1).

17 Plaintiffs believe that the final report issued in *In Re Investigation of Rocklin*  
18 *Unified School District*, CDE No. 2023-0202 (complaint filed Sep. 7, 2023), provides  
19 further support for the denial of the CDE Defendants’ motion for judgment on the  
20 pleadings.

21 Respectfully submitted,  
22 LiMANDRI & JONNA LLP

23  
24 Dated: February 8, 2024

By:

  
25 Charles S. LiMandri  
26 Paul M. Jonna  
27 Mark D. Myers  
28 Jeffrey M. Trissell  
Milan L. Brandon II  
Attorneys for Plaintiffs

**ATTACHMENT**



**CALIFORNIA DEPARTMENT  
OF EDUCATION**

**TONY THURMOND**  
STATE SUPERINTENDENT OF  
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

**California Department of Education  
Education Equity UCP Office  
Investigation Report**

Case Matter No. 2023-0202

Local Educational Agency: Rocklin Unified School District (RUSD)

Date Complaint Received by the CDE: September 7, 2023

Extension of Time Documented: November 6, 2023

Subject of Complaint: Discrimination on the basis of gender identity and expression

Report Mailed: February 1, 2024

**INVESTIGATION PROCEDURES AND DETERMINATION**

The California Department of Education (CDE) received a complaint requesting the CDE directly investigate an official action taken by the Rocklin Unified School District ("RUSD" or "District") School Board on September 6, 2023, that was alleged to be discriminatory as to a certain subset of students defined by characteristics protected under California Law. In response, the CDE engaged in a review of publicly available information and reached a determination that the complaint has merit, pursuant to Title 5 CCR, Section 4664(a)(5), consistent with the details found in the Conclusion section of this Investigation Report.

**SUMMARY OF COMPLAINT AND ALLEGATION**

On September 7, 2023, the CDE received written communication from the complainant, a Placer County educator. In that communication, the Complainant discussed concerns relative to an official action taken by the RUSD School Board on September 6, 2023. Pertinent to the California Department of Education (CDE), the complainant expressly stated:

" Yesterday [September 6, 2023], Rocklin Unified School District (a model district for many other districts in Placer County) voted on and passed a new policy that will disproportionately impact the safety of LGBTQ+ students in Rocklin and is discriminatory against their right to a safe educational environment."

Case Matter No. 2023-0202  
February 1, 2024  
Page 2

In that same communication the complainant specifically requested of the CDE:

" I hope that you [the CDE] will look into this inequitable policy and see that it is discriminatory in nature towards our most marginalized students."

### **JURISDICTION**

The CDE's jurisdiction to address the Complainant's request to determine whether the RUSD School Board's action on September 6, 2023, relative to "LGBTQ+ students" is discriminatory is set forth in subparagraph (F) of paragraph (1), of subdivision (a) of *Education Code (EC) 33315* and paragraph (5) of subsection (a) of Title 5 of the *California Code of Regulations (5 CCR)*, Section 4650.<sup>1</sup>

The CDE elected to directly intervene, determining that the policy in question (referred to as "Paragraph 21" or "P-21") raised serious questions as to whether its implementation would result in immediate denial of students' right to be free from discrimination. Additionally, the CDE determined that referring the complaint to the District would be futile inasmuch the District's Board itself had adopted the rule in question—P-21—and, therefore, District administrators are not in a position to make a final determination as to the legality of P-21.

### **PROCEDURES OF THE INVESTIGATION**

The procedures undertaken in this investigation are governed by the Uniform Complaint Procedures (UCP) statute and regulations. In this case, the investigation consisted of a review of publicly available information from the RUSD's Board meeting on September 6, 2023, including review of the minutes, and the language of the amendment to add Paragraph 21 to Board Policy Manual, Regulation 5020 (P-21). No witnesses were interviewed as the adoption of P-21 was a formal action contained in the minutes of the Board meeting and publicly displayed on the district's website.

### **FINDINGS OF FACT**

Pertinent to the allegation set forth above in the Summary of the Complaint and Allegation, the CDE makes the following findings of fact:

1. On September 6, 2023, in a regular meeting of the RUSD Board, the Board amended Board Policy Manual, Regulation 5020 (titled: "parent/Guardian Rights") to add Paragraph 21 to Regulation 5020.  
(This finding is based on the official RUSD website: [View Regulation 5020: Parent Rights And Responsibilities \(eboardsolutions.com\)](https://www.eboardsolutions.com).)

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<sup>1</sup> The relevant text of the applicable statutes and regulations are included in **Appendix A** attached to this report.

Case Matter No. 2023-0202  
February 1, 2024  
Page 3

2. The content of P-21 reads as follows:

*The rights of parents/guardians of district students include, but are not limited to, the following:*

...

*21. To be notified within three (3) school days when their child requests to be identified as a gender other than the child's biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; requests access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender.*

(This finding is based on the official RUSD website: [View Regulation 5020: Parent Rights And Responsibilities \(eboardsolutions.com\)](#).)

3. The published September 6, 2023 RUSD Board minutes pertinent to P-21 are as follows:

*7. Action Items - Regular Agenda*

*7.1 Action on Revisions to Administrative Regulation:  
AR5020 Parent Rights & Responsibilities and Administrative  
Regulation: AR5145.3 Nondiscrimination/Harassment*

*Motion to take action on Revisions to Rocklin Unified School District Administrative Regulation: AR 5020 Parent Rights & Responsibilities and Administrative Regulation: AR 5145.3 Nondiscrimination/Harassment*

*Motion by Dereck Counter, second by Tiffany Saathoff.*

*Final Resolution: Motion Passes*

*Yes: Dereck Counter, Rachelle Price, Tiffany Saathoff, Julie Hupp*

*No: Michelle Sutherland*

(This finding is based on the official RUSD website: [View Regulation 5020: Parent Rights And Responsibilities \(eboardsolutions.com\)](#).)

Case Matter No. 2023-0202  
February 1, 2024  
Page 4

### **APPLICABLE AUTHORITY**

California has stated an intent to allow all persons in public schools to be free of discrimination based on characteristics enumerated in California law. Among other such protected characteristics, California expressly prohibits discrimination by public education agencies on the basis of gender, gender identity, gender expression and sexual orientation (*EC* Sections 200 and 220)

### **APPLICATION OF LAW TO FINDINGS OF FACT**

As the *EC*, Section 220 makes clear, the prohibition against discrimination based on gender, gender identity, gender expression, and sexual orientation applies to *all persons* in public schools. Thus, the right to be free from discrimination applies to students. Paragraph 21 (P-21) on its face violates the prohibition against discrimination set forth in *EC* 220 for the reasons set forth below:

#### **Summary of Analysis**

The basis for determining that P-21 violates the non-discrimination provisions of *EC* Section 220 is that P-21, in its terms, effectively singles out, applies to and *only* affects a particular group of students defined by legally protected characteristics. The basis for finding noncompliance is discussed in detail below:

#### **Facially discriminatory policy**

Paragraph 21 (P-21) on its face fails to comply with the nondiscrimination requirements in *EC* Section 220. Specifically, P-21 requires specified school personnel to single out and report communications made exclusively by students who express a gender other than that identified at birth by:

- 1) requesting to be identified as a gender other than the child's biological sex or gender;
- 2) requesting to use a name or pronouns that do not align with the child's biological sex or gender; or
- 3) requesting access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender.

The inherent nature of the communications school personnel are required to report makes such notification applicable *exclusively* to this class of students. That is to say, the nature of the communications subject to P-21 limits the rule's applicability to the students who identify with or express a gender other than that identified at birth. Indeed, the very content of the student communication subject to mandatory notification constitutes a self-identification of the student-speaker as a member of a class of

Case Matter No. 2023-0202  
February 1, 2024  
Page 5

persons who fall within the statutory protections of *EC* Section 220 relative to non-discrimination. P-21 explicitly requires school personnel to contact parents, who are:

*“[t]o be notified within three (3) school days when their child requests to be identified as a gender other than the child’s biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child’s biological sex or gender; requests access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child’s biological sex or gender.”*

Hence, the very content of the communication triggering the policy identifies the student as a person who identifies with or expresses a gender other than that identified at birth—a classification of personal characteristics protected by law. By its terms, the mandates of P-21 harms students by providing sensitive information that is unique to students who would otherwise fall within categories the state has deemed should not be singled out under *EC* Sections 200 and 220.

To further clarify, the policy mandates that sensitive often private information, which is unique to a class of students with protected characteristics, must be disclosed by school administrators even if the student does not consent to the parent disclosure. This policy circumvents a student’s determination of when and where to share private personal information regarding gender identification and expression and it is required to be divulged without regard for the nuances of the relationship between the student and parent.

These harms and risks of harm to the students, their constitutional rights of privacy and the protections afforded by California’s anti-discrimination policies are significant.

Also bearing on this analysis is the fact that the parental notification mandates of P-21 on their face do not further an educational or school administrative purpose. Nor does the policy imply any such purpose. It simply intervenes in personal student-parent relationship issues for purposes entirely extraneous to the educational needs of the student and the administrative needs of the school. Finally, given the mandatory notification requirements of P-21, students who may otherwise exercise their right to make any of the requests addressed in P-21 are more likely to forego their rights in order to avoid personal and family difficulty.

Case Matter No. 2023-0202  
February 1, 2024  
Page 6

## **CONCLUSION**

For the reasons discussed above, P-21 on its face fails to comply with *EC* Section 220's prohibitions against discrimination. The CDE finds the District's policy—P-21—*on its face* singles out and is directed exclusively toward one group of students *based on* that group's legally protected characteristics of identifying with or expressing a gender other than that identified at birth. And the application of that policy adversely impacts those students. Finally, P-21 does not expressly or implicitly provide any educational or school administrative purpose justifying either form of discrimination.

## **CORRECTIVE ACTIONS**

The corrective actions addressing the findings of noncompliance are set forth in accordance with Title 5 *CCR* Section 4670.:

### **Corrective Actions Applicable to RUSD:**

Within 5 school days of receipt of this Investigation Report:

1. The Superintendent or the Superintendent's designee must inform all school personnel subject to P-21 in writing that the CDE has determined the policy is inconsistent with *EC* Section 220 and for this reason the mandatory notification requirements set forth in P-21 may not be implemented.
2. The Superintendent or the Superintendent's designee must provide written notification to all students within the District that the mandatory notification requirements of P-21 will not be implemented.

Within 10 school days of receipt of this Investigation Report:

3. The Superintendent or the Superintendent's designee must provide CDE's EEUCPO with evidence of compliance with these corrective actions, which must include copies of the writings referred to in 1 and 2 above.

Case Matter No. 2023-0202

February 1, 2024

Page 7

### **RIGHT TO RECONSIDERATION**

Either party may request a reconsideration of this Investigation Report by making a request within **30 days of the date of this letter** to:

Education Equity Uniform Complaint Procedures Office

[eeucpo@cde.ca.gov](mailto:eeucpo@cde.ca.gov)

Pursuant to Title 5, CCR section 4665, the Request for Reconsideration must specify and explain why:

(1) Relative to the allegation(s), the Department Investigation Report lacks material findings of fact necessary to reach a conclusion of law on the subject of the complaint, and/or

(2) The material findings of fact in the Department Investigation Report are not supported by substantial evidence, and/or

(3) The legal conclusion in the Department Investigation Report is inconsistent with the law, and/or

(4) In a case in which the CDE found noncompliance, the corrective actions fail to provide a proper remedy.

(Title 5, CCR section 4665 (a).)

**CERTIFICATE OF SERVICE**

***Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.***

USDC Court Case No.: 3:23-cv-00768-BEN-WVG

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 9120, Rancho Santa Fe, California 92067, and that I served the following document(s):

- **Supplemental Request for Judicial Notice, in Opposition to the State Defendants’ Motion for Judgment on the Pleadings.**

on the interested parties in this action by placing a true copy in a sealed envelope, addressed as follows:

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 Christopher Mandarano, Esq., Deputy General Counsel  
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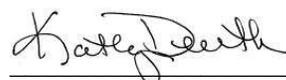
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       **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Rancho Santa Fe, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

  X   **(BY ELECTRONIC MAIL)** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

  X   **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service using the ECF/CM System for filing and transmittal of the above documents to the above-referenced ECF/CM registrants.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on February 8, 2024, at Rancho Santa Fe, California.



Kathy Denworth