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9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 12

13
 14 **ELIZABETH MIRABELLI, an**
individual, and LORI ANN WEST,
 15 **an individual,**

16 Plaintiffs,

17 v.

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

20 Defendants.
 21

3:23-cv-0768-BEN-VET

**DEF. BONTA’S REQUEST FOR
 JUDICIAL NOTICE IN SUPPORT
 OF MOTION TO DISMISS**

Date: April 1, 2024
 Time: 10:30 a.m.
 Courtroom: 5A
 Judge: The Honorable Roger T.
 Benitez

Action Filed: April 27, 2023

22 Pursuant to Federal Rule of Evidence 201, Defendant Rob Bonta, in his
 23 official capacity as Attorney General of California, hereby requests that the Court
 24 take judicial notice of the following documents in support of his Motion to Dismiss.
 25 These documents—which are all incorporated by reference in the First Amended
 26 Complaint—are relevant to establish that Plaintiffs lack standing to sue Defendant
 27 Bonta and that he is immune from suit under the Eleventh Amendment.
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MATTERS TO BE NOTICED

1. The complaint for declaratory and injunctive relief in *People v. Chino Valley Unified School District* (San Bernardino County Superior Court case no. CIV SB 2317301), a true and correct copy of which is attached hereto as **Exhibit 1**.

2. The legal advisory on application of California antidiscrimination statutes to transgender youth in schools originally issued by the California Department of Education in 2016, a true and correct copy of which is attached hereto as **Exhibit 2** and available online at <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.

3. The California Department of Education’s Frequently Asked Questions (FAQs) page concerning Assembly Bill No. 1266, a true and correct copy of which is attached hereto as **Exhibit 3** and available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.

4. The statewide guidance letter sent by the Attorney General on September 26, 2023, a true and correct copy of which is attached hereto as **Exhibit 4** and available online at <https://oag.ca.gov/system/files/attachments/press-docs/9-26-23%20Mirabelli-CV%20Guidance%20Letter.pdf>.

5. The legal alert regarding school forced disclosure policies issued by the Attorney General on January 11, 2024, a true and correct copy of which is attached hereto as **Exhibit 5** and available online at https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20re%20Forced%20Outing%20Policies.1.10.24_0.pdf.

LEGAL STANDARD AND ARGUMENT

Federal Rule of Evidence 201(b) establishes the criteria for judicially noticed facts: “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Further, Federal Rule of Evidence 901(b)(7) provides that evidence a public record or report is from the public office

1 where items of that nature are kept satisfies the requirement that admitted evidence
2 be authenticated. Federal Rule of Evidence 902(5) likewise allows for the self-
3 authentication of official publications issued by a public authority.

4 When considering a motion to dismiss under Rule 12(b)(1), the court may
5 look beyond the pleadings at documents incorporated into the complaint by
6 reference, and matters of which a court may take judicial notice. *DeFiore v. SOC*
7 *LLC*, 85 F.4th 546, 553 n. 2 (9th Cir. 2023) (materials of which a district court may
8 take judicial notice are not considered extrinsic evidence for purposes of Rule
9 12(b)(1)); *Applied Underwriters, Inc. v. Lara*, 530 F. Supp. 3d 914, 923 (E.D. Cal.
10 2021) (a court ruling on a Rule 12(b)(1) motion to dismiss must consider the entire
11 complaint and other sources incorporated by references as well as judicially
12 noticeable matters).

13 **A. Court Filings**

14 The complaint in *People v. Chino Valley Unified School District* (Exhibit 1) is
15 judicially noticeable as a court filing that is related to the matter before this Court,
16 in that Plaintiffs rely and cite to the claims in the *People v. Chino Valley Unified*
17 *School District* matter in their First Amended Complaint. *See, e.g., United States v.*
18 *Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (noting that a court “may take notice of
19 proceedings in other courts, both within and without the federal judicial system, if
20 those proceedings have a direct relation to matters at issue”); *Reyn’s Pasta Bella,*
21 *LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (taking judicial notice
22 of pleadings, memoranda, and other court filings); *Asdar Group v. Pillsbury,*
23 *Madison & Sutro*, 99 F.3d 289, 290 n. 1 (9th Cir. 1996) (court may take judicial
24 notice of pleadings and court orders in related proceedings).

25 **B. Guidance from Government Agencies**

26 A court may take judicial notice of records and reports of state administrative
27 agencies, such as guidance and opinion letters. *Lundquist v. Continental Cas. Co.*,
28 394 F. Supp. 2d 1230, 1243 (C.D. Cal. 2005) (noting it is “well established” that a

1 court may take judicial notice of the reports of an administrative body, and granting
2 request for judicial notice of an opinion letter and notice issued by California
3 Department of Insurance); *see United States v. 14.02 Acres*, 547 F.3d 943, 955 (9th
4 Cir. 2008) (judicial notice is proper for records and reports of government
5 agencies).

6 The guidance publications issued by the California Department of Education
7 (Exhibits 2-3) and the California Attorney General (Exhibits 4-5) are publically
8 available and their accuracy cannot be reasonably questioned. Moreover, the
9 content of these documents, regardless of the underlying truth of the legal analysis
10 therein, is relevant to Defendant Bonta’s arguments that Plaintiffs have failed to
11 establish standing and or that their claims fall within an exception to Eleventh
12 Amendment sovereign immunity.

13 **CONCLUSION**

14 For the foregoing reasons, the Court should grant this request for judicial
15 notice.

16
17 Dated: February 23, 2024

Respectfully submitted,

18 ROB BONTA
19 Attorney General of California
20 DARRELL W. SPENCE
21 Supervising Deputy Attorney General
22 KEVIN L. QUADE
23 Deputy Attorney General



24 EMMANUELLE S. SOICHET
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28

Exhibit 1

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

AUG 28 2023

[Signature]
 BY: Stephanis Paniagua, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN BERNARDINO

15 **CIV SB 2317301**

16 **THE PEOPLE OF THE STATE OF**
CALIFORNIA, EX REL. ROB BONTA,
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,

18 Plaintiff,

19 v.

20 **CHINO VALLEY UNIFIED SCHOOL**
DISTRICT,

22 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

Date:
 Time:
 Dept:
 Judge:
 Trial Date:
 Action Filed:

24 The People of the State of California, by and through Rob Bonta, Attorney General of the
 25 State of California, allege on information and belief as follows:

26 **INTRODUCTION**

27 1. The People of the State of California, acting by and through Attorney General Rob
 28 Bonta (collectively, the People), seek declaratory and injunctive relief, declaring Board

1 Policy 5020.1's (Policy 5020.1 or Policy) forced disclosure provisions unconstitutional according
2 to the State Constitution and in violation of State law, and enjoining Chino Valley Unified School
3 District from implementing Policy 5020.1's forced disclosure provisions.

4 2. Policy 5020.1's forced disclosure provisions include:

5 a. subdivisions 1(a) and 1(b) of the Policy in full;

6 b. subdivision 1(c) of the Policy, insofar as it applies to transgender or gender
7 nonconforming students' requests to change their name, pronouns, sex, or gender
8 on unofficial records; and

9 c. subdivision 5 of the Policy, insofar as it applies to transgender or gender
10 nonconforming students (i) requesting to be treated as a gender other than the
11 student's biological sex or gender listed on the student's birth certificate or any
12 other official records or (ii) accessing sex-segregated school programs or activities
13 that do not align with the student's biological sex or gender listed on the student's
14 birth certificate or any other official records.

15 3. Education is a fundamental right in California pursuant to the Equal Protection Clause
16 of the California Constitution, and education is essential to prepare our youth for civic
17 participation and to provide them with the information and judgment needed to maintain a healthy
18 democracy. (Cal. Const., art. IX, § 1.) As California's Constitution recognizes, the "diffusion of
19 knowledge and intelligence [is] essential to the preservation of the rights and liberties of the
20 people" (Cal. Const., art. IX, § 1.) Formal education also plays an essential role in building
21 understanding of California's diverse communities and the shared values that unite them.

22 4. This fundamental right to education is available to all, including those students who
23 are transgender, gender nonconforming, and those whose gender expression and gender identity
24 differ from their cisgender and gender conforming peers.

25 5. Under the California Constitution, and pursuant to state law, local educational
26 agencies must ensure that any policies they implement provide equal protection to all students
27 regardless of their gender expression, gender identity, or sexual orientation, and may not
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1 unlawfully discriminate against any protected class of students while receiving funds from the
2 State. (Cal. Const., art. I, § 7; Ed. Code, § 200 et seq.; Gov. Code, § 11135.)

3 6. The California Constitution also prohibits local educational agencies from infringing
4 on the privacy rights of their students. (Cal. Const., art I, § 1.)

5 7. These responsibilities of local educational agencies—to provide equal protection to
6 all students, and to refrain from infringing on the privacy rights of students—must not be taken
7 lightly, and certainly should not be used as justification for discrimination. However, instead of
8 honoring these duties, the Chino Valley Unified School District (District or CVUSD) has singled
9 out an especially vulnerable group of children and youth for discriminatory treatment:
10 transgender and gender nonconforming students.¹

11 8. On July 20, 2023, the District School Board adopted Policy 5020.1 and its forced
12 disclosure provisions. The policy mandates that Chino Valley Unified School District employees
13 “out” transgender and gender nonconforming students to their parents or guardians, regardless of
14 the students’ wishes, whenever the student asks to be identified or treated as a gender “other than
15 the student’s biological sex or gender listed on the student’s birth certificate or any other official
16 records.”

17 9. Policy 5020.1 also requires forced disclosure whenever a student requests to use a
18 different name than their legal name or to use pronouns “that do not align with the student’s
19 biological sex or gender listed on the student’s birth certificate or other official records.”

20 10. And Policy 5020.1 requires staff members to notify parents or guardians whenever
21 the student requests to access “sex-segregated school programs and activities,” including asking
22 to join a sports team or use a different bathroom.

23 11. Since the first day of the 2023-2024 school year, Policy 5020.1 has placed
24 transgender and gender nonconforming students in danger of imminent, irreparable harm from the
25 consequences of forced disclosures. These students are currently under threat of being outed to
26 their parents or guardians against their express wishes and will. They are in real fear that the

27 ¹ As explained below, as used herein, the term “gender nonconforming” includes
28 individuals who are gender nonbinary, i.e., whose gender identity fall outside the traditional male-
female binary.

1 District’s policy will force them to make a choice: either “walk back” their constitutionally and
2 statutorily protected rights to gender identity and gender expression, or face the risk of emotional,
3 physical, and psychological harm from non-affirming or unaccepting parents or guardians.

4 12. Policy 5020.1 unlawfully discriminates against transgender and gender
5 nonconforming students, subjecting them to disparate treatment, harassment, and abuse, mental,
6 emotional, and physical. This is by design: the Board’s plain motivations in adopting Policy
7 5020.1 were to create and harbor animosity, discrimination, and prejudice towards these
8 transgender and gender nonconforming students, without any compelling reason to do so.

9 13. Without action from this Court, transgender and gender nonconforming students’
10 rights to be free from unlawful discrimination, harassment, and abuse will be violated.

11 **JURISDICTION AND VENUE**

12 14. This Court has jurisdiction over the allegations and subject matter of the People’s
13 Complaint filed in this action and the parties to this action pursuant to Government Code
14 section 11180 et seq., and Government Code sections 525, 526, 1060; venue is proper in this
15 County.

16 **PARTIES**

17 15. The Attorney General is the chief law officer of the State and has the authority to see
18 that the State’s laws are uniformly and adequately enforced for the protection of public rights and
19 interests. (Cal. Const., art. V, § 13; Gov. Code, § 11180 et seq.) The Attorney General may file
20 any civil action for the enforcement of California’s laws he deems necessary for the protection of
21 public right and interests, absent direct constitutional or legislative restrictions. (See, e.g., *People*
22 *ex rel. Deukmejian v. Brown* (1981) 29 Cal.3d 150, 157.)

23 16. Defendant Chino Valley Unified School District receives state funds, is a public
24 school district organized and existing under the laws of the State of California, and is responsible
25 for providing public education to District students.

26 17. Defendant Chino Valley Unified School District is located in San Bernardino County
27 and serves nearly 26,000 students.

28

FACTUAL BACKGROUND

18. In California, education is a fundamental interest, and students have the right to equal protection with respect to its provision. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609, 619.) The State of California and the District are required to ensure that all students, regardless of gender, gender identity, and gender expression, are treated equally in all aspects of education. (Cal. Const., art. I, § 7, subd. (a); Ed. Code, §§ 200, 220, 262.4.)

19. The Attorney General has the authority, in his sole discretion, to bring claims against a school district for violation of the California Constitution, Article 1, section 7, or where the district has violated students’ right to be treated equally in all aspects of education, regardless of gender, gender identity, and gender expression. (Ed. Code, §§ 200, 220.)

20. The Attorney General has the authority, in his sole discretion, to bring claims against a school district that has unlawfully subjected transgender and gender nonconforming students in the district to discrimination while receiving funds from the state. (Gov. Code, § 11135.)

21. The Attorney General has the authority, in his sole discretion, to bring claims against a school district for violation of the California Constitution, Article I, section 1, where the district has violated the privacy rights of its students.

A. Transgender and Gender Nonconforming Students in Unsupportive Environments Experience High Degrees of Discrimination and Harassment

22. An individual is transgender if their gender identity differs from the sex the person had or was identified as having at birth. Gender nonconforming individuals include those whose gender identities that are not solely male or female (i.e., gender nonbinary). (Diamond, *Gender Fluidity and Nonbinary Gender Identities Among Children and Adolescents* (2020) 14 Child Development Perspectives 110.)

23. Gender identity is not a choice, and it is not a mental illness. It is an essential part of one’s identity and being, and cannot be voluntarily changed.

24. Transgender students in unsupportive or unsafe environments suffer significant levels of discrimination, abuse, and harassment, both physical and mental, well above their non-transgender peers.

1 25. Though schools are typically safe and supportive environments, schools that are not
2 can create serious harms for transgender students. A report analyzing 2017-2019 data concerning
3 students across 2,749 California schools—in grades seven, nine, and 11—found that transgender
4 students in California reported negative school experiences and poorer mental health “at higher
5 rates” than any other “sexual orientation subgroups.” (Hanson et al., *Understanding the*
6 *Experiences of LGBTQ Students in California* (Oct. 2019) The California Endowment, pp. 9, 52,
7 <https://tinyurl.com/v452ty7s>.)

8 26. A study of 2015-2016 data from California public schools found that more than 40
9 percent of transgender students reported being bullied because of their gender identity, as
10 opposed to only 7.3 percent of non-transgender students who reported gender-based bullying or
11 bullying on the basis of perceived gender identity. (De Pedro et al., *Exploring Physical,*
12 *Nonphysical, and Discrimination-Based Victimization Among Transgender Youth in California*
13 *Public Schools* (2019) 1 *Internat. J. of Bullying Prevention* 218, 222.)

14 27. This same study also reported that more than half (55.6 percent) of transgender
15 students in the State reported physical victimization (such as being threatened with a weapon,
16 threatened with harm, shoved, or in a physical fight), and more than two-thirds (69.2 percent)
17 reported nonphysical victimization, such as being called a demeaning name or being the recipient
18 of demeaning sexual jokes or gestures. (De Pedro, *supra*, *Internat. J. of Bullying Prevention* at
19 p. 222.)

20 28. Because transgender students face discrimination because of their gender identity,
21 they are also at risk of suicide and serious mental health issues. (James et al., *The Report of the*
22 *2015 U.S. Transgender Survey* (Dec. 2016) Nat. Ctr. for Transgender Equality, at p. 132; Kosciw
23 et al., *The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual,*
24 *Transgender, and Queer Youth in Our Nation’s Schools* (2020) GLSEN, pp. 52-4; Jody L.
25 Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and Its*
26 *Impact on Transgender People’s Lives* (2013) *J. of Pub. Mgmt. & Soc. Pol’y* 65, 76-8)

27 29. Eighty-six percent of transgender youth reported suicidal thoughts, and 56 percent of
28 transgender youth reported a previous suicide attempt. (Austin et al., *Suicidality Among*

1 *Transgender Youth: Elucidating the Role of Interpersonal Risk Factors* (2020) 37 J. Interpersonal
2 Violence 5.)

3 30. Conversely, transgender children who socially transition² have mental health
4 outcomes that mirror those of their cisgender peers. (Coleman et al., *Standards of Care for the*
5 *Health of Transgender and Gender Diverse People, Version 8* (2022) 23 Internat. J. of
6 Transgender Health S1, S77.)

7 31. A recent study examined the impact of supportive environments (i.e., affirming use of
8 chosen name and pronouns) on depression, suicidal ideation and suicide attempts among
9 transgender youth. Results showed that adding one context (e.g., school, friends) where affirmed
10 gender was used consistently decreased suicidal behavior by 56 percent. (Russell et al., *Chosen*
11 *Name Use Is Linked To Reduced Depressive Symptoms, Suicidal Ideation, And Suicidal Behavior*
12 *Among Transgender Youth*, J. of Adolescent Health (2018) pp. 503-505.)

13 32. The U.S. Centers for Disease Control and Prevention has found that, “[s]chool
14 connectedness, which is the feeling among adolescents that people at their school care about
15 them, their well-being, and success, has long-lasting protective effects for adolescents. Youth
16 who feel connected at school are less likely to experience risks related to substance use, mental
17 health, violence, and sexual behavior.” (Centers for Disease Control, *Youth Risk Behavior Survey:*
18 *Data Summary & Trends Report* (2021) p. 72.)

19 33. Additionally, while many transgender or gender nonconforming youth are fortunate
20 to have parents or guardians who are accepting of their gender identity, others are not so lucky.
21 Those who do not have parents or guardians who accept or affirm their gender identity risk
22 physical, mental, and emotional harm and abuse if their parents, guardians, or other relatives learn
23 of their identity.

24 34. In the 2015 U.S. Transgender Survey, 10 percent of respondents said that an
25 immediate family member had been violent toward them because they were transgender, and 15

26 ² Social transition is the process by which transgender people publicly affirm their gender identity
27 after coming out. This commonly involves changing one’s name and pronouns, as well as dress
28 and other external gender cues such as voice and mannerisms. (Olson et al., *Gender Identity 5*
Years After Social Transition (2022) 150 Pediatrics 2.) That study found that 94 percent of
transgender youth maintain their gender identity five years after social transition.

1 percent ran away from home or were kicked out of their home because they were transgender.
2 (James et al., *supra*, Nat. Ctr. for Transgender Equality at p. 65.) Of those who transitioned in the
3 year preceding the survey, eight percent reported violence from an immediate family member
4 because they were transgender, seven percent ran away from home, and eight percent had been
5 kicked out of their home. (*Id.* at pp. 71-72, 74.)

6 35. Fewer than one-in-three transgender and gender nonbinary youth found their home to
7 be gender-affirming, or accepting of their gender identity. (The Trevor Project, 2022 National
8 Survey on LGBTQ Youth Mental Health, p. 4, <https://tinyurl.com/2fn5xfjr>.)

9 36. Due to these risks, many transgender and gender nonconforming students are not
10 “out” to their immediate families.

11 37. Recognizing these risks, the California Department of Education has issued statewide
12 guidance since at least 2014, generally recommending that school officials and staff members not
13 “out” students to their parents or guardians against the students’ wishes. (Cal. Dept. of Ed.,
14 Frequently Asked Questions, <https://www.cde.ca.gov/re/di/eo/faqs.asp>.) Doing so, the guidance
15 notes, could “compromise the student’s safety” by “increasing the student’s vulnerability to
16 harassment,” violence, or other forms of abuse at school or at home. (*Ibid.*)

17 38. Many California districts, including Chino Valley Unified, have incorporated this
18 guidance into binding Administrative Regulations; CVUSD’s had been in place for years before
19 the adoption of Policy 5020.1.

20 39. California’s Education Code also requires schools to permit students “to participate in
21 sex-segregated school programs and activities, including athletic teams and competitions, and use
22 facilities consistent with” their “gender identity, irrespective of the gender listed on the pupil’s
23 records.” (Ed. Code, § 221.5, subd. (f).)

24 **B. The Chino Valley Unified District School Board Adopts Policy 5020.1 and**
25 **Demonstrates Its Animus**

26 40. On July 20, 2023, the District School Board, which has five members, held a public
27 meeting to discuss whether to adopt Policy 5020.1, requiring, in relevant part, school personnel to
28

1 “out” transgender and gender nonconforming students to their parents or guardians without their
2 consent and even against their express wishes.

3 41. Over several hours, more than 80 members of the public spoke regarding the forced
4 disclosure policy.

5 42. Those opposing the policy included current and former LGBTQ+ and cisgender
6 students, and teachers, parents, mental health professionals, and advocates who warned that the
7 policy would endanger transgender and gender nonconforming students.

8 43. A current CVUSD transgender student stated, “[t]his policy threatens my safety” and
9 “tells me I don’t belong.” The student explained: “52 percent of trans kids feel accepted at school,
10 but only 35 percent feel accepted at home. That leaves a large gap there of kids who feel welcome
11 at school but not at home. Feeling safe at school lessens suicide risk. If a student isn’t out to their
12 parent, [Policy 5020.1] shoves them ‘in the closet’ at school. That’s a miserable place to be.”

13 44. Another LGBTQ+ and current CVUSD student added, “[t]his policy will destroy the
14 lives of kids who should not have to live in fear for being their true selves.”

15 45. A third CVUSD student, who self-identified as LGBTQ+, noted that “LGBTQ youth
16 who experience parental rejection are eight times more likely to attempt suicide and six times
17 more likely to report major depressive symptoms.”

18 46. Explaining the consequences of forced disclosure, a recent graduate from a CVUSD
19 high school, who also self-identified as LGBTQ+, stated that “[Students] could be kicked out or
20 attacked by their parents both physically and verbally. Their home life may become a living hell
21 because of that [disclosure].”

22 47. Several adults read letters to the Board by Chino Valley LGBTQ+ students or
23 individuals who feared for their safety.

24 48. One read a letter from a transgender student that explained: “If a student is outed to
25 their family without their consent, this could possibly result in abuse, hate crimes, getting kicked
26 out of their homes, [and] in extreme cases, being murdered.”

27
28

1 49. Another letter from a transgender student raised “the continuous fear and pressure
2 that [the Policy] put[s] upon all of us trans youth. . . . we’re constantly in a state of panic, fearing
3 the consequences of being outed. Some of us may even feel the need to hide our identities.”

4 50. Parents of current CVUSD students expressed similar opposition to Policy 5020.1’s
5 forced disclosure provisions. One parent, who was also a “public school educator with 22 years of
6 experience,” identified the Policy as “a flagrant attempt to isolate, shame, and otherwise alienate
7 our LGBTQIA students, creating a hostile environment for them in our public schools.”

8 51. Another parent and former educator stated, “[t]his policy breaks down trust between
9 parents, teachers, and students and exposes our most vulnerable students. Policies like this . . .
10 make all kids feel less safe. Kids cannot learn if they do not feel safe, period.”

11 52. One former educator “know[s] students who left the district because they were
12 outed,” cautioning that “[t]hey will be put in . . . risky situations; they will be unhoused; they will
13 have . . . suicidal tendencies if this policy is passed.”

14 53. Also speaking in opposition to the Policy’s forced disclosure provisions, a school
15 counselor on the board of directors of the National Association of Social Workers’ California
16 Chapter warned that Policy 5020.1 “directly contradicts” social workers’ “oath to do no harm in
17 our work with students,” including social workers’ commitment to “put our students’ safety and
18 trust first.”

19 54. Sounding similar notes, another individual speaking in opposition referenced research
20 showing that “if parent notification was mandated,” youth are “less likely to seek . . . counseling
21 or medical services.”

22 55. One CVUSD teacher put it starkly: “This policy will out a student . . . putting them
23 into a hostile household, which will further their mental degradation to the point where they will
24 harm themselves. . . . This policy will kill somebody.”

25 56. State Superintendent of Public Instruction Tony Thurmond also attended the hearing,
26 speaking in opposition. Superintendent Thurmond pointed out that the policy “not only may fall
27 outside of the laws that respect privacy and safety for our students but may put our students at
28 risk because they may not be in homes where they can be safe.”

1 57. Individuals who spoke in support of Policy 5020.1’s forced disclosure requirements
2 claimed that transgender identity is a “mental illness,” a “delusion,” and a “damaging ideolog[y].”

3 58. Echoing these statements before voting to enact the policy, Board members described
4 students who are transgender or gender nonconforming as suffering from a mental illness or
5 perversion, or as being a threat to the integrity of the nation and the family.

6 59. Board Member 1, for example, stated, “there’s always been man, woman; and then
7 you have this transgender [identity] . . . it is an illusion; it is mental illness.” He noted that “at the
8 end, our children are going to be lonely, isolated, and in despair. And a lot of them are not going
9 to be having children because it’s one way to reduce the population, realistically.”

10 60. Board Member 1 further likened the issues related to gender identity to a “death
11 culture,” and claimed that that the Policy was needed because “women are being erased,” and that
12 “[i]t’s not going to end with transgenderism. . . . You got to put a stop to it.”

13 61. The Board President expressed “appreciat[ion]” for “each one of our board member’s
14 viewpoints,” offering no repudiation of Board Member 1’s comments about transgender identity.

15 62. Additionally, the Board President stated that transgender and gender nonconforming
16 individuals needed “non-affirming” parental actions so that they could “get better.”

17 63. In an earlier part of the Board meeting, the Board President claimed that the State
18 Superintendent—who had cautioned that the policy may endanger transgender or gender
19 nonconforming youth—was “proposing things that pervert children.”³

20 64. In his comments supporting the Policy, Board Member 2 stated that it was needed to
21 counter Karl Marx’s call, in the *Communist Manifesto*, “for the abolition of the family” and
22 prevent the creation of “the, quote and unquote, ‘new man.’”

23 65. At the conclusion of its meeting, the Board voted 4-1 to approve Policy 5020.1. The
24 Board President and Board Members 1, 2, and 3 voted in support.

25 66. Board Member 4, the lone dissenter, expressed concern that “[i]f this policy passes,
26 we will have, effectively, shut the door on students confiding to a staff member or a teacher,”
27 preventing the school from being “a supportive place.” Board Member 4 continued: “So how

28 ³ *Id.*, p. 75:1-6.

1 good is this notification process if these students are, effectively . . . ‘throw[n] . . . back into the
2 closet . . . slamming the door?’”

3 **C. The Policy Singles Out Transgender and Gender Nonconforming Students**
4 **for Discriminatory Treatment**

5 67. The Policy states that a school’s “[p]rincipal/designee, certificated staff, and school
6 counselors” shall notify parents or guardians “in writing, within three days” whenever “any
7 District employee, administrator, or certificated staff, becomes aware” that a student is:

8 (a) Requesting to be identified or treated, as a gender (as defined in Education Code
9 Section 210.7) other than the student’s biological sex or gender listed on the student’s
10 birth certificate or any other official records. This includes any request by the student
11 to use a name that differs from their legal name (other than a commonly recognized
diminutive of the child’s legal name) or to use pronouns that do not align with the
student’s biological sex or gender listed on the student’s birth certificate or other
official records.

12 (b) Accessing sex-segregated school programs and activities, including athletic teams
13 and competitions, or using bathroom or changing facilities that do not align with the
14 student’s biological sex or gender listed on the birth certificate or other official
records.

15 (c) Requesting to change any information contained in the student’s official or
unofficial records.

16 (Policy 5020.1, § 1, subs. (a)-(c).)⁴

17 68. Policy 5020.1 also requires school personnel to log and officially document the
18 forced outing of a transgender or gender nonconforming student: “The District employees who
19 make such notification shall either keep a record of such notification (if written) or document
20 such notification (if verbal) and place the record or documentation in the student’s official student
21 information system.” (*Id.*, § 5.)

22 69. Finally, Policy 5020.1 contains the following paragraph:

23 For purposes of this Board policy, Family Code Section 6924, Health and Safety
24 Code Section 124260, and Education Code Section 49602(C), inclusion of
25 parent(s)/guardian(s) is appropriate unless specifically prohibited by law. Nothing in
26 this policy affects the obligations of the District’s employees, administrators, and
certificated staff as mandated reporters under Article 2.5 of the Child Abuse and
Neglect Reporting Act Sections 11164-11174.3 of the Penal Code, and the District
Policy 5141 and Administrative Regulations 5141.4(a)).

27 ⁴ Policy 5020.1 also has provisions relating to disclosures, for instance, related to complaints of
28 bullying involving a child. (*Id.*, § 4.) As noted above, this litigation challenges the Policy’s
provisions on forced disclosure of gender identity.

1 (*Id.*, § 6.)

2 70. As to this paragraph, at the Board Meeting, counsel for the District stated that Policy
3 5020.1 was limited in application based on “very specific statutes” governing school counselors
4 and the disclosure of confidential information, although he did not reference these citations
5 specifically. Counsel claimed that if a student aged 12 years or older stated to a school counselor
6 “while receiving counseling services” that they wished to use different bathroom facilities or told
7 the counselor they were “transgender, gender nonconforming, binary, . . . whatever it is that is
8 their gender identity,” the counselor would be prohibited from disclosing this information based
9 on privacy.

10 71. Counsel’s characterizations were incorrect, as these statutory provisions do not limit
11 forced disclosure of a student’s gender identity at all, or only limit such forced disclosure in
12 narrow circumstances.

13 72. Family Code Section 6924, subdivision (d), directs counselors and mental health
14 providers providing treatment to minors 12 years and older to include “the minor’s parent or
15 guardian” in the treatment of the minor “unless, in the opinion of the professional person who is
16 treating or counseling the minor, the involvement would be inappropriate.” Health and Safety
17 Code Section 124260, subdivision (c) contains a nearly identical provision for students 12 years
18 and older, except that it also requires the professional person to consult with a minor before
19 determining that parental involvement is inappropriate.

20 73. Thus, rather than providing *prohibitions* on disclosure, these sections only *permit*
21 non-disclosure if the counselor concludes disclosure would be appropriate.

22 74. Education Code section 49602 states that personal information disclosed by a student
23 “in the process of receiving counseling from a school counselor . . . is confidential.” However,
24 Education Code section 49602, subdivision (c)—the subdivision cited in Policy 5020.1—*permits*
25 counselors to “[r]eport[] information to the principal or parents of the pupil when the school
26 counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present
27 danger to the health, safety, or welfare of the pupil” or “other school community members.”
28

1 75. Article 2.5 of the Child Abuse and Neglect Reporting Act (CANRA) simply requires
2 school personnel to report known or suspected child abuse to a Child Welfare Agency or a police
3 department; it does not require a school staff member to withhold a student’s transgender identity,
4 even if the staff member knows that disclosure could cause harm to the student.

5 76. Finally, Policy 5020.1 states that “[n]othing in this policy affects the obligations of
6 the District’s employees . . . under . . . District Policy 5141 and Administrative Regulation[]
7 5141.4(a).” But neither address student privacy or otherwise create an exemption to Policy
8 5020.1’s forced disclosure rule.

9 77. Chino Valley Administrative Regulation 5141.4(a) simply reiterates school
10 personnel’s mandatory reporting obligations under CANRA. And Policy 5141 enumerates steps
11 schools will take to provide “first aid and/or medical attention” in an emergency, noting that
12 “parents/guardians are notified as appropriate” whenever an accident or injury occurs.

13 **D. The Attorney General’s Investigation of Policy 5020.1**

14 78. On August 4, 2023, the Department of Justice (DOJ) began an investigation to
15 determine the legality and effect of Policy 5020.1’s forced disclosure provisions pursuant to
16 Government Code section 11180 et seq. The District was notified of the opening of the
17 investigation that same day.

18 79. Under Government Code section 11181, subdivision (h), the DOJ may “[p]resent
19 information or evidence obtained or developed from the investigation of unlawful activity to a
20 court . . . in connection with any action or proceeding.”

21 80. During the investigation, the DOJ interviewed or communicated with current District
22 counsel, the District Superintendent, students, parents, teachers, and community members
23 regarding Policy 5020.1 and its effects, and received documents responsive to subpoenas.

24 81. DOJ learned that counsel for the District provided a training and PowerPoint
25 presentation to school administrators across the District on July 19, 2023. In that training, counsel
26 referenced California’s right to privacy (Cal. Const., art. I, § 1), the right to safe schools (Cal.
27 Const., art I, § 28, subd. (f)), Education Code section 49602, and Penal Code section 11165.7 as
28

1 “legal issues with respect to parental notification.” Counsel also acknowledged the
2 recommendations provided in the California Department of Education’s statewide guidance.

3 82. At that training, district Superintendent Dr. Norm Enfield told administrators that
4 there were no other trainings planned, but that administrators were to train school staff about
5 Policy 5020.1 in staff training immediately prior to the first day of school on August 7, 2023.

6 83. On August 4, 2023, teachers in at least one school in the District attended training
7 from a school administrator regarding the District’s Policy 5020.1.

8 84. In an August 4 training at one school, a principal informed teachers that after the
9 school disclosed the student’s gender identity to the student’s parents or guardians, the school
10 principal would arrange a meeting between the principal, the student, and the student’s parents or
11 guardians. The principal also told teachers that the principal would “call the child out of class,”
12 inform the student of “what was going to happen,” and attempt to persuade the student to “walk it
13 back”—i.e., to disclaim their gender identity—before the meeting.

14 85. When a teacher asked for clarification in that training about when a “name” change
15 would trigger the forced disclosure, the principal stated that the forced disclosure would occur
16 only if the teacher received a request for a name change that the teacher believed was “gender
17 connected.”

18 86. During that training, the principal informed teachers that if they did not report a
19 student’s name, gender, or bathroom request to the school administration, it will be “an HR
20 issue.”

21 87. The principal also told teachers not to bring up the policy in their classrooms to avoid
22 students getting “fired up,” warning that if teachers did raise it with students, the teachers would
23 find themselves in an “awkward, uncomfortable position.”

24 88. Several teachers in the District have also informed DOJ that school personnel have
25 already disclosed several students’ gender identities to their parents or guardians without the
26 students’ consent, and have observed that these students have experienced emotional, physical, or
27 mental harm following the forced disclosure.
28

1 89. One teacher reported that one of his students was outed, against her wishes, within the
2 first two days of schools, leaving her in tears.

3 90. Multiple teachers have described how Policy 5020.1’s forced disclosure provisions
4 have created an environment of fear that has substantially harmed their students.

5 91. One teacher shared that, since the enactment of Policy 5020.1, LGBTQ+ students are
6 having hushed conversations about “which teacher is safe” and “which teacher might report
7 them.”

8 92. A second teacher observed “significant change” in students at his high school. As the
9 faculty liaison for the student-run LGBTQ+ club, this teacher had in previous years seen students
10 expressing their gender identity and other parts of their personality “openly,” with “enthusiasm,”
11 “energy and excitement.” After Policy 5020.1, students are “withdrawn” and “no longer . . .
12 speaking up” about “LGBTQ+ rights.”

13 93. One student, Jordan,⁵ informed a teacher that, following the enactment of Policy
14 5020.1, “I feel like I’m not wanted.” He expressed fear that his teacher will be forced to out him
15 to his parents, as Jordan had a parent hostile toward the LGBTQ+ community who had “an
16 aggressive personality”; Jordan “did not feel safe” if his gender identity was disclosed.

17 94. A former educator and parent of current students in the District spoke numerous times
18 with Morgan, a current District student who expressed fear of severe physical or emotional harm
19 that Policy 5020.1 would cause him.

20 95. Morgan had participated in his school’s “Gender Support Plan”—which provided
21 accommodations for his gender identity at school—but became fearful enough that he asked the
22 former educator whether he should delete their support plan and all the accommodations included
23 to avoid the even greater harm that would be caused by forced disclosure.

24 96. Chris, a current student in the District who prefers they/them pronouns, confirmed the
25 harms that students experienced when they (the students) felt unsafe and unable to openly share
26 their gender identity with faculty. Chris noted that when a teacher refused to recognize their
27 (Chris’s) gender identity, it caused them to withdraw completely from participating at all in class.

28 ⁵ Students are referred to by pseudonyms herein to protect their privacy and safety.

1 97. Chris was in attendance at the District’s July 20 Board meeting, and when they heard
2 the comments made by Board members, after several queer or transgender students had made
3 their presence known during public comment—comments calling transgender identity a
4 “delusion” or “mental illness”—Chris felt that the Board member “was speaking to us, the trans
5 kids in the audience. . . . like he wanted us to know that we were an illness that needed to be
6 cured. That we needed to be exterminated.”

7 98. The Board’s policy and its statements made Chris feel physically threatened.

8 99. Another transgender student in the District informed Chris that though this student
9 usually asks teachers to call them by a gender-affirming nickname, the student was too afraid to
10 do so this year due to the policy, and was “struggling with depression and anxiety.”

11 100. Chris affirmed how “extremely draining” it was to hide their identity. Chris stated,
12 “No kid wants to have to waste time that could be spent finishing their homework to attend a
13 Board meeting to fight for their right to exist. . . . We don’t deserve to be shoved back in the
14 closet, forever afraid to express who we are.”

15 101. The Rainbow Youth Project, an LGBTQ+ organization working in Chino Valley,
16 established a crisis hotline to collect reports related to the enactment of Policy 5020.1. Between
17 August 5 and 23, 2023, the Rainbow Youth Project’s case management and crisis teams answered
18 61 communications specifically from San Bernardino County, as reported by the individual
19 callers utilizing the hotline number designed for reports regarding Policy 5020.1.

20 102. Of the communications about Policy 5020.1’s forced disclosure provisions to
21 Rainbow Youth Project: 58 contacts reported a desire to relocate to a different school district; 54
22 contacts sought resources regarding rights and procedures under federal antidiscrimination law;
23 26 contacts screened positive for anxiety; 17 contacts screened positive for isolation; and one
24 contact expressed thoughts of self-harm and/or suicidal ideation that pre-dated the adoption of
25 Policy 5020.1 but were exacerbated by the adoption of Policy 5020.1. The individual expressing
26 thoughts of self-harm was referred to mental health counseling.

27
28

1 103. Our Schools USA, another organization working in Chino Valley, has informed DOJ
2 of additional reports of current students who have experienced harm or who reasonably fear harm
3 as a result of Policy 5020.1's forced disclosures.

4 104. During its investigation, counsel for the District represented that the District was in
5 the process of drafting an Administrative Regulation related to Policy 5020.1, to be presented for
6 consideration at the Board's September 7, 2023 meeting.

7 105. On August 14, 2023, the Attorney General served a letter on the District requesting
8 the District halt implementation or enforcement of Policy 5020.1 until after the District adopted
9 and promulgated Administrative Regulations related to Policy 5020.1.

10 106. On August 18, 2023, counsel for the District stated that the District rejected the
11 Department of Justice's request.

12 107. On August 18, the District provided a production of records that included a draft
13 Administrative Regulation 5020.1. The draft Administrative Regulation reiterates the forced
14 disclosure provision of Policy 5020.1 and adds that following a forced disclosure, the principal or
15 other individual will contact the Coordinator of Equity, Diversity, and Support system to facilitate
16 a student plan.

17 108. Investigating the District's policy, to date, the DOJ has found that Policy 5020.1 has
18 already resulted in forced disclosures of students' gender identity during the first two weeks of
19 school, causing harm, and that the Policy imminently threatens further severe, irreparable
20 physical, emotional, and psychological harm to students.

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California Constitution, Article I, section 7)**

24 109. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
25 as though they were fully set forth in this cause of action.

26 110. Under the California Constitution, Article I, section 7, sex is a suspect classification.
27 (See *Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 564; *Sail'er Inn,*
28 *Inc. v. Kirby* (1971) 5 Cal.3d 1, 17-20.) So too is sexual orientation: gay and lesbian people

1 constitute a protected class for equal protection purposes, because—like racial minorities and
2 women—they have been subject to invidious treatment unrelated to their ability to contribute to
3 society. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 843-844.) It follows that gender identity is
4 a suspect classification as well.

5 111. Following an investigation carried out pursuant to his authority as the state’s chief
6 law officer and pursuant to Government Code section 11180 et seq., the Attorney General has
7 determined that Defendant has violated the California Constitution, Article 1, section 7, by
8 subjecting transgender and gender nonconforming students in the District to expressly
9 discriminatory treatment, through passage and implementation of Policy’s 5020.1’s forced
10 disclosure provisions.

11 112. The District’s passage and implementation of Policy 5020.1’s forced disclosure
12 provisions violate the California Constitution, Article 1, section 7, by subjecting transgender and
13 gender nonconforming students in the District to expressly discriminatory treatment.

14 113. The District has no compelling interest for singling out transgender and gender
15 nonconforming students to different and unfavorable treatment, and the forced disclosure
16 provisions are neither necessary nor narrowly tailored.

17 114. Due to Defendant’s violations of the California Constitution, declaratory and
18 injunctive relief is an appropriate remedy.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of Education Code sections 200 et seq.)**

21 115. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
22 as though they were fully set forth in this cause of action.

23 116. Education Code section 200 states, in pertinent part, that “[i]t is the policy of the State
24 of California to afford all persons in public schools, regardless of their . . . gender, gender
25 identity, [or] gender expression . . . equal rights, and opportunities in the educational institutions
26 of the state.” It adds that “[t]he purpose of this chapter is to prohibit acts that are contrary to that
27 policy and to provide remedies therefor.”
28

1 117. Education Code section 220 implements that policy by prohibiting discrimination
2 based on gender, gender identity, and gender expression in state-funded programs and activities:
3 “No person shall be subjected to discrimination on the basis of . . . gender, gender identity, [or]
4 gender expression . . . in any program or activity conducted by an educational institution that
5 receives, or benefits from, state financial assistance, or enrolls pupils who receive state student
6 financial aid.”

7 118. Following an investigation carried out pursuant to his authority as the State’s chief
8 law officer and Government Code section 11180 et seq., the Attorney General has determined
9 that Defendant receives state funding and has violated Education Code section 200 et seq. by
10 subjecting transgender and gender nonconforming students to discrimination.

11 119. Defendant’s Policy 5020.1’s forced disclosure provisions discriminate against
12 transgender and gender nonconforming students on the basis of their gender identity and
13 expression by singling them out for unfavorable treatment.

14 120. Due to Defendant’s violations of Education Code sections 200 et seq., and their
15 implementing regulations, declaratory and injunctive relief is an appropriate remedy.

16 **THIRD CAUSE OF ACTION**
17 **(Violation of Government Code section 11135)**

18 121. Plaintiff realleges all paragraphs set forth above and incorporates them by reference
19 as though they were fully set forth in this cause of action.

20 122. Government Code section 11135 prohibits discrimination based on sexual orientation
21 or sex—which is defined to include gender and gender expression—in state-funded programs and
22 activities, including prohibiting unlawful denial of full and equal access to the benefits of and
23 unlawful discrimination under any such program or activity receiving funding or financial
24 assistance from the State.

25 123. Following an investigation carried out pursuant to his authority as the State’s chief
26 law officer, the Attorney General has determined that Defendant has violated Government Code
27 section 11135 by unlawfully subjecting transgender and gender nonconforming students in the
28 District to discrimination while receiving funds from the State.

- 1 a. subdivisions 1(a) and 1(b) of the Policy in full;
- 2 b. subdivision 1(c) of the Policy, insofar as it applies to transgender or gender
- 3 nonconforming students' requests to change their name, pronouns, sex, or gender
- 4 on unofficial records; and
- 5 c. subdivision 5 of the Policy, insofar as it applies to transgender or gender
- 6 nonconforming students (i) requesting to be treated as a gender other than the
- 7 student's biological sex or gender listed on the student's birth certificate or any
- 8 other official records or (ii) accessing sex-segregated school programs or activities
- 9 that do not align with the student's biological sex or gender listed on the student's
- 10 birth certificate or any other official records;

11 132. Issue an order permanently enjoining Defendant from implementing the following
12 provisions of Policy 5020.1:

- 13 a. subdivisions 1(a) and 1(b) of the Policy in full;
- 14 b. subdivision 1(c) of the Policy, insofar as it applies to transgender or gender
- 15 nonconforming students' requests to change their name, pronouns, sex, or gender
- 16 on unofficial records; and
- 17 c. subdivision 5 of the Policy, insofar as it applies to transgender or gender
- 18 nonconforming students (i) requesting to be treated as a gender other than the
- 19 student's biological sex or gender listed on the student's birth certificate or any
- 20 other official records or (ii) accessing sex-segregated school programs or activities
- 21 that do not align with the student's biological sex or gender listed on the student's
- 22 birth certificate or any other official records;

23 133. Issue an order entering final judgment;

24 134. Award reasonable attorneys' fees and costs of suit as permitted by law; and

25 For such other and further relief as the Court deems just and proper.

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27
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1 Dated: August 28, 2023

Respectfully submitted,

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Exhibit 2



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Legal Advisory

Legal Advisory regarding application of California's antidiscrimination statutes to transgender youth in schools.

This advisory replaces LO: 1-04, dated April 30, 2004, regarding application of California's antidiscrimination statutes to transgender youth in schools. The purpose of this advisory is to provide California school districts with updated guidance on the minimum requirements for compliance with California's prohibition on gender identity discrimination.

State and federal law generally prohibits discrimination, harassment, intimidation and bullying of students based on their actual or perceived sex, gender, sexual orientation, gender identity or expression, race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability or genetic information, or association with a person or group with one or more of these actual or perceived characteristics. (Education Code sections 220, 234.1; 42 U.S.C. sections 2000d-2000e-17, 2000h-2000h-6.)

In addition, Education Code Section 234.1, as amended by AB 9 (Ch. 728, Statutes of 2011), and Section 235, mandate that school districts ("districts"), including charter or alternative schools, adopt a policy prohibiting discrimination, harassment, intimidation and bullying based on the above categories at school or in any school activity related to school attendance or under the authority of the district. Education Code Section 234.1 further requires districts to adopt a process requiring school personnel to immediately intervene, when it is safe to do so, whenever they witness acts of discrimination, harassment, intimidation or bullying based on the characteristics specified in Education Code sections 220 or 234.1 or Penal Code Section 422.55, including gender identity.

Education Code Section 221.5 specifically prohibits discrimination on the basis of sex with regard to enrollment in classes or courses, career counseling and availability of physical education activities or sports to both sexes.

In 2013, AB 1266 amended Education Code Section 221.5 to clarify that students must be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, regardless of the gender listed in their student records. Even prior to the passage of AB 1266, the U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Civil Rights Division investigated a civil rights complaint based on *federal* law against Arcadia Unified School District by a transgender student. The district agreed to provide transgender and gender-nonconforming

students with equal access to district facilities, programs and activities consistent with their gender identity. (See [Resolution Agreement](#)  (PDF))

Therefore, California and federal law require schools to afford students equal opportunity and access to the school's facilities, activities, and programs, in a manner that is consistent with each student's gender identity, irrespective of whether the student's gender identity matches the student's assigned sex at birth. Education Code Section 210.7 (defining "gender" to include "a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."). Creating that type of school environment will help ensure that all students will be provided an environment that will nurture their growth, both academically and developmentally.

The Department has prepared [FAQs](#) which address key issues regarding the requirements and implementation of AB 1266. These issues are: (1) privacy with respect to the student's transgender status; (2) names and pronouns; (3) school records; (4) dress codes and uniforms; (5) restrooms and locker rooms; (6) physical education classes and school sports; and (7) protection from harassment. The FAQs also contain a glossary of definitions and list of helpful resources, including a model board policy and administrative regulation developed by the California School Boards Association for adoption by districts. It is recommended that these materials are reviewed by superintendents, principals, administrators and the local educational agency officer appointed pursuant to Education Code Section 234.1(g) to ensure compliance with the educational equity and nondiscrimination requirements of Education Code Section 200 et seq. and 5 California Code of Regulations Section 4900 et seq.

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

If you have further questions regarding this legal advisory, please contact us.

Questions: School Health and Safety Office | shso@cde.ca.gov | 916-319-0914

Last Reviewed: Tuesday, March 21, 2023

Exhibit 3



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Frequently Asked Questions

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

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

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

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

1. What is Assembly Bill (AB) 1266?

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

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

As part of the analysis of AB 1266, Assemblyman Ammiano also stated, “Athletics and physical education classes, which are often segregated by sex, provide numerous well-documented positive effects for a student’s physical, social, and emotional development. Playing sports can provide student athletes with important lessons about self-discipline, teamwork, success, and failure, as well as the joy and shared excitement that being a

member of a sports team can bring. When transgender students are denied the opportunity to participate in physical education classes in a manner consistent with their gender identity, they miss out on these important benefits and suffer from stigmatization and isolation. In addition, in many cases, students who are transgender are unable to get the credits they need to graduate on time when, for example, they do not have a place to get ready for gym class."

2. When did this law go into effect?

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

Federal Protection:

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

California Law:

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

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

3. What specifically does AB 1266 provide?

Pre-existing state law prohibits public schools from discriminating on the basis of several

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

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

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

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

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

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

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

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

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

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

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

community members such as clergy.

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

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

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

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

- A. Public Records Act requests - The Education Code requires that schools keep student records private. Private information such as transgender status or gender identity falls within this code requirement and should not be released. (Education Code Section 49060.)
- B. Family Educational and Privacy Rights (FERPA) - FERPA is federal law that protects the privacy of students' education records. FERPA provides that schools may only disclose information in school records with written permission from a student's parents or from the student after the student reaches the age of 18. (20 U.S.C. Section 1232g.) This includes any "information that . . . would allow a reasonable person in the school community . . . to identify the student with reasonable certainty." (34 C.F.R. Section 99.3.)
- C. California Constitution - Minors enjoy a right to privacy under Article I, Section I of the California Constitution that is enforceable against private parties and government

officials. The right to privacy encompasses the right to non-disclosure (autonomy privacy) as well as in the collection and dissemination of personal information such as medical records and gender identity (informational privacy). Even when information is part of a student's records and therefore covered by FERPA, the law provides several exceptions that permit appropriate communications under circumstances in which the student or others may be at risk of harm. Transgender or gender nonconforming students are often subject to stressors which can place them at risk of self-harm. FERPA expressly permits the disclosure of information from a student's records "...to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals." (34 C.F.R. Section 99.36(a).) "If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals." (*Id.* Section 99.36(c).)

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

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

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

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

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

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

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

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

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

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

parents.

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

If a member of the school community intentionally uses a student's incorrect name and pronoun, or persistently refuses to respect a student's chosen name and pronouns, that conduct should be treated as harassment. That type of harassment can create a hostile learning environment, violate the transgender student's privacy rights, and increase that student's risk for harassment by other members of the school community. Examples of this type of harassment include a teacher consistently using the student's incorrect name when displaying the student's work in the classroom, or a transgender student's peers referring to the student by the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the circumstances, the school's failure to address known incidents of that type of harassment may violate California's antidiscrimination laws.

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

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

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

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

other students).

- C. Use of a nearby private area (i.e., a nearby restroom or a health office restroom).

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

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

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

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

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

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

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

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

California law requires that schools provide all students with a safe, supportive and inclusive learning environment, free from discrimination, harassment, and bullying. Examples of harassment and abuse commonly experienced by transgender students include, but are not limited to, being teased for failing to conform to sex stereotypes, being deliberately referred to by the name and/or pronouns associated with the student's

assigned sex at birth, being deliberately excluded from peer activities, and having personal items stolen or damaged. School district efforts to prevent and address harassment must include strong local policies and procedures for handling complaints of harassment, consistent and effective implementation of those policies, and encouraging members of the school community to report incidents of harassment. Beyond investigating incidents, schools should implement appropriate corrective action to end the harassment and monitor the effectiveness of those actions.

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

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

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

RECENT DEVELOPMENTS AND RESOURCES

The California School Boards Association's (CSBA) [Legal Guidance on Rights of Gender Nonconforming Students in Schools](#) 

CSBA has also developed a model board policy and administrative regulation that can be adopted by districts. The most current CSBA sample language is available through [GAMUT Policy and Policy Plus](#) .

- Board Policy 5145.3 - Nondiscrimination/Harassment
- Administrative Regulation 5145.3 - Nondiscrimination/Harassment

Office for Civil Rights Complaint and Resolution Agreement

On July 24, 2013, the U.S. Department of Education's Office for Civil Rights and the U.S. Department of Justice's Civil Rights Division entered into a Resolution Agreement with the Arcadia Unified School District to resolve a complaint alleging violations of Title IX. The case was brought on behalf of a transgender student who was denied access to the boys' restrooms and

locker rooms, and required to sleep in a separate facility during an overnight field trip. The agreement requires the school district to treat the student in a manner consistent with his gender identity for all purposes. Moreover, the school district agreed to retain a consultant to revise their policies to prohibit discrimination on the basis of gender identity and implement a district-wide training program for staff and students.

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

California Interscholastic Federation

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

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

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

The new [California Interscholastic Federation bylaws](#)

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

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

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

In October 2010, the U.S. Department of Education, Office for Civil Rights, issued a Dear Colleague Letter that, among other things, clarified that although Title IX does not prohibit discrimination on the basis of sexual orientation, harassment directed at a student because that

student is gay, lesbian, bisexual, or transgender may constitute sexual harassment and sex discrimination prohibited by Title IX.

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

Other Resources

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

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

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

Questions: School Health and Safety Office | shso@cde.ca.gov | 916-319-0914

Last Reviewed: Tuesday, March 14, 2023

Exhibit 4



State of California
Office of the Attorney General

ROB BONTA

ATTORNEY GENERAL

September 26, 2023

SENT VIA EMAIL

To: School District Superintendents and Members of Boards of Education

RE: Guidance Regarding Forced Disclosure Policies Concerning Gender Identity

Dear School District Superintendents and Members of Boards of Education:

On September 6, 2023, the San Bernardino Superior Court issued a temporary restraining order in *The People of the State of California v. Chino Valley Unified School District* (Case No. CIV-SB-2317301). In that order, the Court enjoined and restrained the Chino Valley Unified School District (CVUSD) from adopting, implementing, enforcing, or otherwise giving effect to its Board Policy 5020.1, under which school staff were required to forcibly “out” transgender and gender nonconforming students to their parents. Specifically, Policy 5020.1—which the CVUSD Board adopted on July 20, 2023—required schools to inform parents, with minimal exceptions, whenever a student requests to use a name or pronoun different from that on their birth certificate or official records, without the student’s permission. The Policy also requires parental notification if a student requests to use facilities or participates in programs that do not align with their sex or gender on official records. The forced disclosure policy required staff members to make such disclosures without student consent, and even when the disclosure of that student’s gender identity could put them at risk of physical, emotional, or psychological abuse.

The Court’s temporary restraining order in *Chino Valley* provides, in relevant part:

The Court finds Plaintiff, the People of the State of California, have demonstrated a likelihood that it will prevail on the merits of its Complaint, and that the relative balance of harms to both Plaintiff and Defendant require the Court to issue interim relief. . . . Defendant and its agents, employees, assigns, and all persons acting in concert with it are restrained and enjoined from adopting, implementing, enforcing, or otherwise giving effect to [CVUSD] Board Policy 5020.1.

This temporary restraining order remains in full force and effect and the California Department of Justice’s legal interpretation and intent to enforce California law for the protection of children remains unchanged. A hearing on the Department of Justice’s request for a preliminary injunction is currently set for October 13, 2023.

School District Superintendents and Members of Boards of Education

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On September 14, 2023, the United States District Court for the Southern District of California entered a preliminary injunction in a different case, *Mirabelli v. Olson* (Case No. 3:23-cv-00768-BEN-WVG). That court order addresses two teachers' challenge to a different policy (Administrative Regulation [AR] 5145.3) in a different school district (Escondido Union School District [EUSD]) on different legal grounds than those at issue in *Chino Valley*. The *Mirabelli* case does not address the legality of CVUSD Policy 5020.1's forced disclosure provisions, or similar or identical policies adopted by other school districts requiring forced disclosure of transgender or gender nonconforming students' gender identities. Instead, the *Mirabelli* case addresses the limited question of whether the two plaintiff teachers have a right, allegedly based on their sincerely-held religious beliefs, to disclose a student's transgender identity to a parent without the student's consent under the First Amendment's free exercise of religion clause. By its own plain terms, the order in *Mirabelli* only enjoins enforcement of AR 5145.3 and California Department of Education guidelines on that topic against the two named EUSD teachers and prevents any governmental employee or entity from taking adverse employment actions against those two teachers on the basis of those provisions until their claims can be resolved on the merits.

The preliminary injunction in the *Mirabelli* case thus has no effect on the Temporary Restraining Order that remains in place against CVUSD. Nor does the *Mirabelli* order have any bearing on the lawfulness of the implementation of Policy 5020.1 or similar policies, nor on the Department of Justice's enforcement of the law as outlined in its moving papers in *Chino Valley*.

With respect to forced outing policies similar to Policy 5020.1, the California Department of Justice reminds school districts, their governing boards, and their employees to bear in mind the strong protections that California's Constitution and statutes provide to transgender and gender nonconforming students, and our State's guarantees to students of the right to equal education, non-discrimination, and privacy. As the Department of Justice has explained in its briefing in *Chino Valley*, when school districts adopt forced disclosure provisions, they violate the California Constitution's guarantee of equal protection (Cal. Const., art. I, § 7); state statutes prohibiting discrimination on the basis of sex, gender, gender identity, and gender expression (Ed. Code, § 200 et seq.; Gov. Code, § 11135); and the California constitutional privacy rights of transgender and gender nonconforming students (Cal. Const., art. I, § 1). In granting its Temporary Restraining Order in *Chino Valley*, the Superior Court found that the People were likely to succeed on those claims at trial, and that the "relative balance of harms" required the Court to rule in favor of the People.

All California school districts are bound by a duty of care to protect the students they educate. By forcing disclosure of a transgender or gender nonconforming student's gender expression or gender identity—even against a student's wishes, and with no exception for situations involving a potential threat of parental harm or violence—forced disclosure policies not only violate transgender and gender nonconforming students' rights to equal protection, nondiscrimination and privacy, but they risk breaching the duty of care school districts owe to

School District Superintendents and Members of Boards of Education

September 26, 2023

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these and all students. (See, e.g., *Cleveland v. Taft Union High Sch. Dist.* (2022) 76 Cal.App.5th 776, 799 [citations omitted].)

These risks to student safety are not hypothetical. Data underscore the threat posed by forced disclosure policies: only 37 percent of LGBTQ+ youth identified their home as supportive of their identity; one in ten transgender individuals have experienced violence at the hands of an immediate family member; 15 percent ran away or were kicked out of their home because they were transgender; and coming out to adverse parents has been shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use.

My office remains committed to protecting the legal rights, physical safety, and mental and emotional health of children in California schools, and in protecting them from trauma, harassment, bullying, and exposure to violence and threats of violence. By singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm, forced disclosure provisions violate their constitutional right to equal protection and privacy, as well as their right to statutory protection from discrimination under California law.

Sincerely,



ROB BONTA
Attorney General

Exhibit 5

California Department of Justice
Office of the Attorney General



Legal Alert

Subject:

**Forced Disclosure Policies re:
Transgender and Gender Nonconforming Students**

No.

OAG-2024-02

Date:

01/11/2024

Contact for information:

LegalAlerts@doj.ca.gov

TO: All County and District Superintendents, Charter School Administrators, County Office, School Board, and Charter School Boards, and other interested parties

The Office of the California Attorney General issues this legal alert to remind all school boards that forced gender identity disclosure policies—which target transgender and gender nonconforming students by mandating that school personnel disclose a student’s gender identity or gender nonconformity to a parent or guardian without the student’s express consent—violate state law.¹

For purposes of this alert, “forced disclosure policies” refers to policies that require schools to inform parents and guardians, with minimal exceptions, whenever a student requests to use a name or pronoun different from that on their birth certificate or official records, even when the student does not consent. Such policies also require notification if a student requests to use facilities or participate in school programs that do not align with their sex or gender on official records, and tracking and recording of requests made by transgender and gender nonconforming youth. Some districts’ policies require such disclosures even when revealing the student’s gender identity or gender nonconformity to their parents could put them at risk of physical, emotional, or psychological harm. In this alert, the term “transgender and gender nonconforming” includes gender diverse, gender non-binary, and gender nonconforming students.

1) Forced disclosure policies violate California’s Equal Protection Clause by expressly discriminating based on gender identity. Education is a fundamental right under California’s equal protection clause. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608–09, 616–17; Cal. Const. Art. 1, § 7.) The invidious and prejudicial treatment to which transgender people have historically been subject is beyond dispute. (*Whitaker By Whitaker* (7th Cir. 2017) 858 F.3d 1034, 1051 [“There is no denying that transgender individuals face discrimination, harassment, and violence because of their gender identity”]; *Grimm v. Gloucester Cty. Sch. Bd.* (4th Cir. 2020) 972 F.3d 586, 611 [same].) Such discrimination in the school context denies or limits these students equal access to education and causes psychological, emotional, and other harm.

Because gender identity is an aspect of gender, transgender or gender nonconforming individuals constitute a protected class under California’s equal protection clause. As a result, any policy that singles out transgender and gender nonconforming students for unfavorable treatment vis-à-vis cisgender students is invalid unless it survives strict scrutiny. (See *Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 564; *Taking Offense v. State* (2021) 66 Cal.App.5th 696, 722-723, review on other grounds granted Nov. 10, 2021, S270535; see also *O’Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1465 [fundamental right of equal

¹ Please refer to the attached legal memoranda and reply brief for the Attorney General’s full legal analysis. On October 19, 2023, the San Bernardino Superior Court granted a preliminary injunction against the Chino Valley Unified School District Board of Education’s (“Board”) mandatory gender identity disclosure policy, finding that the State is likely to prevail on the merits because the provisions violate California’s Equal Protection Clause and discriminate against transgender and gender nonconforming students on the basis of sex. Because the Court found the Board’s policy provisions violate equal protection, the Court did not reach the State’s privacy and statutory arguments, which are also addressed below.

access to public education, warranting strict scrutiny of legislative and executive action that is alleged to infringe on that right]; Civ. Code, § 51, subd. (e)(5); Gov. Code, § 12926, subd. (r)(2); Ed. Code, § 210.7 [all defining “[s]ex” to include a person’s “gender identity and gender expression”].) In addition, policies which by their operative language specifically target transgender and gender nonconforming students, on their face, discriminate on the basis of sex. (See *Sail’er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 17; *Woods v. Horton* (2008) 167 Cal.App.4th 658, 674.)

To survive strict scrutiny, a school district must establish that a forced disclosure policy (1) serves a *compelling* governmental interest, and that the distinctions drawn by the policy are (2) *necessary* to further its purpose and (3) *narrowly tailored* to do so. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 832; *Connerly v. State Pers. Bd.* (2001) 92 Cal.App.4th 16, 33, 43.) Forced disclosure policies fail all three prongs of the strict scrutiny test.

As to the first prong, districts advancing such policies have pointed to “outdated social stereotypes” that being transgender or gender nonconforming is a “mental illness,” “perversion,” or “mental health” issue that requires parental intervention as the governmental interest justifying such a policy. (*Sail’er Inn, Inc.*, *supra*, 5 Cal.3d at p. 18.) An intent to classify all individuals who are transgender or gender nonconforming as mentally ill or otherwise “disordered” for purposes of forced disclosure cannot be a compelling government interest. (See *id.* at p. 22.)

To the contrary, local school districts (which are agents of the State for purposes of operation of our public school system) have a duty of care to protect, and a compelling interest in protecting, all students, including transgender and gender nonconforming students, from emotional, psychological, and physical harm, including from a parent. (See, e.g., *Cleveland v. Taft Union High School Dist.* (2022) 76 Cal.App.5th 776, 799; see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [the “welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect”]; *In re Roger S.* (1977) 19 Cal.3d 921, 928 [parental right can be limited “if it appears that parental decisions will jeopardize the health or safety of the child”] [citations omitted]; *Brennon B. v. Super. Ct.* (2022) 13 Cal.5th 662, 681 [“[T]he management and controls of the public schools [is] a matter of state care and supervision, and local districts are the State’s agents for local operation of the common school system”] [citations omitted].) Districts adopting forced disclosure policies ignore this countervailing compelling interest and risk breaching the duty of care they owe their students. Such an unlawful breach cannot form the basis for a compelling government interest.

Forced disclosure policies also fail the second and third prongs of strict scrutiny because they are not narrowly tailored or necessary to any non-discriminatory interest the policy might purport to advance. Generally, a policy is narrowly tailored if there is no alternative means of adequately serving the compelling interest that would impose a lesser burden on the constitutional interest. (*People v. Son* (2020) 49 Cal.App.5th 565, 590.) Only the “most exact connection between justification and classification” will suffice. (*Woods, supra*, 167 Cal.App.4th at p. 675.) And the classification must be “necessary rather than convenient.” (*Ibid.*) The availability of gender-neutral alternatives—“or the failure of the legislative body to consider such alternatives”—will be “fatal to the classification.” (*Ibid.*)

To the extent forced disclosure policies are intended to promote parental involvement by informing parents of concerns about a student’s well-being, there are other gender-neutral options, such as a policy informing parents when any student—cisgender or transgender—is exhibiting symptoms of depression or other significant mental health issues. And numerous feasible and effective alternatives to forced disclosure policies exist. For example, schools can adopt policies to allow disclosure with a student’s consent; allow disclosure where a student does not consent where there is a compelling need to do so to protect the student’s wellbeing; allow staff to encourage students to inform their parents; and provide counseling and other support tools to help students initiate these conversations in the time and manner of the family’s choosing. All such policies better protect families, parents, and students without placing students at risk: “It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed . . . citizens.” (*Prince v. Massachusetts* (1944) 321 U.S. 158, 165.) These alternatives are fatal to the policies.

Second, policies that do not create any exception for children who may face emotional, physical, or psychological abuse at home as a result of the school's disclosure to parents or family cannot satisfy the narrow tailoring prong. (See James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat. Center For Transgender Equality (Dec. 2016) p. 65; Austin et al., *Suicidality Among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors* (Mar. 2022) 37 J. of Interpersonal Violence 2696, 2698-2699.) Policies without such exceptions have already inflicted and continue to inflict irreparable physical, mental, and emotional harm upon transgender and gender nonconforming students, as demonstrated by research findings. For example, one in ten transgender individuals have experienced violence at the hands of an immediate family member (James et al., *supra*, *The Report of the 2015 U.S. Transgender Survey* at p. 65); 15 percent ran away or were kicked out of their home because they were transgender (*ibid.*); fewer than 40 percent of LGBTQ+ youth identified their home as supportive of their identity (The Trevor Project, *2022 National Survey of LGBTQ on Youth Mental Health* (2022) p. 20); and coming out to adverse parents has been shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use (see Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults* (Jan. 2009) 123 Pediatrics 346; Choi, et al., *Serving Out Youth 2015: The Needs and Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth Experiencing Homelessness*, Williams Institute (June 2015) p. 5).

In addition, such policies harm transgender and gender nonconforming students by forcing them to choose between hiding their identity in school or being compelled to share it with a parent or guardian whom they believe may emotionally, psychologically, or physically harm them. When forced with this decision, many students feel compelled to stay in the closet. (James et al., *supra*, *The Report of the 2015 U.S. Transgender Survey* at p. 51.) When young people are forced to hide their identity from peers or others, the psychological health effects can be serious. (Pachankis et al., *Sexual Orientation Concealment and Mental Health: A Conceptual and Meta-Analytic Review* (Oct. 2020) 146 Psychological Bulletin 831.) Rather than facilitating conversations between students and parents, these policies instead cause students to further hide who they are, denying students the care and support they need, including the support that would give students the tools they need to have these conversations with family. Such policies thus lack the exact connection required under strict scrutiny to prove that forced outing policies are necessary to promote parental involvement.

2) Forced disclosure policies violate California statutory prohibitions on discrimination based on gender, gender expression, and gender identity. Forced disclosure policies also run afoul of Education Code section 220's and Government Code section 11135, subdivisions (a)'s and (c)'s express commands not to discriminate on the basis of gender identity and gender expression. A law that categorically "presum[es]" the need for forced disclosures for one group but not another "reflect[s] . . . unexamined role stereotypes," plainly betraying a "statute . . . discriminatory on its face." (*Arp v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 395, 406–407.) Forced outing policies target one group, and "that group alone" for discriminatory treatment, which violates state antidiscrimination law. (*Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 89 [Unruh Act]; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 35 [Unruh Act violation because "[sex]-based . . . differential treatment is precisely the type of practice prohibited"]; *Bangerter v. Orem City Corp.* (10th Cir. 1995) 46 F.3d 1491, 1500 [where policy "facially single[s] out" group and "appl[ies] different rules to them," it directly reveals "discriminatory intent and purpose"].) Specifically singling out transgender and gender nonconforming students shows that "the decisionmaker . . . selected . . . a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group." (*Personnel Adm'r of Mass. v. Feeney* (1979) 442 U.S. 256, 279 [cleaned up].)

3) Forced disclosure policies violate students' California constitutional right to privacy with respect to how and when to disclose their gender identity. "[M]inors, as well as adults, possess a constitutional right of privacy under the California Constitution." (*Poway Unified Sch. Dist. v. Super. Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496, 1505; Cal. Const. Art. 1, § 1.) Courts have repeatedly affirmed that an individual has a constitutionally protected privacy interest in their sexual orientation or gender identity. (See, e.g., *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444–445 [describing "sexual orientation and conduct" as legally protected privacy interest]; *Powell v. Schriver* (2d Cir. 1999) 175 F.3d 107, 111–112 [transgender identity is an excruciatingly "private and intimate" detail about oneself protected by the right to privacy].) Moreover, forced disclosure

provisions intrude upon a core aspect of a student's privacy and autonomy—their ability to express their core values and identity. (*Am. Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 335-339 [policy requiring parental consent before minor could obtain an abortion violated minor's constitutional right to privacy because it burdened a "decision . . . so central to the preservation of her ability to define and adhere to her ultimate values regarding the meaning of human existence and life"]; see also *Hill v. Nat. Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 25 ["Privacy rights also have psychological foundations emanating from personal needs to establish and maintain identity and self-esteem by controlling self-disclosure"].) Where, as here, there is "an obvious invasion of an interest fundamental to personal autonomy"—such as the most basic expression of gender identity—there must be a compelling government interest "to overcome the vital privacy interest," and there must not be less restrictive alternatives. (*Hill, supra*, 7 Cal.4th at pp. 34, 40.) As discussed *supra* in subsection 1), there is no compelling government interest that overrides the privacy invasion, and there are a number of less restrictive alternatives to address any parental interest.

Additionally, a student's disclosure of their gender identity to persons of their choosing at school does not negate their reasonable expectation of privacy in their gender identity generally. (See *Mathews v. Becerra* (2019) 8 Cal.5th 756, 769 [requiring reasonable expectation of privacy "in the circumstances"].) As the California Supreme Court explained, individuals in our society play "multiple, often conflicting" social roles, and people may still "fear exposure . . . to those closest to them The claim is not so much one of total secrecy as it is of the right to *define* one's circle of intimacy." (*Hill, supra*, 7 Cal.4th at p. 25.) "It does not follow that disclosure in one context necessarily relinquishes the privacy right in all contexts"; rather, the privacy analysis requires a "reasonable expectation of privacy *in the circumstances*," and the specific context matters—disclosure of a student's transgender identity at school is different than the disclosures to parents required by forced disclosure policies. (*Nguon v. Wolf* (C.D. Cal. 2007) 517 F.Supp.2d 1177, 1191, 1195-1196 [student had reasonable expectation of privacy in sexual orientation with respect to parents, even if she was publicly homosexual at school]; see *Hill, supra*, 7 Cal.4th at p. 25.)

Indeed, districts' insistence on forced disclosure policies inherently acknowledges that students may not share at home what that they otherwise share at school. And unfortunately, research supports their reasons to do so. (See The World Prof. Assn. for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (Version 8, 2022) p. S62 ["Evidence indicates [transgender] adolescents are at increased risk of mental health challenges, often related to family/caregiver rejection"]; Ryan et al., *supra*, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* at p. 346 [study showing, e.g., lesbian, gay, and bisexual youth who experience parental rejection are eight times more likely to attempt suicide and six times more likely to report major depressive symptoms]; James et al., *supra*, *The Report of the 2015 U.S. Transgender Survey* at p. 65 [one in ten transgender youth have experienced violence at the hands of an immediate family member because they are transgender].) Due to those risks and others cited above, many transgender and gender nonconforming students are not "out" to their immediate families. (See The Trevor Project, *supra*, at p. 20.) Forced disclosure provisions unlawfully intrude upon transgender and gender nonconforming students' ability to express their core values and identities. These privacy and autonomy interests are protected by the California constitution, and the State and local school districts have a compelling interest in not only protecting student privacy under the circumstances here but also ensuring that transgender and gender nonconforming students are protected from the reasonable risk of physical, emotional, and psychological harm that forced disclosure causes.

In sum, by singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm, forced disclosure policies violate their constitutional right to equal protection and privacy, as well as their statutory protection from discrimination under California law.

###

CERTIFICATE OF SERVICE

Case Name: Mirabelli et al. v. Olson, et al. No. 3:23-cv-0768-BEN-VET

I hereby certify that on February 23, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **DEF. BONTA'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS**
- **DECLARATION OF EMMANUELLE SOICHET IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE RE: MOTION TO DISMISS**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 23, 2024, at San Francisco, California.

Monali Dholakia

Declarant

/s/: Monali Dholakia

Signature

SA2024300204

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 12
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14 **ELIZABETH MIRABELLI, an**
individual, and LORI ANN WEST,
 15 **an individual,**

16 Plaintiffs,

17 v.

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

21 Defendants.

3:23-cv-0768-BEN-VET

**DECLARATION OF
 EMMANUELLE SOICHET IN
 SUPPORT OF REQUEST FOR
 JUDICIAL NOTICE RE: MOTION
 TO DISMISS**

Date: April 1, 2024
 Time: 10:30 a.m.
 Courtroom: 5A
 Judge: The Honorable Roger T.
 Benitez

Action Filed: April 27, 2023

22 I, Emmanuelle S. Soichet, declare:

23 1. I am an attorney licensed to practice before all the courts of the State of
 24 California and am a Deputy Attorney General employed by the Office of the
 25 Attorney General, counsel of record for Defendant Rob Bonta, in his official
 26 capacity as Attorney General of California, in this matter.
 27
 28

1 2. This declaration supports Attorney General Rob Bonta’s Request for
2 Judicial Notice, which has attached true and correct copies of the following
3 documents:

- 4 a. The complaint for declaratory and injunctive relief in *People v. Chino*
5 *Valley Unified School District* (San Bernardino County Superior Court
6 case no. CIV SB 2317301), a true and correct copy of which is attached to
7 the Request for Judicial Notice as **Exhibit 1**.
- 8 b. The legal advisory on application of antidiscrimination statutes to
9 transgender youths in schools originally issued by the California
10 Department of Education in 2016, a true and correct copy of which is
11 attached to the Request for Judicial Notice as **Exhibit 2** and available
12 online at <https://www.cde.ca.gov/re/di/eo/legaladvisory.asp>.
- 13 c. The California Department of Education’s Frequently Asked Questions
14 (FAQs) page concerning Assembly Bill No. 1266, a true and correct copy
15 of which is attached to the Request for Judicial Notice as **Exhibit 3** and
16 available online at <https://www.cde.ca.gov/re/di/eo/faqs.asp>.
- 17 d. The statewide guidance letter sent by the Attorney General on September
18 26, 2023, a true and correct copy of which is attached to the Request for
19 Judicial Notice as **Exhibit 4** and available online at
20 [https://oag.ca.gov/system/files/attachments/press-docs/9-26-](https://oag.ca.gov/system/files/attachments/press-docs/9-26-23%20Mirabelli-CV%20Guidance%20Letter.pdf)
21 [23%20Mirabelli-CV%20Guidance%20Letter.pdf](https://oag.ca.gov/system/files/attachments/press-docs/9-26-23%20Mirabelli-CV%20Guidance%20Letter.pdf).
- 22 e. The legal alert regarding forced disclosure school policies issued by the
23 Attorney General on January 11, 2024, a true and correct copy of which is
24 attached to the Request for Judicial Notice as **Exhibit 5** and available
25 online at [https://oag.ca.gov/system/files/attachments/press-](https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20re%20Forced%20Outing%20Policies.1.10.24_0.pdf)
26 [docs/Legal%20Alert%20re%20Forced%20Outing%20Policies.1.10.24_0.](https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20re%20Forced%20Outing%20Policies.1.10.24_0.pdf)
27 [pdf](https://oag.ca.gov/system/files/attachments/press-docs/Legal%20Alert%20re%20Forced%20Outing%20Policies.1.10.24_0.pdf).

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

3 Executed in Berkeley, California, on February 23, 2024.

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5



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7 By: _____

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Emmanuelle S. Soichet

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