

No. 23-16031

**IN THE UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT**

AURORA REGINO,

Plaintiff–Appellant,

v.

KELLY STALEY,

Defendant–Appellee,

and

CAITLIN DALBY; REBECCA KONKIN; TOM LANDO; EILEEN ROBINSON;
MATT TENNIS

Defendants.

On Appeal from the United States District Court
for the Eastern District of California
No. 2:23-cv-00032-JAM-DMC
Hon. John A. Mendez

APPELLEE’S SUPPLEMENTAL EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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AURORA REGINO,)	Case No. 2:23-CV-00032-JAM-DMC
)	
Plaintiff,)	Sacramento, California
)	June 27, 2023
v.)	1:34 p.m.
)	
SUPERINTENDENT KELLY STALEY,)	Re: Motion to Dismiss
in her official capacity,)	
et al.,)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	CENTER FOR AMERICAN LIBERTY by JOSHUA W. DIXON, ESQ. 1311 South Main Street, Suite 302 Mount Airy, Maryland 21771
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Also Present:	Aurora Regino
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Proceedings reported via mechanical steno - transcript produced
via computer-aided transcription

1 SACRAMENTO, CALIFORNIA, TUESDAY, JUNE 27, 2023

2 --o0o--

3 (In open court.)

4 THE CLERK: Please remain seated and come to order.
5 Court is back in session.

6 Calling civil case number 2:23-cv-32 Regino versus
7 Staley.

8 THE COURT: Good afternoon. Counsel, state your
9 appearances, please.

10 MR. DIXON: Josh Dixon, Center for American Liberty on
11 behalf of Plaintiff Aurora Regino, who is also here this
12 morning or this afternoon.

13 THE COURT: Good afternoon.

14 MS. REGINO: Good afternoon.

15 MR. DUUS: Brian Duus of Leon, Alberts & Duus on
16 behalf of the Superintendent Kelly Staley of the Chico Unified
17 School District.

18 THE COURT: All right. Good afternoon.

19 Keep the mic in front of you, make sure we can hear
20 you, but you can remain seated.

21 Before the Court this afternoon is a motion to dismiss
22 by the defendant. The Court has reviewed the briefs and has a
23 few questions for the attorneys.

24 First question -- actually, first comment. There is a
25 request for judicial notice. There's no objection to exhibits

1 A, C and D and the Court does take judicial notice of those.

2 Mr. Dixon, you opposed judicial notice of Exhibit B,
3 and I understand it's a lengthy document, and I don't need to
4 take judicial notice of the entire document, but the key
5 portion is the definition of "social transition" found on Page
6 78 and 79 of 261 in Exhibit B. I wasn't clear why you were
7 objecting to the Court taking judicial notice of that or
8 accepting that as the definition of "social transition" when
9 it's identical to what you were arguing in the preliminary
10 injunction.

11 Remember I asked you a question about -- it talks
12 about and it says, "A social transition process can include one
13 or more of a number of different actions consistent where the
14 child's affirmed gender, including name change, pronoun change,
15 change in sex gender markers, participation in
16 gender-segregated programs, bathroom and locker room use,
17 personal expression and communication of affirmed gender to
18 others," and I remember during the preliminary injunction
19 hearing I asked you, "Isn't just one of those enough to be
20 social transitioning," and you said, "Yes." So I'm somewhat
21 confused as to why you were objecting to that definition.

22 MR. DIXON: Yes, Your Honor. So our complaint
23 contains the definition of "social transition". I could find
24 the paragraph number, if Your Honor would like.

25 Actually, here it is, Paragraph 2, "Social transition.

1 First, the active affirmation of a person's transgender
2 identity."

3 It goes on to say, "In the school setting it primarily
4 refers to calling a student by a new name associated with their
5 transgender identity and referring to the student by pronouns
6 associated with their transgender identity."

7 If you look at the definition of "transition" on
8 Exhibit B, it's simply not -- it's not limited to the school
9 context. It is transition more generally. It includes the
10 concept of medical --

11 THE COURT: Where did you get your definition in the
12 complaint?

13 MR. DIXON: It is from our expert, Your Honor, but it
14 is alleged in our complaint, so it is a fact that the Court
15 must accept for purposes of this proceeding.

16 THE COURT: I understand that. Look, I could take
17 judicial notice of the fact that Exhibit B contains a
18 definition. You are correct that I can't -- and I won't take
19 judicial notice of the fact that this is the definition of
20 social transitioning given that there's a disagreement between
21 the parties. So that's the only -- it doesn't really move the
22 argument forward, so I would deny the Request for Judicial
23 Notice as to the entire document, and at best, I take judicial
24 notice that there is a definition within Exhibit B of the term
25 "social transition," but it doesn't affect the case itself.

1 We'll come back to that. Okay, that explains it to me.

2 The next question I have for you is this is a motion
3 to dismiss, so we are at a really early stage of the
4 proceedings, but are there any issues of material fact in this
5 case? It seems to me to be almost a purely legal case that the
6 parties almost could try the case on the stipulated set of
7 facts.

8 I'm wondering, because two questions always come up in
9 motions to dismiss: Is there something else you think you need
10 to get from the defendants in discovery which you haven't had
11 an opportunity to do, I assume, and second, if I did grant the
12 motion to dismiss, should I grant leave to amend? I'm going
13 save that for the last part.

14 Just broadly, it's your case, are there facts here
15 that need further development?

16 MR. DIXON: I think, broadly speaking, and Your Honor,
17 respectfully, if I may say this without committing, because
18 this is not something I've fully vetted in my own mind, but I
19 don't believe we would need extensive discovery in any event,
20 maybe none. I do think -- I agree with Your Honor, this could
21 be a case that could potentially be tried on stipulated facts
22 depending upon what the District was willing to stipulate to.

23 For example, we allege in our complaint, as Your Honor
24 is aware, that social transition constitutes psychological
25 treatment. I don't know if a District intends to dispute that

1 fact. They did not for purposes of this proceeding. That may
2 be a potential area that would be disputed, but if not, then
3 yes, I do think it's potential that we could resolve this case
4 on a stipulated set of facts.

5 THE COURT: I can't convert a motion to dismiss to a
6 motion for summary judgment without prior notice, and I don't
7 intend to do that, but reading the briefs -- the second set of
8 briefs I've read. I'm pretty familiar with this case now, I
9 couldn't really see this being the type of case where there
10 needs to be a lot of development of the facts, that there's a
11 lot of disagreement.

12 Mr. Duus, do you disagree? I know Mr. Dixon argued
13 you don't, but I'm under the impression you disagree with their
14 argument that social transitioning is equivalent of
15 psychological treatment, medical treatment.

16 MR. DUUS: I'm not a doctor, Your Honor, but I do
17 disagree with that because I think "social transitioning" is a
18 broad term and it doesn't always constitute medical treatment.

19 THE COURT: Okay.

20 MR. DUUS: But I would add that I don't think that is
21 necessary for the disposition of this motion.

22 THE COURT: Your argument is even if it did constitute
23 medical treatment, that still the policy withstands a
24 constitutional challenge.

25 MR. DUUS: Correct, Your Honor.

1 THE COURT: Okay. Okay, the six claims. Let's start
2 with the substantive due process claim.

3 The law is clear that to establish a substantive due
4 process claim under 1983 claim that you are bringing here, the
5 plaintiffs are required to allege that, "One, a federal
6 constitutional right was violated, and, second, that the
7 alleged violation was committed by a person acting under the
8 color of state law such that it shocks the conscience." That's
9 a Ninth Circuit case -- two Ninth Circuit cases, *Wong versus*
10 *County of Los Angeles* and *Brittain versus Hansen*, both held
11 that.

12 The Courts have held that the threshold requirement
13 for such substantive or procedural due process claims is
14 plaintiff's showing of a liberty or property interest protected
15 by the constitution.

16 The Supreme Court has required a careful description
17 of the asserted liberty interest that has been violated, and
18 Courts have also been cautioned against the expansion of
19 substantive due process rights, less the liberty protected by
20 the due process clause be suddenly transformed into a policy
21 preference of the Court.

22 Although the law does not require a case directly on
23 point for a right to be clearly established, existing precedent
24 must replace the statutory or constitutional question beyond
25 debate.

1 I haven't found -- and I don't think either party has
2 found, but I want to ask each of you -- that there is no -- you
3 cited some cases outside this district and from other
4 districts, and we could talk about those, but within the Ninth
5 Circuit, at least as we sit here today, there is no case that
6 had similar facts; am I correct?

7 A school district -- I know there are other district
8 court cases going on right now, but the Ninth Circuit hasn't
9 had a case with facts similar to this; otherwise, I'm sure you
10 guys would have cited it. Can we both or all agree on that?

11 MR. DIXON: Respectfully, Your Honor, I would agree
12 that there is not a case in the Ninth Circuit, at least not one
13 that I am aware of, involving social transitioning in school.
14 I don't think that answers the *Glucksberg* question, but I would
15 agree with that assessment.

16 THE COURT: And, Mr. Duus, you would agree as well?

17 MR. DUUS: I agree, Your Honor.

18 THE COURT: Okay. So the argument that the defendants
19 raise, Mr. Dixon, sort of goes to the heart of the case here,
20 is that your client is advocating for an expansion, for an
21 expansion of parental substantive due process rights that is
22 not supported by precedent, that you haven't provided any
23 controlling authority that would permit this Court to find that
24 the scope of your client's substantive parental rights covers
25 the instant, this case's circumstances.

1 None of the cases cited by you opine on whether the
2 State has an affirmative duty to inform a parent of their
3 child's transgender identity, nor whether the State must obtain
4 parental consent before socially transitioning a transgendered
5 child.

6 So, that's my first question to you. What authority
7 in the Ninth Circuit can I rely on in denying a motion to
8 dismiss or the motion for summary judgment, if we're headed
9 down that road?

10 What do I rely on in terms of a case within the Ninth
11 Circuit that firmly demonstrates that the parental right to the
12 care, custody and control of one's child extends to the
13 circumstances of this case?

14 Are there any cases that share the facts of this case?

15 MR. DIXON: Your Honor, let me say at the outset that
16 the Glucksberg test applies to what the Supreme Court has
17 described as "new rights." As Justice Kennedy said in his
18 *Obergefell* majority opinion, when analyzing whether or not a
19 case falls within the confines of the substantive due process
20 clause, particularly in a case like this where the Supreme
21 Court has already held that parents have the right to the care,
22 custody and control of their children, the question is not
23 whether or not there is historical analogue for this precise
24 practice. It is whether this practice comes within the
25 confines of the rights as already held.

1 So in *Obergefell*, the Supreme Court said, without
2 looking at history and tradition of same-sex marriage, said
3 that the right to marriage is established in *Loving* and other
4 cases, extended to same-sex situation. So the argument here is
5 that we are not required to point to historical analogue
6 because Number 1, the Supreme Court has already said parents
7 have the right to the care, custody and control of their
8 children, and, Number 2, it falls within the confines of that
9 right as described.

10 To the extent Your Honor is not persuaded by that
11 argument, the *Parham* case is perhaps the best case that we have
12 here for establishing the existence of a preexisting right.
13 *Parham* establishes that parents have the right to control the
14 medical care that their children receive.

15 We have alleged in the complaint that social
16 transitioning constitutes psychological treatment,
17 psychological care, and so the Supreme Court has not decided,
18 for example, that an appendectomy -- that the parent has the
19 right to give a child an appendectomy. The parent has the
20 right to control the medical treatment with respect to cardiac
21 issues. But that level of granularity is not what the Supreme
22 Court is talking about in *Glucksberg*. They're talking about
23 the proposition, Number 1, the State may not interfere with --
24 I'm sorry, may not command the medical care of the child, and
25 then Number 2, this constitutes medical care. So it's a very

1 straightforward application of the *Parham* case.

2 THE COURT: If I don't find that it constitutes
3 medical care, simply calling a student by the name that they
4 want to be called by or using the pronouns they want to use,
5 that that doesn't constitute medical care or a medical
6 decision, what happens with your argument?

7 MR. DIXON: May I challenge that?

8 THE COURT: I want you to assume that.

9 MR. DIXON: Okay. So assuming *Parham* doesn't apply,
10 then we've got two other arguments that we've put in the brief.
11 I know Your Honor is familiar with the brief.

12 THE COURT: What is the medical treatment in *Parham*?

13 MR. DIXON: The medical treatment in the *Parham* was
14 the voluntary commitment by the parents of the child to a
15 mental institution.

16 THE COURT: That's not this case.

17 MR. DIXON: That's correct, Your Honor, but, again, I
18 don't believe that Supreme Court would require for a *Glucksberg*
19 analysis, that each individual type of treatment be the subject
20 of a case holding.

21 The larger principle is the parents have the right to
22 direct and control the medical care of the children. This, as
23 alleged, is medical care.

24 THE COURT: Yes, but it has to be somewhat analogous,
25 that isn't even close to the facts of this case. So why would

1 I want to rely on a case that isn't -- I mean, it's so easily
2 distinguishable.

3 MR. DIXON: Well, Your Honor, we're here on a 12(b)(6)
4 motion. We have alleged in our complaint that social
5 transitioning constitutes psychological treatment. The reasons
6 for that is it's intended to alleviate psychological distress
7 associated with the mind-body mismatch.

8 We have alleged that it has the effect of hardening a
9 transgender identity. We have alleged that it leads almost
10 inexorably to further graduated affirmative care.

11 We have pointed to at least four cases that say, and
12 one that holds, that social transitioning in the prison
13 context, the Eighth Amendment context, constitutes treatment.
14 So if social transitioning constitutes treatment in the Eighth
15 Amendment context, I don't see how it doesn't in the Fourteenth
16 Amendment context.

17 THE COURT: Okay. Hold that thought.

18 MR. DIXON: Yes, Your Honor.

19 THE COURT: Mr. Duus, do you want to respond?

20 MR. DUUS: Yes, I would, Your Honor. First off,
21 Mr. Dixon did not answer your question, so I will. There is no
22 Ninth Circuit precedent. We haven't been aware of any.

23 If this Court were to find that a parental right to
24 notice and consent before a school district, social
25 transitioning -- before a school district supports a student

1 choosing to transition from one gender to another, it would be
2 a dramatic expansion of the Fourteenth Amendment.

3 I mean, as far as this argument about medical
4 treatment, just calling something medical treatment doesn't
5 make it so.

6 THE COURT: Do I have to take it as true for purposes
7 of a motion to dismiss, though?

8 MR. DUUS: No.

9 THE COURT: Why not?

10 MR. DUUS: Because if you plead that a dog is a cat,
11 that is incorrect. Also, they could plead whatever they want
12 in their complaint, but look at what they actually pled. The
13 extent of what they've pled is that plaintiff's daughter, and
14 remember this case is filed by plaintiff, it was the daughter
15 who was the student who was actually experiencing these things,
16 the daughter went to talk to the counselor. The daughter said,
17 "I want to be a boy."

18 The first thing that they plead the daughter told the
19 counselor is, "I don't want to tell my mom because she would be
20 mad."

21 The only thing the counselor is alleged to have done
22 is responded to that by, yes, instructing a different use of a
23 pronoun by the daughter's choice at school.

24 Then they emphasize that, well, when the daughter
25 allegedly went to the counselor and said, I do want to tell my

1 mother, their language, the counselor was not supportive, but
2 said, "Look, tell some other family members before you tell
3 your mother." Didn't tell her not to tell her mother, but
4 said, "Tell some other family members before." How in the
5 world is that medical treatment? It just isn't. It's barely
6 counseling. It's barely psychological treatment. It's talking
7 to a counselor, which students do all the time.

8 THE COURT: Let me ask you this: Under this policy,
9 the school district's policy, if a parent does know that their
10 child is experiencing what the plaintiff's daughter went
11 through and specifically tells the District, "I don't want you
12 doing any social transitioning at all," and the child comes
13 back to school and says to the teacher and the counselor,
14 "Don't listen to my mom. I want you to use this name and use
15 these pronouns," what does the District do under that scenario?

16 MR. DUUS: So, I'm sorry, Your Honor, I didn't quite
17 hear the first part. You're saying if the parent --

18 THE COURT: The parent knows, the parent has
19 explicitly told the District, "Don't do this," yet the child
20 comes to school -- so now you have -- that's not this case, I
21 understand, but taking this policy out to its limits, under
22 that policy what does the District do when there is an actual
23 conflict between the parent and the child?

24 MR. DUUS: Well, I think the first thing they would do
25 would be to call their lawyer, and the lawyer, if they were

1 honest, would say, "I don't know, but let's take a look at your
2 policy," and one thing that I do say about this regulation --

3 THE COURT: So you haven't had that experience in real
4 life?

5 MR. DUUS: Not yet, Your Honor.

6 THE COURT: Okay.

7 MR. DUUS: But this regulation is replete with
8 references to parents and guardians. The first thing, as we
9 mentioned at the hearing on the motion for preliminary in
10 junction, is this regulation tells the District to address each
11 situation on a case-by-case basis in accordance with the
12 following guidelines. And so in Your Honor's hypothetical, I
13 would note that while I don't know the answer to your question,
14 this regulation provides that the compliance officer may
15 discuss with the student any need to disclose the student's
16 transgender or gender nonconformity status with parents or
17 guardians. In particular, I want to point out this is, "The
18 District shall offer support services such as counseling to
19 students who wish to inform their parents/guardians of their
20 status and desire assistance in doing so."

21 Then it says, "The compliance officer shall arrange a
22 meeting with the student, and if appropriate, the student's,
23 parents, guardians, to identify and develop strategies for
24 ensuring that the student's access to educational programs and
25 activities is maintained."

1 So under this regulation, I am 100 percent certain
2 that my advice to a school district would be you have to meet
3 with the parents. If you have a situation where the student
4 has already told the parents, and the parents and guardians are
5 aware of it and object to it, this regulation is telling you
6 you have to set a meeting with the parents. But, you know,
7 that frames the issue before the Court. In this situation,
8 who's right is controlling; the student's constitutional right,
9 which we know exists, or the parent's alleged constitutional
10 right which there is no precedent for?

11 But if you were to recognize a parental constitutional
12 right, and this would be a policy decision since it would be a
13 brand new right being recognized, there are a lot of other
14 hypotheticals that I think we would all have to think about.
15 What if the parents disagreed; what if under your hypothetical
16 mom wanted to allow the child to transition and dad objected?

17 Here's another hypothetical: Mr. Dixon is arguing for
18 the expansion of the Fourteenth Amendment. Okay. All right.
19 Parents have a right to notice and consent if their child is
20 being socially transitioned, is undertaking that, and parents
21 have a right to consent to that. "I don't want my little girl
22 to become a boy." Okay. Well, let's recognize that
23 constitutional right. Then do I, as a father, if I have three
24 girls and I get a fourth girl and I want a boy, do I have the
25 constitutional right to compel the social transition of that

1 girl to a boy? That's the logical result, isn't it?

2 THE COURT: Okay. Do you want to respond at all?

3 MR. DIXON: I would simply point out, Your Honor, that
4 the policy, it does mention "parents" a bunch, but the gist of
5 the policy and the text of the policy is parents shall not be
6 told if the child doesn't want them to be, unless the District
7 has quote "compelling evidence that disclosure is necessary to
8 preserve the student's physical or mental wellbeing."

9 Now, we've alleged that in every case social
10 transitioning without parental knowledge or consent and,
11 therefore, support is emotionally, psychologically damaging to
12 the child. In every case it creates a psychologically
13 unhealthy situation where the parent and the child are at odds,
14 where the child perceives the parent as the enemy.

15 So this policy, by its own terms according to our
16 allegations in our complaint, can't apply. It is impermissible
17 in all of its applications, including the application here to
18 my client.

19 THE COURT: Your argument -- but your argument is that
20 this isn't an interference. Normally that involves a proactive
21 event of some type. This isn't a proactive policy. It's a
22 reactive policy. In no way does it take away the child, in no
23 way does it prevent the child from talking to her mother, and
24 in no way did it interfere with your client's rights to discuss
25 this with her daughter. It was the daughter's choice not to

1 disclose it initially. I know she found out through the
2 grandmother. All the District did, and all it does under this
3 policy, is react to a decision made by someone else.

4 Your argument I would think carry more weight if, in
5 fact, the District was proactive. They're not proactive here.
6 They're reactive, and I have great concern about finding a
7 substantive due process right in that type of situation.

8 It comes back to this argument raised in the briefs
9 that what you are really asking this Court to do is make a
10 policy decision. It's a decision for the legislature. It's a
11 decision for the Department of Education. It's not a decision
12 for a court. We get too involved already in day-to-day
13 minutiae of schools, prisons, decisions that should be made by
14 the legislature.

15 I take to heart those words that if you are going to
16 create a new -- and this would be a new-substantive due process
17 right, there's got to be more precedent in the law, that's what
18 I'm struggling with, and I want to give you an opportunity to
19 address that.

20 MR. DIXON: Thank you, Your Honor, I respectfully
21 suggest --

22 THE COURT: I wasn't elected, so...

23 MR. DIXON: Yes, Your Honor. Yes, Your Honor.

24 I respectfully suggest that the administration of
25 medical treatment by a school to a child consenting or not is

1 precisely an act for this Court to stop. If the school, for
2 example, had a policy under which they would tell students that
3 everyday before school if you want to come get an Adderall just
4 to calm you down, we're going to allow that. We're not going
5 to require it, we're going to allow the students to go get it,
6 but sorry, we're not going to tell your parents about that
7 either. I think that would be plainly the provision of medical
8 treatment to the child, the child's choice, the school is not
9 requiring the child to make that choice, but they're conducting
10 medical treatment on children in violation of the parent's
11 constitutional rights to direct and control that.

12 THE COURT: That's not this case, though. It's not
13 even closely analogous to this case.

14 MR. DIXON: But based on our allegation that social
15 transitioning constitutes medical treatment, which again at
16 this stage in the litigation, the Court must accept that is
17 perfectly analogous to what is going on.

18 THE COURT: I only have to accept the fact if I don't
19 think it's a conclusory allegation. I mean, that's based on
20 your expert's testimony.

21 MR. DIXON: You are correct in that, Your Honor, you
22 don't have to accept conclusory allegations, but this is not
23 alleging that a dog is a cat. In *Edmo*, the Ninth Circuit says
24 social transitioning constitutes psychological treatment. We
25 cited three other cases that say the same thing. The *Monroe*

1 case held in the prison context. It would be improper at this
2 stage to discount that allegation; it's not a conclusory
3 allegation.

4 This is not Mr. Iqbal alleging that John Ashcroft was
5 involved in some massive conspiracy to deprive him of his
6 rights. This is well within the range of reason particularly
7 considering the case law that has adopted that proposition.

8 THE COURT: *Edmo* relied on the same definition as the
9 Exhibit B, though, right?

10 MR. DIXON: *Edmo* --

11 THE COURT: The Court acknowledged the WPATH standards
12 of care identification of social transitioning is a form of
13 treatment for those suffering from gender dysphoria, but it
14 relied on, again, the Exhibit B, not your expert's view, but
15 the requests for judicial notice Exhibit B definition, right?

16 MR. DIXON: No, it didn't, Your Honor. To be clear,
17 the *Edmo* did rely on the WPATH guidelines generally, but not
18 the definition -- all the defendant sought to introduce was the
19 definition of "social transitioning."

20 THE COURT: Right.

21 MR. DIXON: That's what we objected to. *Edmo* does
22 rely on the WPATH for purposes of including whether it's
23 medical treatment, psychological treatment.

24 THE COURT: But, again, your only evidence that using
25 someone's preferred name and pronouns, your only support that

1 that's medical treatment is your expert, right?

2 MR. DIXON: Well, I mean, we have --

3 THE COURT: There's no definition that says that.

4 MR. DIXON: That is a fact that we have alleged in our
5 complaint. We have cited case law.

6 THE COURT: It's a conclusion. Again, I know we are
7 in semantics, but it's important, especially under Iqbal, if I
8 view that simply as a conclusion, it doesn't have to be
9 accepted, right?

10 MR. DIXON: Well, Your Honor, it does -- if you
11 conclude that it's a conclusory allegation, then under Iqbal
12 you're not required to accept it; however, it is not a
13 conclusory allegation. We have alleged it is undertaken for
14 the purpose of alleviating psychological distress, and we have
15 alleged that it has serious and potentially lifelong
16 consequences.

17 THE COURT: It's undertaken to protect the student
18 from harassment primarily. A student has a right to privacy.
19 It's to avoid a student being harassed in school. It's not
20 done for medical purposes.

21 MR. DIXON: That's contrary to the allegations in our
22 complaint, Your Honor. Allegations in the complaint is that
23 it's undertaken for the purpose -- social transitioning is
24 undertaken for the purpose of alleviating stress.

25 THE COURT: The allegation has to be plausible. You

1 think that's plausible?

2 MR. DIXON: That social transitioning is undertaken
3 for the purpose of alleviating distress? Yes, Your Honor, that
4 is precisely why --

5 THE COURT: No, that it's medical, that it's a
6 psychological treatment.

7 MR. DIXON: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. DIXON: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. DIXON: And I would point Your Honor to the cases
12 we cited in our brief where medical causation, for example, is
13 allowed to be alleged. A plaintiff is not required to employ
14 an expert to come in and testify that the pain he's feeling is
15 because of the cancer he got due to the defendant's actions.
16 These are the types of allegations that are made in complaints
17 everyday. These type of somewhat specialized, somewhat
18 technical causation, scientific, whatever you want to call
19 them, types of allegations are precisely what the rules allow
20 in this setting.

21 THE COURT: Okay. Next question for you: Would your
22 client argue that her alleged parental right should extend to
23 the school's affirmation of a child who identifies in school as
24 gay or lesbian and doesn't want their parent to know?

25 MR. DIXON: No, Your Honor.

1 THE COURT: Why not?

2 MR. DIXON: And this is a point we have made in our
3 two or three briefs that we filed in this case. This case has
4 nothing to do with the LGB -- LGB. It is only about the "T" of
5 the LGBT student.

6 The idea here is that if a student, for example, comes
7 to a social counselor and says, "I think I may be transgender,"
8 there's no obligation, no duty on the part of the counselor to
9 tell the parents of that. It is when the District, as it did
10 here, undertakes the affirmative obligation or affirmative act
11 of telling everyone in the school, You must refer to the
12 student in this way. You must participate in socially
13 transitioning this child, which is precisely what the policy
14 does here on pain of sanction. The District says all
15 administrators, all teachers, all other students must
16 participate in the social transitioning of this child. So if a
17 student comes to a counselor and says, "I think I may be
18 lesbian. I think I may be gay. I think I may be bisexual" --

19 THE COURT: Nonbinary or gender non-conforming.

20 MR. DIXON: -- whatever, that is beyond the scope of
21 the right we are asserting here.

22 THE COURT: You argue that children are unable to
23 provide informed consent to psychological treatment, that's in
24 your opposition brief. Are you -- is your client claiming that
25 children should not be permitted to attend school counseling or

1 guidance sessions about parental notice absent parental notice
2 and consent?

3 MR. DIXON: We don't allege that -- there is a case
4 that the District cited, it's called *Thomas*, and I don't
5 remember the school district's name -- Evansville, I believe.
6 It was an unpublished decision of the Second Circuit where the
7 Second Circuit said conversations with the guidance counselor
8 regarding academic matters are beyond the purview of the
9 parental right. That is our view as well. These types of
10 routine conversations with the guidance counselor, no, that
11 does not constitute psychological treatment. If however a
12 student were to go in a guidance counselor's office for a
13 sustained course, I don't know, call it hypnotherapy, now we
14 have a problem. Now the school is administering psychological
15 treatment just as it is in the social transitioning context.
16 But no, an ordinary conversation with a guidance counselor, no,
17 Your Honor, that's not part of what our complaint is about.

18 THE COURT: Okay. Are instances of physical or
19 physically-invasive medical treatment and procedures on minors
20 distinguishable from psychological treatment with respect to
21 your client's alleged parental right to make medical treatment
22 decisions for her children?

23 MR. DIXON: From a constitutional standpoint, if it
24 constitutes psychological or medical treatment, no, there is no
25 difference. Now, obviously one might lead to a greater set of

1 damages, but when it comes to whether or not the parental right
2 is triggered, yes, Your Honor, it is, and if I may, and please
3 stop, I know you will, but please stop me if I'm not answering
4 your question the way you want me to, but Your Honor said
5 earlier that the child plainly has a privacy right, and I would
6 strenuously object to that point. I mean, the Supreme Court
7 has never once held that a child has a privacy right in this
8 setting versus their parents. In fact, if you look at the
9 historical sources that we've cited in our brief, *Blackstone*
10 and *Kent*, children have a duty of obedience to their parents,
11 under both the common law and at the time the Fourteenth
12 Amendment was adopted. The notion that children have a privacy
13 right against their parents would be anathema both to the
14 founders and the framers of the Fourteenth Amendment.

15 The case that the District cites in support of that
16 proposition, there are a couple, but the primary one is
17 *Bellotti*. In *Bellotti* the Supreme Court held that a state
18 statute that required parental notice for an abortion did
19 prevent problems vis-a-vis the child's right to an abortion
20 under the Fourteenth Amendment. There's a lot of reasons that
21 doesn't extend to today's issue, primarily *Dobbs* has overruled
22 *Bellotti*. *Bellotti* is no longer good law on that point.

23 As it stands right now, the Supreme Court has never
24 once held in a holding that is currently binding that parents,
25 or the children rather, have any privacy right whatsoever

1 against their parents. Not a single case. I would also
2 submit, Your Honor, that *Bellotti* was an extremely unique case
3 in that the right at issue was the right to an abortion. That
4 is a right that due to the nature, the sui generis nature of
5 pregnancy, meaning the right must either be exercised or lost
6 within the short window of human gestation is a very unique
7 right.

8 The Supreme Court has held that adults, for example,
9 have the right to marry. There's no problem with prohibiting
10 minors from getting married.

11 The Supreme Court has held that adults have the right
12 to engage in sexual relations. There's no problem with
13 prohibiting minors from engaging in that, and the reason for
14 that as the Supreme Court in *Bellotti* has told us, that those
15 are the types of rights that can be exercised when the child
16 reaches the age of majority. If the child wants to get
17 married, parents can say no. The State can say no because the
18 child can get married at 18.

19 The same is true here. Nothing about the "right at
20 issue," quote, unquote, the right at issue here, the right to
21 privacy that the District asserts is evaporating. There's no
22 reason to apply the rule of *Bellotti* to it. A child who wants
23 to be socially transitioned can do that when that child reaches
24 the age of majority. The one case that we can figure that they
25 have cited for this proposition that is still good law is the

1 *Wolf* case out of the Central District of California. In the
2 *Wolf* case it is true that the Court in that case held that a
3 minor child had a right to privacy against her parents
4 vis-a-vis her sexual orientation. That case did not cite
5 *Blackstone*. Did not cite *Kent*. Did not cite a single Supreme
6 Court case. It cited one case, a case called *Sterling* out of
7 the Third Circuit that held that an adult has a privacy right
8 when the State discloses his homosexual status to his family.
9 There is no warrant to extend that case law to minors. I mean,
10 the *Bellotti* opinion and *H.L.* opinion, opinions we've cited in
11 our brief, are chock full of reasons and justifications for why
12 minors rights do not extend to the full extent of adult's
13 rights.

14 Children are immature, as the *Parham* case tells us.
15 Their perception of what they might want today is different
16 from what it might be tomorrow. They need the instruction.
17 They need the guidance of their parents in these types of
18 situations. So even if the Supreme Court had held that adults
19 have the right to privacy of a transgender identity, that would
20 not extend to the parents.

21 THE COURT: I want to give Mr. Duus an opportunity to
22 respond to that point. Mr. Duus?

23 MR. DUUS: Your Honor, *Bellotti* is pretty clear; a
24 child merely on account of his or her minority is not beyond
25 the protection of the Constitution. As the Court said in *In re*

1 *Gault*, whatever may be the precise impact, neither the
2 Fourteenth Amendment nor the Bill of Rights is for adults
3 alone. They're born a citizen of the United States. You have
4 constitutional rights upon birth.

5 Now, I understand that in certain circumstances that
6 we've recognized in our papers, parents have the right to
7 control in the custody of their children. It's usually against
8 state interference such as involuntary imprisonment or unwanted
9 medical treatment. But look at all the cases we've cited
10 where -- okay, let me take a step back.

11 So given *Bellotti*, given the Constitution, you have to
12 start with the premise that a child has constitutional rights.
13 So whether you fall under liberty, whether you fall under
14 privacy, we've cited ample authority that the right to gender
15 expression is a protected right. I mean, to quote -- this is
16 Third Circuit, but it was quoted by the Ninth Circuit in the
17 *Nelson* case, but the Third Circuit in *Sterling* held it is
18 difficult to imagine a more private matter than one's sexuality
19 and a less likely probability that the Government would have a
20 legitimate interest in disclosure of sexual identity.

21 So if you start with the premise that a child has some
22 right, some right to privacy, some right to liberty, some right
23 to express their gender the way they want to, okay, if we could
24 agree on that, at least to some degree -- and I don't agree, by
25 the way, that the idea of a child's privacy would have been

1 anathema in 1776 or 1789. I'll give you an example. A diary,
2 the parents didn't regularly read Jane -- well, Jane Austin was
3 English -- but parents didn't regularly read Phillis Wheatley's
4 diary. There's always been some degree recognized of privacy
5 even amongst the most intimate of families.

6 So what they're asking this Court to recognize is
7 something that has never been recognized: A parental right to
8 notice and consent when a child expresses their gender.
9 There's no precedent for it. As I mentioned earlier, to
10 recognize that right would lead to a lot of really maybe
11 unforeseen and unwanted consequences. I mean, that's a big
12 step for a government of limited powers to say that under the
13 Fourteenth Amendment we're going to expand this parental right
14 that we've never recognized before.

15 THE COURT: Again, just so we're clear, we talked
16 about this at the injunction motion, but I agree with the
17 plaintiff here, she's not really asking the Court to find that
18 the parent has a right to notice or consent simply if the child
19 came to school and said -- if her daughter came to school and
20 said, "I don't want to be called this name, I want to be a
21 boy," their view is the District doesn't have to provide any
22 notice to the parent if the child just says that. Notice from
23 their point of view, and correct me if I'm wrong, is simply
24 required the minute the District starts social transitioning,
25 again, equating social transitioning to medical treatment. So

1 it's a slightly different claim than the way you frame it.

2 So the question is, again, is that a substantive due
3 process right if, again, the District simply has -- if the
4 facts of this case reveal the District simply agrees with the
5 child's request and calls the child by different name and uses
6 different pronouns?

7 MR. DUUS: I understand their argument, Your Honor.
8 They're saying -- I mean, it goes to the crux of this case.
9 They're saying, Look, the problem here was that A.S. was being
10 treated as a boy at school, but as a girl at home, and the
11 mother had a right to know that. Okay.

12 Well, that's balanced against -- that would be
13 recognizing a substantive due process right to Ms. Regino or
14 Mrs. Regino, which there is no precedent for, but balance that
15 against the fact that we do have a precedent recognizing a
16 child's right to privacy and to protect their own expression of
17 their gender or sexuality. And if it came down to it, like the
18 scales of justice, you would have to weigh the child's right
19 against the parents. I think particularly under the factual
20 allegations in this complaint as we went through earlier and as
21 Your Honor pointed out, this is the school district reacting to
22 A.S. They're reacting -- so to give you an example, a concrete
23 example, the first conversation -- in the first conversation
24 that's alleged when A.S. tells the counselor, "I would like to
25 be known as a boy." The counselor asks, "Do you have a boy's

1 name," and she said, "Yes." She already had a boy's name.
2 She's reacting to that. This isn't a case of compulsion.

3 Your Honor, if I could address a couple of the points
4 about the medical issue.

5 THE COURT: Go ahead.

6 MR. DUUS: Mr. Dixon mentioned a child going and
7 getting Adderall. Okay, let's think about that for a second.
8 Adderall is a controlled substance. Adderall is subject to
9 extensive regulation under the FDA, under federal and state
10 law. So it isn't the same thing. And I think the presence of
11 all those regulations is why Adderall is considered to be
12 medical treatment in a way that may be giving a kid something
13 else, you know, I don't know, Gatorade, soda or something else,
14 it's not medical treatment, right. That's why I dispute that
15 all social transitioning equates to medical treatment. There
16 isn't any authority for that. I would notice that also they
17 did not object to our request for judicial notice of the
18 regulation. The regulation itself contains a definition of
19 "gender transition" that's pretty much the same as the WPATH
20 definition, and at least from the school's perspective. It's
21 the process in which a student changes from living and
22 identifying as a sex assigned to the student at birth to living
23 and identifying as the sex that corresponds to the student's
24 gender identity. That's not necessarily a medical decision. I
25 mean, "medical" to me means you are actually taking action on

1 someone's body. That's the difference between medical and
2 psychological, right? I mean, the District's regulation
3 doesn't even contemplate that, and there aren't any allegations
4 of that in the complaint.

5 THE COURT: Okay, let me come back to the plaintiff.

6 You cited a case out of the Kansas District Court,
7 recent case, May 9, 2022, *Ricard versus USD*. The question I
8 have for you is you why should I consider the holding of *Ricard*
9 which, again, different facts. It involved religious freedom
10 of exercise for teachers, or the other case you cite *BPJ versus*
11 *West Virginia Board of Education* under equal protection Title 9
12 for student athlete case. Why should I consider the holdings
13 of those two cases when the balance of the parental rights were
14 not at issue either case?

15 MR. DIXON: Before I get there, may I make one more
16 point on the privacy argument?

17 THE COURT: Go ahead.

18 MR. DIXON: Simply, we've explained in our brief why
19 there is no privacy right, but let me also emphasize it in the
20 *Wolf* case the Court said that to the extent the privacy right
21 exists, it only exists when the child has a reasonable
22 expectation of privacy.

23 In the *Wolf* case, the Court said that expectation was
24 there because the child had only come out to five friends. In
25 this case the District socially transitions a child throughout

1 the school community, as I mentioned earlier, all
2 administrators, all teachers, all other students. In that
3 situation, as a matter of law, there cannot be a reasonable
4 expectation of privacy.

5 In addition, the right can be overcome when the
6 District has compelling or sufficient countervailing
7 considerations, and I would submit here, Your Honor, the
8 parental right is a sufficient countervailing consideration.

9 On the *Ricard* case, Your Honor, it is true out the
10 District of Kansas that that case involved a claim by a
11 teacher. The Court noted in dicta, it would have been that
12 parents have the right to have a say in what their children are
13 called in school.

14 It is -- you're right, Your Honor, it is not holding,
15 but that case does state that parents have a right to say what
16 their -- parents have a right to say what their children are
17 called in school, and then it went on to hold that the policy
18 did not satisfy strict scrutiny because of the presumption that
19 was at issue in that case, and that's precisely what our
20 allegation is here.

21 The policy presumes that when a child says to a
22 administrator, "I want to transition and I don't want my parent
23 to know," the presumption is that by that statement, "I don't
24 want my parent to know," that the parent is an abusive parent,
25 that's the District's argument, that that is the reason for the

1 secrecy. Because the child doesn't want the parent to know,
2 the District presumes that that parent is an abuser and will
3 harm the child.

4 THE COURT: That's your argument of their argument. I
5 didn't read that in their brief, but that's your interpretation
6 of their argument.

7 MR. DIXON: Well, that is --

8 THE COURT: I don't recall them saying that in their
9 brief, but go ahead.

10 MR. DIXON: What they say is the justifications for
11 the policy are, Number 1, privacy, which I believe does not
12 exist. There is no justification. It is a vapor. It does not
13 exist.

14 The second justification is the prevention of child
15 abuse. Now, the policy --

16 THE COURT: No.

17 MR. DIXON: Yes, Your Honor.

18 THE COURT: It's an anti-harassment policy. I don't
19 think it's an anti child abuse. I know that was your argument
20 interpreting their argument, but go ahead, make your point. I
21 read the briefs.

22 MR. DIXON: Yes, Your Honor. I don't want to belabor
23 the point, I will find it for you, but that is the two
24 justifications they give for the policy, in their briefing, is
25 student privacy, which again does not exist, and even if it

1 did, it would be overcome by the parental right here, and
2 Number 2, it's for the prevention of domestic abuse, prevention
3 of child abuse, essentially -- not essentially, what the
4 district is doing is saying that if a child says, "I don't want
5 my parents to know," they're refusing to tell the parent
6 because doing so would lead to child abuse. That is an
7 impermissible presumption under the *Stanley* case.

8 THE COURT: Okay. If I granted the motion to dismiss
9 on the facial challenge, does your as-applied challenge also go
10 away, or is there a basis for you maintaining your as-applied
11 challenge?

12 MR. DIXON: There is a basis for us maintaining the
13 as-applied challenge. The standards are the same. You look to
14 whether it, you know -- the only difference in a facial and
15 as-applied challenge is the scope of the remedy. The facial
16 challenge would seek to strike the policy in all of its
17 applications.

18 The as-applied challenge would seek to hold that the
19 District -- the policy may not be applied as to Ms. Regino. So
20 if Your Honor were to conclude -- we would respectfully
21 disagree, but if Your Honor will conclude this permissible in
22 some set of applications based on the facts we've alleged, it
23 is impermissible as applied to Ms. Regino.

24 Your Honor, while I was looking, I found the quote.
25 It's on Page 17, "The District has a legitimate interest to

1 protect the student's privacy and create a zone of protection
2 from potential domestic abuse." So those are the two
3 justifications that the District gives for the policy. That's
4 on Page 17, end of the first paragraph.

5 THE COURT: Do you want to respond to that?

6 MR. DUUS: Yes, Your Honor. Mr. Dixon forgets the
7 first line of the sentence, we're citing a case, and since he
8 spent so much time citing out-of-circuit authority, we cited
9 *J&J Parents*, and the quote is here, "As discussed in *J&J*
10 *Parents*, the District has legitimate state interest to protect
11 the student's privacy and create a zone of protection from
12 potential domestic abuse. Maintaining the confidentiality of
13 the student's gender identity has a reasonable relationship
14 with that interest."

15 So yeah, as discussed in *J&J*, one of the policy
16 considerations behind this regulation is to prevent potential
17 abuse because, remember, why didn't A.S. want to tell her
18 mother about her transition, because, in their own allegations,
19 she was afraid that her mother would be mad. I'm not saying
20 that there was a risk of domestic abuse, I don't know. I don't
21 think there is. I don't think there are the facts to support
22 that in this case, but as discussed in *J&J Parents*, yeah,
23 that's one of the reasons for this policy, that that's a
24 potential, but that's not the only reason. One is that maybe
25 the child just isn't ready to tell their parents for whatever

1 reason. Short of domestic abuse, maybe they're just afraid
2 their parents are mad or angry. Maybe they need time to
3 express themselves and figure out if this is even the right
4 thing for them to do, right? Maybe they'll change their minds
5 and the parent never knows about it, but our position certainly
6 isn't that that's the only reason or justification for this
7 policy or this regulation.

8 THE COURT: Okay. Come back because I still wasn't
9 clear on your answer about -- so how would you maintain the
10 substantive due process as-applied challenge if you couldn't
11 maintain the facial challenge?

12 MR. DIXON: So to that point, Your Honor, it is our
13 view that the right is triggered, the parental right is
14 triggered by virtue of the allegations in the complaint. The
15 analysis then turns to is there a compelling interest?

16 The District asserts, as Mr. Duus just conceded, that
17 privacy and the prevention of dispute of parental abuse are the
18 two justifications for the policy. Privacy, as we've already
19 demonstrated, is a vapor; it doesn't exist. There is no
20 privacy right that children have against their parents with
21 respect to social transitioning by the school.

22 Number 2, the District asserts that that has a
23 compelling interest in the prevention of child abuse. We would
24 concede that the prevention of child abuse is a compelling
25 governmental interest; however, it must be narrowly tailored

1 under the *Stanley* case. In the *Stanley* case, Your Honor, the
2 father was unwed father, the mother died. The State had a
3 procedure for where the children go, and the State -- the
4 procedure presumed that an unwed father is not fit to raise the
5 children, so the State takes them. The Supreme Court said that
6 type of presumption is constitutionally impermissible because
7 it reverses the constitutionally-mandated presumption of
8 parental fitness and parental affinity. If there is an
9 adjudicative process that determines the father is not fit,
10 that's one thing, but what we've got here is a presumption that
11 the father is unfit based on nothing more than the unwed
12 status. That's precisely what we have in this case. We have a
13 presumption based on a child who says, "My mother would be
14 mad."

15 I mean, the mother might get mad for -- I don't think
16 I need to belabor the point that a child being fearful that the
17 mother might be mad has no reasonable relationship to the
18 prevention of child abuse. So that governmental purpose is
19 simply not narrowly tailored. We've alleged in the complaint
20 that Ms. Regino is not a child abuser. She has nothing but
21 love for her daughter, as evidenced by the fact that when this
22 happened, she did precisely what the District refused to do,
23 which is get the child help that the child needed rather than
24 leave the child on an island to simply have the gender
25 confusion issue swirling around her 11-year old head, perhaps

1 resulting by the social transitioning in this child, having
2 these types of feelings for the rest of her life, having a
3 situation where she goes on to puberty blockers, and then
4 medicalization again causing sterility for the rest of her
5 life. The mother did what the District would not do, which was
6 take the child to get the help the child needs and the child
7 today for now is identifying, again, as a girl. So the right
8 here --

9 THE COURT: You went way beyond my question. If I
10 found in the substantive due process claim the facial challenge
11 that your client hadn't established a federal constitutional
12 right, a substantive due process right, then you would agree
13 with me that you could not maintain the as-applied challenge.

14 MR. DIXON: If Your Honor concludes that we have not
15 alleged the existence of a federal constitutional right, then
16 that holding applies to Ms. Regino as applied as well.

17 I respectfully suggest --

18 THE COURT: I know you disagree.

19 MR. DIXON: Yes, Your Honor. If I may, Your Honor
20 started off the line of questioning by asking about what if I
21 conclude this isn't medical treatment? For the reasons we have
22 discussed, I believe Your Honor is required to accept that
23 allegation. It's a psychological treatment. I also want to
24 make a very quick point before I get there. For purposes of
25 constitutional analysis, there's not a difference between

1 psychological and medical treatment.

2 Mr. Duus has tried to draw the distinction between
3 Adderall being a controlled substance. As we perceive the
4 Ninth Circuit and the Supreme Court holdings, there would not
5 be any difference if instead of the Adderall hypothetical, the
6 hypothetical were hypnotherapy or some other form of
7 psychotherapy. I mean, medical treatment, psychological
8 treatment, whichever it is, it is controlled by the rule of
9 *Parham*.

10 Assuming Your Honor disagrees, however, that
11 psychological treatment is what we've alleged here, social
12 transitioning constitutes psychological treatment, there are
13 two other prongs of analysis we have alleged a substantive due
14 process.

15 THE COURT: What if I disagree under the facts of this
16 case two things happen: One, they agreed to call her by a
17 different name, and, two, they agreed to use different
18 pronouns, that's all that happened in this case, taking those
19 facts under those circumstances, can a Court conclude that
20 that's medical treatment? What happens then?

21 MR. DIXON: Assuming for the sake of argument --

22 THE COURT: Because I've now accepted all your facts
23 as true, I just don't accept your conclusion that that's
24 medical treatment.

25 MR. DIXON: If Your Honor does not accept that

1 conclusion, we still have stated a constitutional claim under
2 two different modes of analysis. So far, this entire argument
3 has been about one of the three we've alleged, medical
4 treatment.

5 We have also alleged that social transitioning, i.e.
6 sexual identity, gender identity of the child, is an important
7 decision that parents should be allowed to make even
8 independent.

9 THE COURT: This policy doesn't interfere with that.
10 It doesn't in any way interfere with that. It doesn't prevent
11 the child from telling her mother. It doesn't prevent the
12 parent from asking questions of her child. Again, it's not
13 proactive, it's reactive. They don't sign a note or tell the
14 child, "Don't you dare tell your mom what's going on in
15 school." That's not this case. So if that's your argument,
16 again, you could say, "I have issues with that," because
17 they're not -- they didn't interfere with your client's
18 parental rights in any way. They reacted to what the child was
19 telling them.

20 MR. DIXON: They reacted to what the child was telling
21 them --

22 THE COURT: And that's all they did.

23 MR. DIXON: -- and they kept it secret. They imposed
24 a regime where they mandated everyone in the school environment
25 to address the student in a different way, and then

1 intentionally refrained from telling the parents about that
2 activity. Even if that did not constitute medical treatment,
3 the implications of social transitioning, as we have alleged,
4 even if Your Honor does not accept our characterization of
5 "psychological treatment," the lifelong implications of social
6 transitioning on the child's identity are sufficient to allege
7 an infringement with the parent's parental right. We have a
8 situation where children are not permitted to get --

9 THE COURT: Do you want me to impose an affirmative
10 duty on the District to tell the parent?

11 MR. DIXON: Only if --

12 THE COURT: I'm not a legislator. That's a question
13 for the school board. That's a question for the Department of
14 Education. That's not a constitutional question for a judge in
15 my view. I think you are in the wrong forum. I know you
16 disagree.

17 MR. DIXON: Respectfully, I do.

18 THE COURT: I struggle with that. If you know me at
19 all, I think the powers in -- the responsibilities of a Federal
20 District Court are limited, and they should be limited. I know
21 other judges don't agree, but I'm a judge. I didn't get
22 elected. If I'm going to establish some policy that says to
23 the school district and every school district in the State of
24 California, "You got to tell parents now," who am I to say
25 that? No one elected me to make that decision.

1 MR. DIXON: Respectfully, Your Honor, we believe that
2 is required by the case law that is cited in our brief. I
3 mean, I understand -- I don't believe that that is a
4 legislative decision. Sure, it's something that a legislature
5 could do, but it is something that we believe is
6 constitutionally mandated.

7 THE COURT: Okay, I get it.

8 MR. DIXON: If I may, one more.

9 THE COURT: No. I want to get real quickly to the
10 procedural due process claim, because, again, I'm trying to
11 understand your argument. I know that the plaintiffs have
12 raised -- I'm sorry, the defendant has raised the argument that
13 again this was a legislative enactment. If there's any
14 procedural due process right that your client has, it's in the
15 procedure followed to enact the policy, but after that it
16 applies to everyone, and nothing's been violated here.

17 Again, you need a deprivation of a
18 constitutionally-protected liberty, a property interest, and
19 you need a denial of adequate procedural protections. There is
20 not a lot of discussions in the briefs about this, but I know
21 if I don't find that there was a constitutionally-protected
22 liberty or property interest violated here, those claims go
23 away as well. But again, I didn't really understand the
24 opposition to the argument raised by the defendant on the
25 procedural due process claim.

1 MR. DIXON: So the cases that the District cites for
2 purposes of arguing that this is a legislative enactment stand
3 solely for the proposition that a legislative enactment, people
4 are not required to give -- to receive notice that the
5 legislator is contemplating a law. People can follow the
6 legislative process and go in and make their voices heard prior
7 to a law being enacted. This case, however, this situation,
8 this policy, imposes a procedural regime, an established state
9 procedure under which a student comes in, evidentiary
10 assessments are made on a quote -- I quote from the policy, "a
11 case-by-case basis," and unless there is compelling evidence of
12 this and such, then the District will not tell the student --
13 the student's parents, rather, that's an adjudication. That's
14 not a legislative decision. That's an adjudication that is
15 made on the ground, and the case law establishes that when a
16 property right is finally extinguished or interfered with at
17 that time, there must be notice and an opportunity to be heard.
18 So the deprivation occurs at the moment the school begins to
19 socially transition the child. At that time the parent is not
20 informed. There has been an adjudication; the parent has been
21 deemed to be an abuser, and the school is doing this social
22 transitioning without notice, without opportunity to be heard.

23 So, I mean, we've cited a couple of cases in the
24 brief, *Cleveland v. Loudermill*, *Logan against Zimmerman Brush*.
25 There are scores of cases where a legislative enactment creates

1 a procedural regime that when applied, results in a deprivation
2 of a liberty protected interest. That's precisely what we have
3 here.

4 THE COURT: I understand. Mr. Duus, you want to
5 respond to that at all?

6 MR. DUUS: Yeah, Your Honor. I mean, they admit in
7 opposition that it was a legislative enactment. I don't even
8 understand the argument that a school district personnel
9 interacting with a child is an adjudication that would take --
10 that would somehow affect the regulation. I don't see any
11 authority for that.

12 I would like to point out something in their papers
13 because Mr. Dixon earlier mentioned that this case was about
14 all this social transitioning that was affecting A.S. and
15 swirling about her head, and the District set up this regime
16 not to tell the parents. That isn't what is alleged in their
17 complaint, which is the operative document.

18 In their complaint, Paragraph 8, they said, "After
19 several weeks of the District treating Ms. Regino's daughter as
20 a boy," so this went on for several weeks at most according to
21 their own allegations. Then why did Ms. Regino ultimately find
22 out that A.S. was doing this? It's because -- and these are
23 their words not mine -- the counselor "encouraged A.S. to speak
24 with other family members before telling her mother." So
25 contrary to the argument that's being made now their operative

1 complaint, what they allege, which is controlling, is that the
2 counselor encouraged A.S. to tell other family members before
3 telling her mother and that's how the mother found out. A.S.
4 did tell her grandmother who told the mom. So this argument
5 that there is this secrecy regime or the parental secrecy
6 policy, it's not even supported by their own allegations.

7 THE COURT: Okay.

8 MR. DIXON: Your Honor, may I make one more point?

9 THE COURT: No, no. Let me focus now on the last two
10 claims, the First Amendment.

11 With respect to your First Amendment claims, what
12 authority in the Ninth Circuit firmly demonstrates that the
13 right to family integrity and association extends to the
14 circumstances of this case? Are there, again, any cases that
15 share the facts of this case?

16 MR. DIXON: Your Honor, we cited the *Keates* case in
17 our brief, which establishes that the right to family integrity
18 arise under both the First and Fourteenth Amendment.

19 THE COURT: I'm just agreeing with you in a general
20 principle, but that's not my question. What authority in the
21 Ninth Circuit firmly demonstrates that the right to family
22 integrity and association extends to the facts of this case?

23 MR. DIXON: Well, let me be clear. The First
24 Amendment claim we make applies to all three of our arguments.
25 It is a claim for intimate association, and that intimate

1 association head, as it were, has three components that we've
2 alleged here: Right to medical treatment; right to make
3 important decisions; right to family integrity.

4 Now, I could speak specifically about the family
5 integrity argument, but I wanted to make clear that the First
6 Amendment argument is broader than just associational rights
7 from a family integrity standpoint.

8 THE COURT: Just asking for a case.

9 MR. DIXON: Yes, Your Honor. Give me one moment,
10 please. The question was there case law from the Ninth
11 Circuit, as I understand it, that applies to social
12 transitioning context. I am not aware of such a case, Your
13 Honor. We have cited out-of-circuit authority for the
14 proposition that interferences like these that draw a wedge
15 between parent and child, acts by the Government that preclude
16 the parents from knowing the influences that are being imposed
17 on their children. Those types of allegations satisfy this
18 family integrity right, but I'm not able to cite a social
19 transitioning case out of the Ninth Circuit.

20 THE COURT: Next question: How should the Court
21 approach the integrity of the parent-child relationship when
22 the school's mandatory disclosure requirement would, by design,
23 require the school to insert itself into that relationship even
24 where the child expressly forbids it?

25 MR. DIXON: Well, if the -- you know, as discussed,

1 the child does not have a right to preclude disclosure. This
2 is a bit like saying the child made an F on the report card and
3 doesn't want his parents to know. So this is really not very
4 different from any other types of disclosures which the schools
5 do all the time in the educational context. If there is a
6 right, then sure, that right would need to be taken account of,
7 but there is no right. There is no child right to privacy
8 against their parents.

9 THE COURT: Okay. How is your client's First
10 Amendment right implicated in this case when the District has
11 taken no action to physically separate your client from her
12 child or prevent them from talking? Cite the primary cases
13 where this right has been recognized.

14 MR. DIXON: Your Honor, we cited several cases in our
15 brief. I'll go through them briefly, but the *Gruenke* case out
16 of the Third Circuit -- I'm not sure I'm pronouncing that
17 correctly by the way -- in that case the child, the child was
18 pregnant, high schooler got pregnant. The swim coach
19 interjected in what the Third Circuit called the "management of
20 family crisis." There was no strict interference with the
21 ability of the parents to commune with the child. It was
22 simply the interjections of the State into the family.

23 The Ninth Circuit case law states that what is
24 prohibited by the right to family integrity is unwarranted
25 interference into the parent-child relationship. That's

1 precisely what was at issue in *Gruenke*, that is precisely what
2 is at issue here.

3 The *Arnold* case out of the Eleventh Circuit involved
4 a --

5 THE COURT: So the interference occurs by the District
6 not taking any action, that's your argument by "not
7 disclosing," by not acting.

8 MR. DIXON: By reaching down into the family and
9 socially transitioning a child in an area where the parent
10 should have control and authority over how the child
11 identifies, yes, that's exactly right, Your Honor.

12 THE COURT: That's the interference you are talking
13 about?

14 MR. DIXON: Yes, Your Honor. We basically allege
15 there are three types of interference, taking an act that
16 interferes with that type of personal decision.

17 THE COURT: What is an "interference" here? It's
18 simply the District didn't tell your client, that's the only
19 "interference" in quotes. I'm sorry, I'm using air quotes.

20 MR. DIXON: The District is performing an act that
21 results in the child having more likely to have a transgender
22 identity for the rest of their life.

23 THE COURT: The District is social transitioning the
24 child, but where is the interference? Your argument of the
25 interference is they didn't tell my client; they didn't act.

1 MR. DIXON: They performed that act without parental
2 consent, without the authority from the parent who has the
3 right to direct and control to do so.

4 THE COURT: Okay.

5 MR. DIXON: By doing so they also create a paradigm
6 where the parent or the child sees the parent as the enemy.
7 They go to school and they can -- the school will give them
8 what they want, but the parents won't give them what they want.
9 It creates a paradigm where they're the enemy, and it creates a
10 situation where the parent doesn't even know the influences
11 that are being imposed on the child.

12 THE COURT: If I don't accept your argument that
13 the -- that one of the basis for this policy is that the
14 District views it as preventing child abuse, that, again, it's
15 really to protect the child as much as possible from harassment
16 at school, if I don't accept that argument, again, where is the
17 interference; where is the constitutional violation here?

18 MR. DIXON: The District is performing actions on the
19 child that result in a issue that is core to the parent-child
20 relationship. The child is the son or the child is the
21 daughter, the District is interfering with that creating --

22 THE COURT: How?

23 MR. DIXON: By socially transitioning the child which
24 results in a decreased rate of --

25 THE COURT: But they're not taking the child away from

1 the parent. The child goes home everyday. The child is with
2 the parent 16 hours of the day. That's not being interfered
3 with at all.

4 MR. DIXON: Right, so --

5 THE COURT: They're not physically separating the
6 child. They're not preventing the child from talking to their
7 parent. That's not in the policy.

8 MR. DIXON: I would submit, Your Honor, that those
9 types of things, while sufficient, are not necessary to state a
10 claim for violation of the right to family integrity. I
11 started talk about the *Gruenke* case, the *Arnold* case, there is
12 the *Patel* case. In the *Patel* case, the police performed an
13 aggressive investigation and caused other family members to
14 distrust the plaintiff. Second Circuit said that that type of
15 interference with the relationship of the family is sufficient
16 to state a claim for violation of family integrity. While it
17 is true that most of the cases result in the Ninth Circuit
18 involve physical interference, the taking of a child, that is
19 certainly not the limit of the types of cases that will satisfy
20 the family integrity.

21 There are also District of Arizona and Central
22 District of California cases, we cited these in our brief
23 where -- go ahead, Your Honor.

24 THE COURT: I'm asking a lot of questions. Last one,
25 I promise. One more question. How does your client's request

1 for relief work with the District's general antidiscrimination
2 policy?

3 If the school abides by a parent's request to not
4 socially transition their child against the child's wishes,
5 isn't the school then in violation of its own
6 antidiscrimination policies?

7 MR. DIXON: It's not, Your Honor, and the reason is
8 that the definition of who is transgender and who is not is a
9 parental decision. So the District can apply its general
10 policies without problem. It's just that the parent is the
11 entity, the person, whomever, who gets to decide that question.

12 THE COURT: Okay. Mr. Duus, question for you: Under
13 this policy, or any policies, is the school -- in the Chico
14 Unified School District, is the school authorized to provide
15 any medical treatment to children absent parental notification
16 and/or consent, and if so, are there any limitations to this
17 authority?

18 MR. DUUS: Not to my knowledge, Your Honor.

19 THE COURT: Okay. Are you aware of any?

20 MR. DIXON: I am not Your Honor.

21 THE COURT: Okay.

22 MR. DIXON: I'm sorry, Your Honor, you're asking about
23 statutory?

24 THE COURT: Do you know of any situation where a
25 school is authorized to provide medical treatment without

1 parental notification?

2 MR. DIXON: No, Your Honor.

3 THE COURT: Okay. Don't take anything by the fact
4 that I picked on you a lot more. It's the nature of my oral
5 arguments, and it doesn't reflect ultimately what I'm going to
6 decide.

7 I appreciate you doing your best to really respond. I
8 know I put you on the hot spot a lot. Take nothing from the
9 fact that I kind of let the defendant off the hook a little
10 bit. Don't read anything into that. I'll let you -- I don't
11 want you to repeat what's in the briefs, I've read the briefs,
12 and I have a lot to think about. If there's anything else you
13 want on the record, I'll give each of you an opportunity to
14 sort of sum up.

15 I'm going to take the motion under submission. I
16 think you deserve a written order, a written opinion in this
17 case.

18 It's a really unique issue, and I think it's
19 important. I know there are other, again, districts dealing
20 with this issue in California, slightly different cases, but
21 it's going to keep coming up, so I think we need a written
22 order. We'll get that out as soon as possible.

23 Mr. Dixon, go ahead.

24 MR. DIXON: Yes, Your Honor. I just want to stay
25 under the hotspot for one minute, Your Honor. Not so much a

1 summary as it is really to just address one of the first things
2 that Your Honor said which is the standard here, the District
3 shocks the conscience; the District's actions shocks the
4 conscience.

5 We've explained that in our brief, Your Honor, that
6 shocks the conscience, which was at issue in the *Brittain* case,
7 arises in cases of executive action. That's what the Supreme
8 Court said in the *Lewis* case. And *Lewis* was a high speed
9 police chase that resulted in death. In *Brittain* it was an
10 aggressive police investigation.

11 Here, that's not the right standard. The right
12 standard here is the strict scrutiny standard, and the reason
13 is that we're challenging the prospective application of a
14 policy. Under the *Lewis* test that is not an aggressive -- I'm
15 sorry, not an executive action, that's a legislative act for
16 purposes of the standard of review.

17 THE COURT: You said prospective application of the
18 what?

19 MR. DIXON: The policy, the parental secrecy.

20 THE COURT: Would you agree strict scrutiny applies
21 again if I think there is a clearly established constitutional
22 right at issue here?

23 MR. DIXON: The language of "clearly establish" sounds
24 a lot to me like qualified immunity. So I'm not sure that's
25 the right standard. I do recognize the *Glucksberg*. I've read

1 *Glucksberg*, and I understand what it says. Our argument is
2 twofold with respect to that. I'm not going to repeat what
3 I've already said, but the *Glucksberg* test is satisfied, but I
4 would also point out that the Ninth Circuit has said that the
5 First Amendment right is coordinate with the Fourteenth
6 Amendment right, and there is no requirement for satisfying the
7 *Glucksberg* test for First Amendment claims.

8 THE COURT: The other way, what you are arguing is
9 that you actually disagree that it's a rational basis review;
10 it's strict scrutiny as far as you're concerned.

11 MR. DIXON: It's absolutely strict scrutiny, Your
12 Honor. We believe we satisfy a rational basis, but rational
13 basis doesn't apply.

14 THE COURT: Okay.

15 MR. DIXON: Just to make the point very clear because
16 I want to clarify something Mr. Duus said about legislative
17 enactment. This is a policy, we're challenging the prospective
18 application of it. That warrants the application of strict
19 scrutiny because this is not an executive action.
20 Shocks-the-conscience test doesn't apply, but it is a
21 legislative enactment that creates an established state
22 procedure that results in the deprivation of a constitutionally
23 protected interest.

24 So for purposes of the procedural due process clause,
25 it doesn't fall under the rule. You have *Bi-Metallic* or the

1 *Halverson* case that the District cited in its brief because
2 there is an adjudication that's occurring that results in the
3 deprivation of the right at the time of child is socially
4 transitioned without parental notice and an opportunity to be
5 heard.

6 THE COURT: Mr. Duus, anything further you want to
7 add?

8 MR. DUUS: Yeah, Your Honor. Actually, it's "Duus."

9 THE COURT: "Duus," sorry.

10 MR. DUUS: That's okay. I think just two things I
11 want to briefly touch on. I think one of the ironies of this
12 case is that Ms. Regino ultimately found out that her daughter
13 was having these feelings about gender expression because the
14 daughter told the counselor, and the counselor, in their own
15 allegations, encouraged her to tell other family members, which
16 the young lady had to know the grandmother was going to tell
17 the mother.

18 Then, the second thing is, as I touched on at the
19 beginning of the hearing, and Your Honor mentioned at one point
20 about a Federal District Court such as this one, or another
21 District Court intruding into the parent-child relationship,
22 and what they're asking for, it's a huge step. I mean, they're
23 asking this Court to recognize a significant expansion of the
24 Fourteenth Amendment and they can't. They can't plausibly
25 argue that it's only going to effect transgender issues. You

1 can't. It's just not logical. You know, once a right is
2 recognized, it expands. There is no other way to go about it.

3 I would really -- if the Court were inclined to do
4 that, I would really want Mr. Dixon's answer to the question if
5 a parent can stop the gender transition of a child, can a
6 parent compel it? That's funny, right, that would never
7 happen. Really? You have parents who want a boy, who want a
8 girl, there's ambiguity in the biological organs of the child,
9 if there's some other issues in how the child acts or if a
10 father with three girls wants a boy under the Constitution,
11 does that parent have the right to compel that child to gender
12 transition? It's a converse argument, but it's just as
13 constitutionally sound if the Court recognizes the right
14 they're seeking.

15 MR. DIXON: I'll be happy to respond, Your Honor.

16 THE COURT: Go ahead.

17 MR. DIXON: Our argument, the parental right is
18 triggered and the parental right here does not satisfy strict
19 scrutiny. Parents have the right to direct and control the
20 gender identity of their children. In the case where the
21 father wants a boy he could play basketball with, whatever the
22 case may be, the parental right is triggered. Strict scrutiny
23 would clearly prohibit the father for transitioning the child
24 for that reason. It's not really a very difficult
25 hypothetical.

1 I would also point out in my mind, if Montana, say,
2 were to enact the law that says parents may not socially
3 transition their children, even putting aside whether or not it
4 constitutes medical treatment, the Ninth Circuit unequivocally
5 would hold that that interferes with the parental right.

6 Your Honor didn't ask about the *Fields* and the *Barr*
7 line of cases. I would simply like to close my argument by
8 saying that when parents hand their children off to the school,
9 the school stands in loco parentis. In loco parentis, as we
10 cited in the *Gruenke* case, does not mean in place of parents.
11 Parents hand their kids off to school for the sole purpose of
12 the school to educate the children, and the school stands in
13 that position to the extent of that delegation. That's why
14 *Fields* make sense, because schools have to have the ability to
15 have school curriculum. That's why *Barr* makes sense because
16 schools have to have routine management decisions, hour of the
17 schoolday, that kind of thing.

18 When parents hand their kids off to school, they do
19 not hand them off for purposes of making gender identity, and
20 facilitating that -- maybe a better way to put it is
21 facilitating the transition of the gender identity. That is
22 not within the scope of what the children are being handed off
23 to the school for.

24 THE COURT: But you know the response to that argument
25 is that the school didn't do that here. The school didn't make

1 the decision. Her daughter had already made that decision.
2 Again, we're coming full circle.

3 I don't want to belabor the point. I have a quick
4 question, it doesn't really apply to the motion to dismiss. I
5 think we talked a little bit about it in terms of the remedy,
6 ultimate remedy your client is seeking.

7 She wants injunctive relief, right, she wants -- she
8 wants not only an order that the District can't enforce this
9 policy against her daughters, but that she also wants the Court
10 to go further and say the District has to rewrite the policy.
11 In fact, the District has to notify the parent before any
12 social transitioning takes place; is that accurate? That's
13 what she wants out of this case, it's not really a monetary
14 case.

15 MR. DIXON: As presently styled, it is not a monetary
16 case. It is a declaratory and injunctive relief, and she would
17 like a declaration that the policy is constitutionally invalid,
18 that the District may not apply the policy as to her, and
19 separately may not apply the policy district wide. I mean,
20 that's the facial challenge, is a declaration and injunction
21 vis-a-vis application of the policy writ large.

22 THE COURT: But within that, that means the District
23 would have to notify her before any social transitioning took
24 place.

25 MR. DIXON: That would not necessarily be the scope of

1 the Judge's order, Your Honor's order. It certainly could be,
2 but we're asking for an injunctive and a declaration, this
3 policy.

4 THE COURT: I'm just trying to get an idea if I ask
5 you to draft the injunction that you are seeking, would it
6 include an affirmative statement that the District has to
7 notify her -- it's not a class action, but notify her before
8 any social transitioning takes place and you would have to
9 define "social transition"?

10 MR. DIXON: That would be the fullest extent of the
11 relief we would seek. We would seek secondarily notice. First
12 of all, notice and consent. Second of all, lease notice.

13 THE COURT: Okay. Thank you, both. Mr. Duus, sorry
14 for mispronouncing your name, but it will look fine on the
15 transcript.

16 Mr. Dixon, thank you.

17 Ms. Regino, thank you for being here. It's important
18 that we have you here. So I appreciate you being here as well.

19 We'll get something out to you as soon as we can. We
20 are adjourned.

21 (Proceedings adjourned at 3:03 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a true and correct transcript of proceedings in the above-entitled matter.



MARYANN VALENOTI, RMR, CRR
Official Court Reporter
CA CSR #11266

August 6, 2023
DATE

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14 in her official capacity;

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AURORA REGINO,

Plaintiff,

vs.

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

Defendants.

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

**DEFENDANT SUPERINTENDENT
KELLY STALEY'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEFENDANT SUPERINTENDENT
KELLY STALEY'S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Date: June 27, 2023

Time: 1:30 p.m.

Crtrm.: 6

Judge: Hon. John A. Mendez

Complaint Filed: January 6, 2023

Trial Date: Not Yet Set

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

2 Defendant SUPERINTENDENT KELLY STALEY hereby requests, pursuant to Federal
3 Rule of Evidence 201, that the Court take judicial notice of the following facts and items in
4 connection with her contemporaneously-filed Motion to Dismiss First Amended Complaint:

- 5 1. Exhibit A: The District’s Administrative Regulation 5145.3. Exhibit A is the
6 District’s anti-harassment regulation in force during the time in question, and the
7 target of each of the claims raised by Plaintiff AURORA REGINO (“Plaintiff”).
8 A court may take judicial notice of government records. *Anderson v. Holder*, 673
9 F.3d 1089, 1094 n. 1 (9th Cir. 2012); *Daniels-Hall v. National Educ. Ass’n.*, 629
10 F.3d 992, 998 (9th Cir. 2010).
- 11 2. Exhibit B: World Professional Association for Transgender Health Standards of
12 Care for the Health of Transgender and Gender Diverse People, Version 8
13 (“WPATH SOC 8”) providing the definition of “social transition.” A court may
14 take judicial notice of definitions as “adjudicative facts” under Federal Rule of
15 Evidence 201. *Threshold Enters. v. Pressed Juicery, Inc.*, 445 F.Supp.3d 139,
16 146 (N.D. Cal. 2020). In addition, the Ninth Circuit Court of Appeals regularly
17 recognizes definitions as adjudicative facts even if not expressly identifying those
18 recognitions as “judicial notice.” See e.g., *Rincon Band of Luiseno Mission*
19 *Indians of the Rincon Reservation v. Schwarzenegger*, 602 F.3d 1019, 1030
20 (recognizing Webster’s Third New International Dictionary 598 (2002) definition
21 of “demand”).
- 22 3. Exhibit C: Order, *Jane Doe v. Manchester School District*, Case No. 216-2022-
23 CV-00117 (N.H. Superior Court, Hillsborough County, Northern District, Sept. 5,
24 2022). A court may take judicial notice of State court proceedings. *Trigueros v.*
25 *Adams*, 658 F.3d 983, 987 (9th Cir. 2011). Exhibit C provides persuasive legal
26 analysis that a parent’s constitutional rights are not infringed by school districts
27 which do not disclose the gender identity of its students.
- 28 4. Exhibit D: California Department of Education (“CDE”) publication: “Frequently

1 Asked Questions: School Success and Opportunity Act (Assembly Bill 1266)
2 Frequently Asked Questions.” A court may take judicial notice of government
3 records. *Anderson*, 673 F.3d at 1094 n. 1; *Daniels-Hall*, *supra*, 629 F.3d at 998.
4 Exhibit D imposed guidance for public school districts to follow with regard to
5 complying with A.B. 1266 and other transgender-related legal requirements.

6 Under Federal Rule of Evidence 201, a court may take judicial notice a fact that is not
7 subject to reasonable dispute if it: (1) is generally known with the trial court’s territorial
8 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot
9 reasonably be questioned. As set forth above and in the contemporaneously-filed declarations,
10 the records itemized above meet the requirements of Rule 201.

11
12 Dated: April 25, 2023

LEONE ALBERTS & DUUS

/s/ Jimmie E. Johnson _____
BRIAN A. DUUS, ESQ.
JIMMIE E. JOHNSON, ESQ.
Attorneys for Defendants

EXHIBIT C

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

Jane Doe

v.

Manchester School District
and
School Administrative Unit #37

Docket No. 216-2022-CV-00117

ORDER

The plaintiff brought this action alleging that the transgender student policy of the Manchester School District violates the plaintiff's constitutional and statutory parental rights. The defendants now move to dismiss. The plaintiff objects. For the reasons set forth below, the defendants' motion to dismiss is GRANTED.

Factual Background

The Amended Complaint alleges the following facts, which the Court assumes to be true for purposes of this motion. On February 8, 2021, the Manchester School District adopted Policy 100.1, titled Transgender and Gender Non-Conforming Students (hereinafter "the Policy"). (See Am. Compl. ¶ 24; Ex 1.) The Policy provides:

District policy requires that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. This policy is designed in keeping with these mandates to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities. . . . In all cases, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender nonconforming

student while maximizing the student's social integration and minimizing stigmatization of the student.

(Am. Compl., Ex. 1, Section I.) Of particular relevance to the plaintiff's claims, the Policy further provides that:

The Board recognizes a student's right to keep private one's transgender status or gender nonconforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. School personnel should not disclose information that may reveal a student's transgender status or gender nonconforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student has authorized such disclosure. Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender nonconforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative to meet the need for that individual's privacy, regardless of gender identity.

(Id., Section III.A.) The Policy was derived from a model policy that was drafted, circulated, and recommended by the New Hampshire School Boards Association, an organization to which the defendants pay dues with funds provided by taxpayers. (Am. Compl. 25.) On March 14, 2022, the District amended the Policy, making the following changes (deletions in ~~strikethrough~~ format; additions in **[bold and in brackets]**):

The Board recognizes a student's right to keep private one's transgender status or gender nonconforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. School personnel should not disclose information that may reveal a student's transgender status or gender nonconforming presentation to others, ~~including parents and other school personnel,~~ unless legally required to do so or unless the student has authorized such disclosure.

Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. **[Nothing herein shall be construed to change the obligation of the school to take action when student safety is concerned.]**

When ~~contacting the parent or guardian of~~ **[referring to]** a transgender or gender nonconforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise. Any student who has a need or desire for increased privacy, regardless of the underlying reason, should be provided with a reasonable alternative to meet the need for that individual's privacy, regardless of gender identity.

(Am. Compl., Ex. 2, Section III.A.)

The plaintiff's minor child (M.C.) attends a school in the Manchester School District. (Am. Compl. ¶ 48.) In the fall of 2021, the plaintiff learned that M.C. had asked teachers and fellow students to refer to M.C. by a name traditionally associated with a gender different from their gender as assigned at birth. (*Id.* ¶ 49.) The plaintiff reached out to M.C.'s guidance counselor and informed her that she would like the school to continue to treat M.C. according to M.C.'s birth gender, address M.C. by their given name, and address M.C. using the pronouns traditionally associated with their biological sex. (*Id.* ¶ 50.)

While some of M.C.'s teachers communicated their willingness to comply with the plaintiff's wishes, (*id.* ¶¶ 51–52), the school's principal sent the plaintiff an email in which he stated:

While I respect and understand your concern, we are held by the District policy as a staff. I have quoted our district policy below, which outlines the fact that we cannot disclose a student's choice to parents if asked not to. If [M.C.] insists on being called [M.C.'s desired name] as a staff we have to respect that according to the policy or unfortunately we can be held accountable despite parents' wishes.

(Id. ¶ 53.) Following this exchange, M.C. informed the plaintiff that they had asked school personnel to use their birth name and pronouns. (Id. ¶ 54.) School personnel made similar representations to the plaintiff. (Id. ¶ 55.) Nevertheless, the plaintiff has brought this action claiming that the continued existence of the policy “means that [she] cannot know whether representations by District personnel are factually true, or whether the District personnel are simply following the Policy by misleading and/or lying to [her] about M.C.’s in-school gender expression and the District’s response thereto.” (Id. ¶ 56.) Count I alleges that by promulgating and enforcing the Policy, the defendants are violating her parental rights under Part I, Article 2 of the New Hampshire Constitution. Count II alleges that the Policy is *ultra vires*. Count III alleges that the Policy violates the Family Educational Rights and Privacy Act (FERPA). Finally, Count IV alleges that the Policy violates the Protection of Pupil Rights Act (PPRA). The plaintiff seeks a declaratory judgment, permanent injunction, nominal damages, and attorneys’ fees. (Id. ¶ 1; Prayer for Relief.)

Analysis

In ruling on a motion to dismiss, the Court determines “whether the allegations contained in the pleadings are reasonably susceptible of a construction that would permit recovery.” Pesaturo v. Kinne, 161 N.H. 550, 552 (2011). The Court rigorously scrutinizes the facts contained on the face of the complaint to determine whether a cause of action has been asserted. In re Guardianship of Madelyn B., 166 N.H. 453, 457 (2014). The Court “assume[s] the truth of the facts alleged by the plaintiff and construe[s] all reasonable inferences in the light most favorable to the plaintiff.” Lamb v. Shaker Reg’l Sch. Dist., 168 N.H. 47, 49 (2015). The Court “may also consider documents attached to the plaintiff’s pleadings, or documents the authenticity of which are not disputed by the

parties[,] official public records[,] or documents sufficiently referred to in the complaint.” Beane v. Dana S. Beane & Co., P.C., 160 N.H. 708, 711 (2010). “If the facts do not constitute a basis for legal relief, [the Court will grant] the motion to dismiss.” Graves v. Estabrook, 149 N.H. 202, 203 (2003).

The defendants first argue that Count I of the Amended Complaint should be dismissed because the Policy does not infringe the plaintiff’s right to parent under Part I, Art. 2 of the New Hampshire Constitution. Specifically, while the defendants concede that the plaintiff has a fundamental right to raise her child as she wishes, they assert that the plaintiff’s right to parent does not include the ability to direct how the school teaches her child. In response, the plaintiff argues that by preventing the free flow of information between parents and the school concerning a child’s preferred name, gender identity, or social transitioning status, the Policy infringes on the fundamental right to parent. She thus asserts that the policy is subject to strict scrutiny, which it cannot survive.

The Plaintiff invokes both the State and Federal Constitutions. (See Am. Compl. ¶ 2.) Accordingly, the Court will address the State Constitutional claim first, citing to federal law to aid in its analysis. See In re Nelson, 149 N.H. 545, 547 (2003) (citing State v. Ball, 124 N.H. 226, 231–33 (1983)).

“The right of parents to raise and care for their children is a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution.” In re R.A., 153 N.H. 82, 90 (2005). “Similarly, the United States Supreme Court has recognized that the ‘Due Process Clause of the Fourteenth Amendment protects the fundamental rights of parents to make decisions concerning the care, custody, and control of their children.’” Id. (quoting Troxel v. Granville, 530 U.S. 57, 66 (2000)). “Parental rights have been found

to operate against the State, against third parties, and against the child.” Id. (quotation omitted). However, the right to make decisions about the care, custody, and control of one’s children is not absolute. Reardon v. Midland Community Schools, 814 F. Supp. 2d 754, 768 (E.D. Mich. 2011) (citing Prince v. Massachusetts, 321 U.S. 158, 165–66 (1944)); see also Arnold v. Bd. of Education, 880 F.2d 305, 313 (11th Cir. 1989) (“We recognize that parental autonomy to direct the education of one’s children is not beyond limitation. When parents enroll their children in public schools they cannot demand that the educational program be tailored to their individual preferences.”). For example, “[w]hile parents may have a fundamental right to decide whether to send their child to a public school, they do not have a fundamental right generally to direct how a public school teaches their child.” Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 395 (6th Cir. 2005). “Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities offered at the school or . . . a dress code, these issues of public education are generally committed to the control of state and local authorities.” Id. at 395–96.

By its plain terms, the Policy encourages respect for student wishes when it comes to when and with whom to share information regarding the student’s preferred name and gender identity. Nevertheless, it is not stated in absolute terms. Indeed, the policy specifically contemplates that it shall not prevent school officials from taking action when student safety is concerned. Even crediting the plaintiff’s assertion that the policy would allow school officials to affirmatively conceal her child’s gender identity preferences from her, the Court rejects the plaintiff’s argument that the Policy violates her fundamental right

to parent. See Parents for Privacy v. Barr, 949 F.3d 1210, 1231 (9th Cir. 2020) (affirming district court's conclusion that "Plaintiffs lack a fundamental right to direct Dallas High School's bathroom and locker room policy"); Thomas v. Evansville-Vanderburgh School Corp., 258 Fed.Appx. 50, 52–54 (7th Cir. 2007) (finding no violation of parent's right to direct upbringing of child where the school did not inform mother of school counselor's private conversations with student regarding her problems at school); Doe v. Irwin, 615 F.2d 1162, 1168 (6th Cir. 1980) (finding no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the school's voluntary birth control clinic). Indeed, the policy does not encourage or prevent students from sharing information with their parents. Moreover, the Policy does not prevent parents from observing their children's behavior, moods, and activities; talking to their children; providing religious or other education to their children; choosing where their children live and go to school; obtaining medical care and counseling for their children; monitoring their children's communications on social media; choosing with whom their children may socialize; and deciding what their children may do in their free time. In short, the Policy places no limits on the plaintiff's ability to parent her child as she sees fit.

The Court therefore finds that because no fundamental right is infringed, plaintiff's claims do not warrant the application of strict scrutiny. Instead, where a challenged law or regulation does not impinge upon a fundamental right, the Court employs a rational basis review. See Lloyd v. Sch. Bd. of Palm Beach Cty., No. 9:21-cv-81715-KMM, 2021 U.S. Dist. LECIS 210628, at *21–29 (S.D. Fla. Oct. 29, 2021) (finding that because a school mask mandate did not implicate fundamental rights, rational basis review was

appropriate). The rational basis test requires that the Policy only be rationally related to a legitimate governmental interest. State v. Hollenbeck, 164 N.H. 154, 163 (2012). The party challenging the legislation has the burden of proof. Id. This level of review contains no inquiry into whether the Policy unduly restricts individual rights, nor does the Court independently examine the factual basis. Id. Rather, the Court will inquire only as to whether the defendants could reasonably conceive to be true the facts upon which the Policy is based. Id.

Here, the defendants have a legitimate interest in ensuring that “all school district programs, activities, and employment practices be free from discrimination,” to “create a safe learning environment for all students,” and to “ensure that every student has equal access to all school programs and activities.” See (Am. Compl., Ex. 2, Section I); see also RSA 193:38 (prohibiting discrimination in public schools on the basis of gender identity); RSA 193:39 (requiring school districts to develop and implement anti-discrimination plans). The defendants enacted the Policy in furtherance of those interests. As it pertains to student privacy, the Policy notes that a student’s transgender status may constitute confidential information and provides that “[s]chool personnel should not disclose information that may reveal a student’s transgender status or gender nonconforming presentation to others unless legally required to do so or unless the student has authorized such disclosure.” (Am. Compl., Ex. 2, Section III.) The Policy is flexible and acknowledges that the “needs of each transgender or gender nonconforming student must be assessed on a case-by-case basis.” (Id. at Section I.) The parties disagree as to whether the Policy properly balances and respects competing rights and adequately protects the interests of transgender students. While competing values and policy

interests may be at stake, “[i]t is not for the court to inquire into the wisdom or unwisdom of such [rulemaking]. Whether the act be wise, reasonable, or expedient, is a legislative and not a judicial question.” Cram v. School Bd., 82 N.H. 495, 496 (1927). Here, the School Board considered the various interests involved and specifically acknowledged that differing circumstances may exist for each student. It adopted a policy derived from a model policy recommended by the New Hampshire School Boards Association. (Am. Compl. ¶ 25.) They considered changes and subsequently amended the Policy. (Id. ¶ 43.) The Policy itself sets forth its purpose and is drafted in flexible terms. While the plaintiff may disagree with the Policy, it is rationally related to a legitimate governmental interest and the Court finds, therefore, that it does not offend the constitution.

Accordingly, the defendants’ motion to dismiss is GRANTED as to Count I of the Amended Complaint.

The defendants next argue that the school board was authorized to enact the Policy and therefore it is not *ultra vires*. “Administrative rules may not add to, detract from or modify the statute they are intended to implement.” Appeal of Mader 2000 Trust, 174 N.H. 520, 525 (2021) (brackets and quotation omitted). “Thus, the determination of whether an administrative rule is *ultra vires* involves statutory interpretation.” Id. When interpreting statutes, we ascribe the plain and ordinary meanings to the words used. Id. The interpretation of a statute is a question of law for this Court.

The relevant statutory authority is contained within RSA 193:38–:39, reproduced below:

193:38 Discrimination in Public Schools. – No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or

national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

193:39 Discrimination Prevention Policy Required. – Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other classes protected under RSA 354-A.

RSA 193:38 makes discrimination based on sex or gender identity unlawful in public schools. RSA 193:39 requires that each school district develop a discrimination prevention and response plan targeted at, *inter alia*, discrimination based on sex or gender identity. The Policy by its own terms “is designed . . . to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities.” (Am. Compl., Ex. 2, Section I.) Given the relevant statutory framework, the language of the Policy, and the record before it, the Court finds the plaintiff has failed to set forth a legal or factual basis to support its contention that the policy is *ultra vires*.

As a result, the defendants’ motion to dismiss Count II of the Amended Complaint is GRANTED.

Finally, the defendants contend that the plaintiff lacks standing to assert the federal statutes referenced in Counts III and IV of the Amended Complaint, and that even if she did, she has failed to state a claim for relief. In her Amended Complaint, the plaintiff asserts taxpayer standing under Part I, Article 8 of the State Constitution. However, in her objection, the plaintiff fails to address the defendants’ arguments as to Counts III and IV.

Part I, Article 8 provides that:

[A]ny individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer.

Part I, Article 8 confers standing upon a plaintiff who challenges a particular governmental spending action, that is to say, “a plaintiff with standing under Part I, Article 8 can call on the courts to determine whether a specific act or approval of spending conforms with the law.” Carrigan v. N.H. Dep’t of Health and Human Servs., 174 N.H. 362, 370 (2021). The phrase “has spent, or has approved spending” does not mean “a governmental body’s overall management of its operations and functions, including its allocation of appropriations, as opposed to one or more discrete acts or decisions approving certain spending.” Id.

The plaintiff first claims that by withholding information regarding a student’s preferred name or gender identity, the defendants are violating FERPA, 20 U.S.C. ¶ 1232g(a)(1)(A), by unlawfully withholding “education records.” As a threshold matter, it is well settled law that FERPA cannot be enforced through a private cause of action. See Frazier v. Fairhaven Sch. Comm., 276 F.3d 52, 69 (1st Cir. 2002) (finding no private cause of action under FERPA and collecting cases holding the same). Nor can FERPA be enforced through an action under 42 U.S.C. § 1983. See Gonzaga Univ. v. Doe, 536 U.S. 273, 290 (2002). The Court therefore has doubts about whether a plaintiff could use Article 8 taxpayer standing to assert an otherwise unavailable FERPA claim.

In any event, the relevant provision of FERPA requires educational institutions and agencies to make education record available to parents in order to be eligible for federal funding. "Education records" are defined as "those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution." 34 CFR § 99.3. Here, contrary to the defendant's assertions, the language of the Policy suggests that some records may be generated about students as a result of the policy. (See Am. Compl., Ex. 2, Section III.B (noting that the permanent pupil record will contain the student's legal name and gender, but that the district is not required to use a student's legal name or gender on other school records or documents).) Nevertheless, as noted above, the Policy does not create an absolute bar to the release of information. Specifically, it states that "[s]chool personnel should not disclose information that may reveal a student's transgender status or gender nonconforming presentation to others unless legally required to do so or unless the student has authorized such disclosure." (Id., Section III.A.) Thus, to the extent any "education records" are actually generated under the Policy, by the Policy's very terms, the defendants are required to treat and handle them in accordance with FERPA. As a result, the Court finds that the Policy does not violate FERPA.

As a result, the defendants' motion to dismiss Count III of the Amended Complaint is GRANTED.

Finally, the plaintiff claims that the Policy violates the PPRA because it requires students to submit to surveys or evaluations concerning their sex behaviors or attitudes without parental consent. The relevant portion of the PPRA provides that:

No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information

concerning . . . sex behavior or attitudes . . . without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

20 U.S.C. § 1232h(b)(3). Likewise, the associated regulations require that

(a) No student shall be required . . . to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning . . . (3) Sex behavior and attitudes.

(b) As used in paragraph (a) of this section, prior consent means . . . (2) Prior written consent of the parent or guardian, if the student is an unemancipated minor.

34 CFR § 98.4

Nothing in the Policy mandates or suggests that school personnel should survey or question students regarding their preferred names or gender identities. Nor does the Policy mandate or suggest students submit to psychiatric examination, testing or treatment without the consent of a parent. Rather, the Policy establishes that should a student discuss with or express to the school a preference for a name or gender identity other than that assigned at birth, then the school would honor that choice and, to the extent allowable by law, protect the confidentiality of that information. As a result, the Court finds that the Policy does not violate the PPRA.

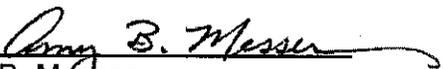
Accordingly, the defendants' motion to dismiss COUNT IV of the Amended Complaint is GRANTED.

Conclusion

Consistent with the foregoing, the defendants' motion to dismiss the Amended Complaint is GRANTED.

SO ORDERED.

September 5, 2022
Date


Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/06/2022

From: caed_cmecf_helpdesk@caed.uscourts.gov
To: CourtMail@caed.uscourts.gov
Subject: Activity in Case 2:23-cv-00032-JAM-DMC Regino v. Staley et al Minute Order.
Date: Wednesday, April 12, 2023 4:09:03 PM

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U.S. District Court

Eastern District of California - Live System

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The following transaction was entered on 4/12/2023 at 4:07 PM PDT and filed on 4/12/2023

Case Name: Regino v. Staley et al
Case Number: [2:23-cv-00032-JAM-DMC](#)
Filer:
Document Number: 45(No document attached)

Docket Text:

MINUTE ORDER (Text Only Entry) issue by M York Courtroom Deputy for Senior District Judge John A. Mendez on 04/12/2023: On 04/10/2023, Plaintiff timely filed her First Amended Complaint in response to Defendants' Motion to Dismiss at ECF No. [40]. See FAC, ECF No. [42]; Fed. R. Civ. P. 15(a)(1)(B). An amended complaint ordinarily moots a motion to dismiss, however, the Court may exercise its discretion to consider a motion to dismiss the original complaint where the amended complaint fails to cure the defects of the original complaint. Appleton v. County of Sacramento, 2005 U.S. Dist. Lexis 35632, fn. 4 (E.D. Cal. Dec. 25, 2005). Accordingly, the Court GRANTS in PART and DENIES in PART Defendants' Motion to Dismiss. The Court GRANTS Defendants' motion as to the individual Board Member Defendants sued in their official capacities. The claims against Defendants Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, and Matt Tennis, sued in their official capacities, are hereby DISMISSED with prejudice. As to any other issues raised in the Motion to Dismiss, the Court will take them up at the appropriate time if Defendants file a second motion to dismiss the FAC. The Court thus DENIES the remainder of Defendants' motion without prejudice for refileing. The Court also DENIES Defendant's Request for Judicial Notice without prejudice for refileing. ECF No. [40-1](#). The 05/23/2023 hearing on this Motion is hereby VACATED. (York, M)

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17 *Attorneys for Plaintiff*
18 AURORA REGINO

19 **IN THE UNITED STATES DISTRICT COURT**
20 **EASTERN DISTRICT OF CALIFORNIA**

21 **AURORA REGINO,**

22 **Plaintiff,**

23 vs.

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

Defendants.

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

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE

1 Plaintiff Aurora Regino, by and through her undersigned counsel, submits the following
2 Opposition to Defendants’ Request for Judicial Notice (“RJN”) (Dkt. 40-1.) Defendants filed the
3 RJN in connection with, and in support of, their Rule 12(b)(6) Motion to Dismiss Ms. Regino’s
4 Complaint. (Dkt. 40.) Ms. Regino has now filed a First Amended Complaint, which she is entitled
5 to do of right under Rule 15(a)(1)(B). The First Amended Complaint moots both the Motion to
6 Dismiss and the RJN. *See, e.g., Doe v. Lassen Community College Dist.*, No. CV 07-1521 LEW,
7 WL 2904219, *1 (E.D. Cal. Oct. 3, 2007) (denying defendant’s RJN as moot upon plaintiff’s
8 filing of first amended complaint). Ms. Regino files this Opposition to the RJN out of an
9 abundance of caution in the event the Court concludes the RJN is not moot.

10 INTRODUCTION

11 In support of their Motion to Dismiss, Defendants filed the RJN, which asked the Court
12 to take judicial notice of six exhibits. (Dkt. 40-5–40-10.) One of the exhibits—the World
13 Professional Association For Transgender Health Guidelines, Version 8 (the “WPATH
14 Guidelines” or the “Guidelines”) (Dkt. 40-6)—improperly presents new facts to the Court that are
15 not subject to judicial notice under Rule 201 of the Federal Rules of Evidence. Moreover, the
16 WPATH Guidelines are not attached to, or referenced in, Ms. Regino’s First Amended Complaint,
17 and the success of her claims do not depend on the contents of that document. The Court should
18 therefore disregard this document at this time.

19 ARGUMENT

20 When ruling on a Rule 12(b)(6) motion, the Court generally “may not consider any
21 material beyond the pleadings.” *Applied Underwriters Inc. v. Lichtenegger*, No. 2:15-cv-02445-
22 TLN-CKD, 2017 WL 2881517, at *2 (E.D. Cal. July 6, 2017) (cleaned up). The only exceptions
23 to this general rule are (1) “for matters subject to judicial notice pursuant to Federal Rule of
24 Evidence 201” and (2) “for material attached to the complaint or referred to in the complaint if
25 the complaint necessarily relies on that material and its authenticity and relevance are not
26 disputed.” *Id.* (citation omitted). Under the first exception, the adjudicative fact must “not [be]
27 subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial
28

1 jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot
2 reasonably be questioned.” Fed. R. Evid. 201(b).

3 Here, the WPATH Guidelines do not satisfy either one of these exceptions.

4 **I. The WPATH Guidelines are not Subject to Judicial Notice**

5 Defendants ask the Court to take judicial notice of the definition of “social transition” set
6 forth in the WPATH Guidelines. (Dkt. 40-1 at 2:13-23.) But because the WPATH definition is
7 “subject to reasonable dispute,” the Guidelines are not subject to judicial notice. Fed. R. Civ.
8 Evid. 201(b).

9 The Court “cannot take judicial notice of the contents of documents for the truth of the
10 matters asserted therein when the facts are disputed.” *Rollins v. Dignity Health*, 338 F. Supp. 3d
11 1025, 1031 (N.D. Cal. 2018) (citation omitted). Further, it is improper to take judicial notice of a
12 document “when the substance of the [document] is subject to varying interpretations, and there
13 is a reasonable dispute as to what the [document] establishes.” *Khoja v. Orexigen Therapeutics,*
14 *Inc.*, 899 F.3d 988, 1000 (9th Cir. 2018) (cleaned up). It is also improper to take judicial notice
15 documents when they contradict “facts stated in a well-pleaded complaint.” *Cottle v. Plaid, Inc.*,
16 536 F. Supp. 3d 461, 477 (N.D. Cal. 2021) (cleaned up).

17 Here, Defendants seek judicial notice of the WPATH Guidelines’ definition of “social
18 transition.” Curiously, Defendants do not actually quote this definition either in the RJN or their
19 Motion to Dismiss. In any event, the First Amended Complaint already alleges a definition of
20 “social transitioning” in the school setting. (First Amended Complaint ¶ 2.) Accordingly, the
21 Guidelines’ definition is subject to “reasonable dispute” and “varying interpretations” on the facts
22 here. *Khoja*, 899 F.3d at 1000. At this stage in the proceedings, the Court must accept the truth of
23 Ms. Regino’s allegations and not the WPATH Guidelines’ definition. *Cottle*, 536 F. Supp. 3d at
24 477.

25 What is more, Defendants attached the entire 260-page WPATH Guidelines as an Exhibit
26 to their RJN. (Dkt. 40-6.) As a result, Defendants are effectively asking the Court to consider the
27 *entire* document simply to take notice of *one definition* contained therein. Even if the Court were
28 to take notice of the definition of “social transition” (and it should not), the Court should not take

1 notice of the entire document. *Khoja*, 899 F.3d at 999 (“Just because [a] document itself is
2 susceptible to judicial notice does not mean that every assertion of fact within that document is
3 judicially noticeable for its truth.”). Defendants have not shown that the WPATH Guidelines
4 generally are not subject to reasonable dispute—which they are—and, thus, the Guidelines
5 generally cannot be considered for the “truth of the matters asserted therein.” *Rollins*, 338 F. Supp.
6 3d at 1031.¹

7 **II. The Complaint does not Necessarily Rely on the WPATH Guidelines**

8 The WPATH Guidelines are not attached to the First Amended Complaint, nor does the
9 First Amended Complaint reference them. Moreover, the First Amended Complaint does not
10 necessarily rely on the Guidelines’ definition of “social transition” or the content of the Guidelines
11 more generally.

12 The Court may only consider an extrinsic document when the success of a claim
13 necessarily “depends on the contents of a document.” *Knieval v. ESPN*, 393 F.3d 1068, 1076 (9th
14 Cir. 2005). Considering documents that were not submitted with or referenced in the complaint
15 is “nothing more than another way of disputing the factual allegations in the complaint.” *Khoja*,
16 899 F.3d at 1003. Doing so is inconsistent “with the prohibition against resolving factual disputes
17 at the pleading stage.” *Id.* (citing *In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016)
18 (“At the motion to dismiss phase, the trial court must accept as true all facts alleged in the
19 complaint and draw all reasonable inferences in favor of the plaintiff.”)).

20 None of the claims in the First Amended Complaint necessarily rely on the Guidelines’
21 definition of “social transition” or the content of the Guidelines more generally. While the
22 allegations underlying those claims may touch on some of the same subject matter contained in
23 the Guidelines—such as the nature of social transitioning as a form of psychological treatment—
24 the contents of the Guidelines are not necessary for Ms. Regino’s claims to succeed. *See Belin v.*
25

26
27 ¹The definition of “social transition” contained in the WPATH Guidelines does not undermine Ms.
28 Regino’s claims in any way. The Court should not, however, allow Defendants to use this single
definition as an excuse to introduce the entire WPATH Guidelines to support their Motion to Dismiss.

1 *Starz Ent., LLC*, No. CV 21-09586-FWS-PLA, 2022 WL 2192999, at *5 (C.D. Cal. June 17,
2 2022) (holding claims did not necessarily rely on a document even when the complaint included
3 “specific reference” to general subject matter at issue in the document). Indeed, Ms. Regino’s
4 claims can—and should—succeed without the Court ever considering the Guidelines’ definition
5 of “social transition” or the other provisions of the Guidelines. The Court should thus reject
6 Defendants’ efforts to invoke the Guidelines’ definition of “social transition” or any of its other
7 provisions. *See Khoja*, 899 F.3d at 1003 (observing incorporation by reference “is not a tool for
8 defendants to short-circuit the resolution of a well-pleaded claim”).

9 In sum, the Court should deny Defendants’ request for judicial notice of the WPATH
10 Guidelines’ definition of “social transition” (and any other portion thereof), strike all references
11 to the Guidelines in Defendants’ Motion to Dismiss, and not consider them in ruling on
12 Defendants’ Motion to Dismiss.

13 **CONCLUSION**

14 For the forgoing reasons, the Court should deny Defendants’ Request for Judicial Notice
15 of the WPATH Guidelines’ definition of “social transition” or the Guidelines more generally.

16
17 Respectfully submitted,

18
19 Dated: April 10, 2023

DHILLON LAW GROUP INC.
CENTER FOR AMERICAN LIBERTY

20
21 */s/ Harmeet K. Dhillon* _____

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22
23
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16 in her official capacity; TOM LANDO, in his
17 official capacity; EILEEN ROBINSON, in her
18 official capacity; and MATT TENNIS,
19 in his official capacity

20 IN THE UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA

22 AURORA REGINO,

23 Plaintiff,

24 vs.

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

Defendants.

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

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS**

(Fed. R. Civ. Proc. 12)

Date: May 23, 2023

Time: 1:30 p.m.

Crtrm.: 6

Judge: Hon. John A. Mendez

Complaint Filed: January 6, 2023

Trial Date: Not Yet Set

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

2 PLEASE TAKE NOTICE that on May 23, 2023 at 1:30 p.m., or as soon thereafter as the
3 matter may be heard in Courtroom 6 of the above-entitled court, located at 501 I Street,
4 Sacramento, California 95814, Defendants KELLY STALEY, CAITLIN DALBY, REBECCA
5 KONKIN, TOM LANDO, EILEEN ROBINSON, and MATT TENNIS (collectively,
6 “Defendants”) will and hereby do move this Court to dismiss the following claims raised in the
7 operative Verified Complaint filed by Plaintiff AURORA REGINO in the above-captioned
8 matter (“Complaint”):

- 9 1. All causes of action, including but not limited to, Count One, Count Two, Count
10 Three, and Count Four, as to Defendants CAITLIN DALBY, REBECCA KONKIN,
11 TOM LANDO, EILEEN ROBINSON, and MATT TENNIS, pursuant to Federal
12 Rule of Civil Procedure 12(f), as these individuals are named as defendants in their
13 official capacities with Chico Unified School District (“District”) only, redundant to
14 the naming of Defendant KELLY STALEY in her official capacity with the District;
- 15 2. First Cause of Action as to all Defendants pursuant to Federal Rule of Civil Procedure
16 12(b)(6) (“Rule 12(b)(6)”), as the Complaint does not allege the deprivation of a life,
17 liberty or property right secured by the Constitution or laws of the United States;
- 18 3. First Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the Complaint
19 does not allege an abuse of power which shocks the conscience;
- 20 4. Second Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
21 Complaint does not allege the deprivation of a life, liberty or property right secured
22 by the Constitution or laws of the United States;
- 23 5. Second Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
24 Complaint does not allege an abuse of power which shocks the conscience;
- 25 6. Third Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
26 Complaint does not allege the deprivation of a life, liberty or property right secured
27 by the Constitution or laws of the United States;
- 28 7. Third Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the

- 1 Complaint does not allege an abuse of power which shocks the conscience;
- 2 8. Third Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
- 3 Complaint does not allege facts establishing an entitlement to individual notice and
- 4 hearing;
- 5 9. Fourth Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
- 6 Complaint does not allege the deprivation of a life, liberty or property right secured
- 7 by the Constitution or laws of the United States;
- 8 10. Fourth Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
- 9 Complaint does not allege an abuse of power which shocks the conscience; and
- 10 11. Fourth Cause of Action as to all Defendants pursuant to Rule 12(b)(6), as the
- 11 Complaint does not allege facts establishing an entitlement to individual notice and
- 12 hearing.

13 This motion is based on the instant Notice of Motion and Motion, the Memorandum of
14 Points and Authorities set forth below, the contemporaneously-filed request for judicial notice, all
15 pleadings in this action, as well as any evidence and arguments that may be offered in the
16 forthcoming reply briefing and hearing on the motion. This motion is made following the
17 conference of counsel pursuant to the Court's standing order which took place on March 20, 2023.

18
19 **LEONE ALBERTS & DUUS**

20 Dated: March 27, 2023

/s/ Jimmie E. Johnson

BRIAN A. DUUS, ESQ.

JIMMIE E. JOHNSON, ESQ.

Attorneys for Defendants

SUPERINTENDENT KELLY STALEY,

CAITLYN DALBY, REBECCA KONKIN,

TOM LANDO, EILEEN ROBINSON, and MATT

TENNIS

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AURORA REGINO,

 Plaintiff,

 v.

KELLY STALEY, ET AL.,

 Defendants.

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

**ORDER DENYING PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Aurora Regino ("Plaintiff") seeks a preliminary injunction against Chico Unified School District Superintendent Kelly Staley and school board members Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, and Matt Tennis ("Defendants") in their official capacities. Plaintiff asks this Court to enjoin enforcement of school district regulation AR 5145.3, which broadly covers nondiscrimination and harassment as it applies to the school district's transgender students. See Mot. for Preliminary Injunction ("MPI"), ECF No. 18. Defendants oppose the motion. See Opp'n, ECF No. 21. Plaintiff replied. See Reply, ECF No. 27.

For the reasons set forth below, the Court DENIES

1 Plaintiff's motion.

2 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

3 Plaintiff contends that the Chico United School District, in
4 which both of her children, A.S. and C.S., are students, operates
5 a policy, AR 5145.3 (the "Regulation"), that (1) permits school
6 personnel to socially transition students expressing a
7 transgender identity and (2) prohibits school personnel from
8 informing a student's parents of this change unless the student
9 expressly authorizes them to do so. MPI at 5-6. During the
10 2021-22 school year, Plaintiff's child, A.S., then a student at
11 Sierra View Elementary School, expressed feelings of gender
12 dysphoria to her school counselor, Mandi Robinson, specifically
13 that she identified as a boy. Id. at 6. After a couple of
14 subsequent counseling sessions, Plaintiff alleges that A.S.'s
15 counselor began socially transitioning A.S. by informing her
16 teachers that she was to be called by her new name and referred
17 to by male pronouns. Id. at 7. School personnel did not
18 disclose these developments to Plaintiff; Plaintiff further
19 alleges that Robinson actively discouraged A.S. from informing
20 Plaintiff and instead advised her to disclose her new identity to
21 other family members first. Id. Robinson also did not suggest
22 that A.S. discuss her gender dysphoria with a medical
23 professional. Id. On April 8, 2022, A.S. informed her
24 grandmother of her new gender identity, who then informed
25 Plaintiff the same day. Id. Plaintiff then spent the following
26 months in contact with school district personnel to express her
27 concerns about the Regulation and advocated for the school
28 district to change it. Id. at 8. Plaintiff alleges that

1 district personnel, including Defendants, dismissed her concerns
2 and stated that state law mandated the Regulation. Id. at 8.
3 A.S. currently does not express feelings of gender dysphoria and
4 now identifies as a girl again and is currently in counseling for
5 depression and anxiety. Id.

6 On January 6, 2023, Plaintiff filed her complaint against
7 Defendants alleging four causes of action under 42 U.S.C. § 1983:
8 two facial challenges to the Regulation under substantive and
9 procedural due process; and two as-applied challenges to the
10 Regulation under substantive and procedural due process. See
11 Compl. A couple of weeks later, Plaintiff filed the operative
12 motion for preliminary injunction seeking to enjoin Defendants
13 and all district employees from: (1) socially transitioning
14 current students without obtaining informed consent from the
15 students' parents or guardians; (2) not obtaining informed
16 consent from the parents or guardians of all current students who
17 have previously been socially transitioned or are currently being
18 socially transitioned; (3) socially transitioning Plaintiff's
19 children without her informed consent; and (4) not obtaining
20 Plaintiff's informed consent if her daughters have been socially
21 transitioned in the past or are still being socially
22 transitioned. See MPI.

23 II. EVIDENTIARY ISSUES

24 A. Judicial Notice

25 Defendants request the Court take judicial notice of three
26 exhibits. See Request for Judicial Notice, ECF No. 21. Exhibit
27 A is a publication by the California Department of Education
28 outlining the frequently asked questions regarding California's

1 School Success and Opportunity Act (AB 1266), Exhibit B is a
2 publication by the California School Boards Association detailing
3 a sample anti-harassment regulation, and Exhibit C is Chico
4 Unified School District's Administrative Regulation 5145.3 on
5 antidiscrimination and harassment. Id. at 2. All three exhibits
6 constitute government records and are, therefore, proper subjects
7 for judicial notice. Anderson v. Holder, 673 F.3d 1089, 1094
8 n. 1 (9th Cir. 2012); Daniels-Hall v. National Educ. Ass'n., 629
9 F.3d 992, 998 (9th Cir. 2010).

10 B. Expert Affidavit

11 Defendants object to Plaintiff's submission of Dr. Stephen
12 B. Levine's affidavit in consideration of her motion for
13 preliminary injunction. See Defendants' Objections to Expert
14 Affidavit, ECF No. 21. Plaintiff responds that Dr. Levin's
15 affidavit qualifies as an expert affidavit under Federal Rule of
16 Evidence (FRE) 702 and that Defendants' objection is premature.
17 See Plaintiff's Response to Defendants' Objections to Expert
18 Affidavit, ECF No. 27. The Court agrees that the affidavit is
19 admissible under FRE 702.

20
21 III. OPINION

22 A. Legal Standard

23 A preliminary injunction is an "extraordinary remedy" that a
24 court may award only "upon a clear showing that the petitioner is
25 entitled to such relief." Winter v. Natural Resources Defense
26 Counsel, Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary
27 injunction, a petitioner must demonstrate that: (1) they will
28 likely succeed on the merits, (2) they will suffer irreparable

1 harm in the absence of preliminary relief, (3) the balance of
2 equities tips in their favor, and (4) an injunction is in the
3 public interest. Boardman v. Pacific Seafood Group, 822 F.3d
4 1011, 1020 (9th Cir. 2016) (quoting Winter, 555 U.S. at 20).

5 Post-Winter, the Ninth Circuit kept a “sliding scale
6 approach” to preliminary injunctions known as the “serious
7 questions test.” Alliance for the Wild Rockies v. Cottrell, 632
8 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, a
9 “likelihood” of success is not an absolute requirement. Id. at
10 1132. “Rather, serious questions going to the merits and a
11 hardship balance that tips sharply toward the [petitioner] can
12 support issuance of an injunction, assuming the other two
13 elements of the Winter test are also met.” Drakes Bay Oyster Co.
14 v. Jewell, 747 F.3d 1073, 1085 (9th Cir. 2014).

15 B. Analysis

16 1. Motion for Preliminary Injunction

17 a. Factor One: Success on the Merits

18 Plaintiff argues that she is highly likely to succeed on the
19 merits of her claims because AR 5145.3 violates her substantive
20 due process rights as a parent to A.S. as well as her procedural
21 due process rights. Plaintiff claims that she has a
22 constitutional right to direct the upbringing and education of
23 her children, citing the Supreme Court findings in Parham v.
24 J.R., 442 U.S. 584, 602 (1979) that “parents possess what a child
25 lacks in maturity, experience and capacity for judgement” and the
26 “natural bonds of affection lead parents to act in the best
27 interests of their children.” MPI at 9. Plaintiff claims that
28 parental authority extends to decisions regarding the health,

1 well-being, and medical treatment of their children; while some
2 parents do not act in the best interest of their children in
3 these areas, Plaintiff argues that it would be unfair for
4 Defendants to completely supersede all parents' authority with
5 respect to handling gender dysphoria and expression in their
6 children. Id. at 10. Plaintiff acknowledges that parents do not
7 have a right to dictate the curriculum that is taught to their
8 children in schools but argues that general school policies are
9 subject to judicial review and cannot supersede parental rights.
10 Id. at 10-11.

11 Plaintiff identifies four ways in which the Regulation
12 violates her substantive parental rights: (1) it interferes with
13 her right to control the important decisions in her children's
14 lives; (2) it interferes with her right to control the health,
15 well-being, and medical treatment of her children; (3) it
16 facilitates students being provided substandard and unethical
17 medical care; and (4) it goes against the presumptions of
18 parental fitness and affection. Id. at 11-15. Plaintiff further
19 claims that the Regulation does not satisfy strict scrutiny
20 because Defendants cannot demonstrate that student privacy or
21 anti-transgender discrimination are compelling government
22 interests; additionally, the Regulation does not require school
23 personnel to have evidence of parental abuse against a student's
24 transgender identity, so parents are denied information based
25 solely on a student's opinion and not on whether disclosure
26 actually poses a risk to the student's safety. Id. at 15-16.
27 The Regulation also lacks a lower age limit, so children as young
28 as five years old could be subjected to social transitioning

1 without parental knowledge or consent, which Plaintiff argues
2 does not conform with narrow tailoring under strict scrutiny.
3 Id. at 17.

4 Plaintiff also argues that the Policy is procedurally
5 defective because it interferes with parental rights without
6 requiring the state to conduct a thorough investigation, provide
7 notice to parents, or give parents the opportunity to be heard.
8 Id.

9 As for Plaintiff's substantive due process claims,
10 Defendants argue that students have a privacy right concerning
11 their personal sexual information and that Plaintiff has no
12 legally cognizable right that has been violated; Plaintiff is
13 simply attempting to dictate whether her child and other children
14 are allowed to express their preferred gender identities at
15 school. Opp'n at 14, 19. Defendants refer to a recent district
16 court decision out of Maryland that found that minor students
17 have a privacy right to maintain their gender identity a secret
18 from their parents. Id. at 14-15 (citing John & Jane Parents 1
19 v. Montgomery Cnty. Bd. of Educ., 2022 U.S. Dist. LEXIS 149021
20 (D. Md. Aug. 18, 2022)). Defendants distinguish the cases cited
21 by Plaintiff, stating that they mainly cover abortion,
22 involuntary separations, or government institutions forcing
23 medically invasive procedures onto minors without parental
24 consent; Defendants argue that none of them are applicable to the
25 circumstances of the instant case. Id. at 15-17. Defendants
26 then contend that the instant case is analogous to cases
27 concerning the lack of parental rights regarding the direction of
28 a child's curriculum at school, arguing that Plaintiff cannot

1 contest the Regulation because she decided to send her children
2 to schools in the district, so she is subject to the district's
3 regulations. Id. 18-19. Defendants also argue that Plaintiff
4 cannot establish that Defendants have committed any conduct that
5 "shocks the conscience" of the Court because the Regulation
6 complies with state law. Id. at 19.

7 As for Plaintiff's procedural due process claims, Defendants
8 again argue that Plaintiff has no cognizable right that has been
9 violated by Defendants. Id. at 19-20. Therefore, these claims
10 must fail as well. Id.

11 The Court finds that Plaintiff has failed to demonstrate a
12 likelihood of success on the merits for her claims. The Court
13 first finds that a determination on Plaintiff's as-applied
14 challenges to the Regulation are premature absent more concrete
15 factual allegations and, thus, cannot satisfy the first Winter
16 factor. As for Plaintiff's facial challenges, to establish a
17 substantive due process claim under § 1983, a plaintiff must
18 allege that (1) a federal constitutional right was violated and
19 (2) the alleged violation was committed by a person acting under
20 the color of state law. Long v. Cnty. of Los Angeles, 442 F.3d
21 1178, 1185 (9th Cir. 2006). To establish a procedural due
22 process claim, a plaintiff must allege that (1) they were
23 deprived of a federal constitutional right and (2) they were
24 denied adequate procedural protections. Brewster v. Bd. of Educ.
25 of Lynwood Unified Sch. Dist., 149 F.3d 971, 982 (9th Cir. 1998).
26 The Supreme Court requires a "careful description of the asserted
27 liberty interest" that has been violated. Washington v.
28 Glucksberg, 521 U.S. 702, 720, 117 S. Ct. 2258, 2268, 138 L. Ed.

1 2d 772 (1997). In the instant case, Plaintiff has failed to
2 provide any controlling authority to suggest that the established
3 right of parents to direct the upbringing of their children
4 extends to the circumstances of this case. While the cases cited
5 by Plaintiff refer to the generally held presumptions that
6 parents act in the best interest of children and help compensate
7 for their children's lack of maturity and experience when dealing
8 with intimate and health related decisions, as noted above,
9 Plaintiff's cases are restricted to abortion, commitments to
10 mental institutions, involuntary separation by the state, and
11 forced, physically invasive testing by the state on children
12 without parental consent. None of the cases cited by Plaintiff
13 opine on whether the state has an affirmative duty to inform
14 parents of their child's transgender identity nor whether the
15 state must obtain parental consent before socially transitioning
16 a transgender child. In the absence of the requisite legal and
17 statutory support for Plaintiff's contention that she has a
18 constitutional right that was violated, Plaintiff cannot
19 establish a likelihood of success on the merits for her facial
20 substantive or procedural due process claims.

21 However, the Court notes the novel nature of Plaintiff's
22 claims and finds that Plaintiff has raised serious questions that
23 go to the merits of her case, namely what the bounds of the
24 parental right are to direct the upbringing of one's children as
25 they pertain to a child's gender identity and expression in
26 school. In fact, Plaintiff's argument in this case has
27 implications beyond gender identity and expression and can be
28 applied to any personal aspect of a child's expression in school

1 that a parent deems relevant to their health and well-being;
2 thus, sexual orientation, the expression of one's racial, ethnic,
3 or cultural identity, and other topics subject to school policies
4 could be subject to legal scrutiny under Plaintiff's theory. In
5 light of these serious questions, the Court will continue its
6 analysis of the remaining Winter factors with particular
7 consideration of whether the balance of equities tips sharply in
8 favor of Plaintiff, pursuant to Drakes Bay. 747 F.3d at 1085.

9 b. Factor Two: Irreparable Harm

10 Plaintiff argues that she has made a strong showing that
11 the Regulation violates her fundamental constitutional rights,
12 which is sufficient to establish irreparable injury. MPI at 19;
13 Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (citing
14 Elrod v. Burns, 427 U.S. 347, 373 (1976)). Plaintiff claims in
15 her reply brief that (1) any delay in her filing for her
16 preliminary injunction is negligible, (2) she is currently
17 experiencing emotional distress arising from her concern that the
18 school district will transition her children again without her
19 consent, and (3) she has demonstrated that there is a substantial
20 risk that the school district will apply the Regulation against
21 her children in the future, all of which also constitute
22 irreparable harm. Reply at 7-9.

23 Defendants first argue that Plaintiff cannot establish that
24 there is a need for speedy action to protect her rights because
25 she waited nine months to seek injunctive relief after learning
26 of the Regulation being applied to her daughter A.S. Opp'n at
27 20. Defendants also note that A.S. has returned to identifying
28 as a girl despite the continuance of the Regulation so there can

1 be no clear showing of a likelihood of irreparable harm. Id. at
2 20-21. Defendants also contend that Plaintiff has failed to
3 establish an immediate threat; it is not enough that A.S. has
4 been harmed in the past or that Plaintiff's daughters continue to
5 reside in the school district for Plaintiff to meet her burden of
6 showing that injury is likely and immediate. Id. at 21-22.

7 The Court find's Defendants' argument persuasive. A party
8 "may not obtain a preliminary injunction unless they can show
9 that irreparable harm is likely to result in the absence of the
10 injunction." Cottrell, 632 F. 3d, 1135. "Indeed, suffering
11 irreparable harm prior to a determination of the merits is
12 perhaps the single most important prerequisite for the issuance
13 of a preliminary injunction." See Nutrition Distribution LLC v.
14 Lecheek Nutrition, Inc., No. CV 15-1322-MWF (MRWx), 2015 WL
15 12659907 (C.D. Cal. June 5, 2015) (internal citations omitted).
16 A party requesting a preliminary injunction must "generally show
17 reasonable diligence." Benisek v. Lamone, 201 L. Ed. 2d 398, 138
18 S. Ct. 1942, 1944 (2018). A delay in seeking an injunction is
19 weighed against the moving party because an injunction is "sought
20 upon the theory that there is an urgent need for speedy action to
21 protect the [party's] rights." Lydo Enterprises, Inc. v. City of
22 Las Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984); see also Oakland
23 Trib., Inc. v. Chron. Pub. Co., 762 F.2d 1374, 1377 (9th Cir.
24 1985) (stating that a "long delay before seeking a preliminary
25 injunction implies a lack of urgency and irreparable harm"). The
26 Court notes Plaintiff's nine-month delay in seeking injunctive
27 relief and finds that Plaintiff has demonstrated a lack of
28 urgency for action by the Court. The Court also finds that

1 Plaintiff is seeking to enjoin the school district to actively
2 seek the informed consent of parents to socially transition their
3 children who express a transgender identity. Thus, Plaintiff
4 seeks a mandatory injunction, which goes beyond a prohibitory
5 injunction's maintenance of the status quo and instead compels
6 the district to take affirmative action. Doe v. Snyder, 28 F.4th
7 103, 111 (9th Cir. 2022). The standard for a mandatory
8 injunction is high; it will not be granted unless extreme or very
9 serious damage will result and is "not issued in doubtful cases
10 or where the injury complained of is capable of compensation in
11 damages." Id. Plaintiff has not established a clear violation
12 of her constitutional rights, so she is not entitled to the
13 Court's favor under this factor absent a showing that extreme or
14 very serious harm is certain to result absent the injunction.
15 Plaintiff has failed to do so in this case. Plaintiff's general
16 claims of emotional distress and fear that the district will
17 apply the Regulation against her children are vague and do not
18 rise to the level of certain "extreme or very serious" harm that
19 is required for the imposition of a mandatory injunction. To the
20 contrary, Plaintiff has not demonstrated that there is any
21 immediate, irreparable harm that requires judicial intervention
22 at this time.

23 c. Factor Three: Balance of the Equities

24 Plaintiff argues that, in cases involving the deprivation of
25 constitutional rights, the balance of equities favors the
26 plaintiff unless the government can demonstrate that the
27 injunction will seriously hamper significant governmental
28 interests, which Defendants cannot do in this case. MPI at 19.

1 Plaintiff also contends that there is no burden on the school
2 district to comply with her proposed order because schools would
3 still be permitted to socially transition students so long as
4 they obtain parental consent. Id. at 19-20.

5 Defendants respond that the balance of equities favors the
6 school district because an injunction would force the district
7 to abandon enforcement of its established regulation and
8 jeopardize the privacy rights of its students. Opp'n at 22. On
9 the other hand, Plaintiff has no applicable constitutional right
10 that has been violated and any burden that Plaintiff feels about
11 not being aware of her daughter's gender identity is not due to
12 the school district, but due to A.S.'s own decision on whether
13 to disclose it to Plaintiff. Id.

14 In exercising sound discretion, the Court "must balance the
15 competing claims of injury and consider the effect of granting
16 or withholding the requested relief," paying "particular regard
17 for the public consequences in employing the extraordinary
18 remedy of injunction." Winter, 555 U.S. at 24. The Court finds
19 that Defendants have demonstrated that the balance of equities
20 favors them, noting the burden on the school district to disrupt
21 the status quo and change its established regulation as well as
22 the potential burden on students who are currently benefiting
23 from the Regulation's protections. Plaintiff has also failed to
24 make a showing that the balance of equities tips sharply in her
25 favor, as required under the serious questions test under Drakes
26 Bay, considering Plaintiff's failure to establish a likelihood
27 of success on the merits. 747 F.3d at 1085.

28 ///

1 d. Factor Four: Public Interest

2 Plaintiff argues that it is always in the public interest to
3 prevent the violation of a party's constitutional rights; in this
4 instance, Plaintiff has made a strong showing that the Regulation
5 violates her parental rights, so it is in the public interest to
6 grant her injunctive relief. MPI at 20. Plaintiff also claims
7 that the injunction will benefit all children and parents in the
8 district by protecting the intimate trust of the parent-child
9 relationship and reducing the psychological harm to children who
10 express different gender identities at home and school. Id.

11 Defendants argue that there is no public interest to promote
12 when parents seek to gain unfettered access to information about
13 their child's gender identity, regardless of the wishes of the
14 student, nor is there a public interest in a parent forcing their
15 own beliefs on gender on their child against their will. Opp'n
16 at 23. To the contrary, there is an interest in creating a zone
17 of protection at schools in the rare circumstances where the
18 disclosure of a child's gender expression at school could lead to
19 harm from within their family. Id.

20 Considering the Court's disposition on the other Winter
21 factors, it is not swayed one way or the other regarding the
22 public interest. Both parties raise valid concerns. It is not
23 necessarily a school's duty to act as an impenetrable barrier
24 between student and parent on intimate, complex topics like
25 gender expression and sexuality, particularly when students can
26 be as young as five years old. On the other hand, granting
27 parents unimpeded access to and control over a student's personal
28 life can result in conflict that makes students feel vulnerable

1 and unsafe both at home and at school, depending on their
2 parents' personal beliefs. There are also practical concerns
3 about the enforceability of anti-harassment policies like the
4 Regulation, particularly in cases where a school could be
5 prevented from providing institutional support and protection for
6 certain marginalized identities because of parents' personal
7 beliefs. However, these concerns are not dispositive in this
8 case and are better suited for deliberation by the legislature.

9
10 IV. ORDER

11 For the reasons set forth above, the Court DENIES
12 Plaintiff's motion for preliminary injunction.

13 IT IS SO ORDERED.

14 Dated: March 8, 2023

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17 JOHN A. MENDEZ
18 SENIOR UNITED STATES DISTRICT JUDGE
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15 in her official capacity; REBECCA KONKIN,
16 in her official capacity; TOM LANDO, in his
17 official capacity; EILEEN ROBINSON, in her
18 official capacity; and MATT TENNIS,
19 in his official capacity

20 IN THE UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA

22 AURORA REGINO,

23 Plaintiff,

24 vs.

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

Defendants.

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

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

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

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

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

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

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

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

3
4
5 **LEONE ALBERTS & DUUS**

6 /s/ Jimmie E. Johnson

7 BRIAN A. DUUS, ESQ.

8 JIMMIE E. JOHNSON, ESQ.

9 Attorneys for Defendants

10 SUPERINTENDENT KELLY STALEY,

11 CAITLIN DALBY, REBECCA KONKIN,

12 TOM LANDO, EILEEN ROBINSON, and MATT

13 TENNIS
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EXHIBIT A



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 1 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 concerning a student's gender identity.

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 consisting of the student's birth name during class, but would not include unintentional or sporadic occurrences. Depending on the referring to 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 district pursuant to district policy. Students shall have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school's dress code more strictly against transgender and gender nonconforming students than other students.

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

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

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

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

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

RECENT DEVELOPMENTS AND RESOURCES

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

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

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

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

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

Office for Civil Rights Complaint and Resolution Agreement

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

the school district to treat the student as a transgender student for all purposes. The Board of Education 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 Identity 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).

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Case 2:23-cv-00032-JAM-DMC Document 21-1 Filed 02/14/23 Page 13 of 28
Questions: School Health and Safety Office | shso@cde.ca.gov | 916-319-0914

Last Reviewed: Thursday, September 16, 2021

EXHIBIT B

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

Note: In its October 2010 Dear Colleague Letter: Harassment and Bullying, the U.S. Department of Education's Office for Civil Rights identifies training of the school community as one of the key measures for minimizing discriminatory and harassing behavior in school.

Item #1 below is optional and may be modified to reflect district practice.

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

(cf. 1240 - Volunteer Assistance)

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

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

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

(cf. 5145.6 - Parental Notifications)

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

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

(cf. 1113 - District and School Web Sites)

(cf. 1114 - District-Sponsored Social Media)

5. When 15 percent or more of a school's students speak a single primary language other than English, translate the nondiscrimination policy, related complaint procedures, and all forms for use in the complaint process into that other language. (Education Code 234.1, 48985)
 6. At the beginning of each school year, inform school employees that any employee who witnesses any act of discrimination, harassment, intimidation, or bullying against a student is required to intervene if it is safe to do so. (Education Code 234.1)
- Note: Item #7 below is optional and should be revised to reflect district practice. In some situations, the district may need to provide individualized accommodation to a student to protect him/her from harassment or bullying. Each situation will need to be analyzed to determine the most appropriate course of action to meet the needs of the student, based on the circumstances involved.
7. At the beginning of each school year, inform each principal or designee of the district's responsibility to provide appropriate accommodation(s) to protect students' privacy rights and ensure their safety from threatened or potentially harassing, intimidating, or discriminatory behavior.

Process for Initiating and Responding to Complaints

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

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

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

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

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

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

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

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

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

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

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

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

5. Student Records: A student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the district shall use the student's preferred name and pronouns consistent with his/her gender identity on all other district-related documents.
- (cf. 5125 - Student Records)
- (cf. 5125.1 - Release of Directory Information)
6. Names and Pronouns: If a student so chooses, district personnel shall be required to address the student by a name and the pronouns consistent with his/her gender identity, without the necessity of a court order or a change to his/her official district record. However, inadvertent slips or honest mistakes by district personnel in the use of the student's name and/or consistent pronouns shall not constitute a violation of this administrative regulation or the accompanying district policy.
7. Uniforms/Dress Code: A student has the right to dress in a manner consistent with his/her gender identity, subject to any dress code adopted on a school site.

(cf. 5132 - Dress Code)

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EXHIBIT C



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Nondiscrimination/Harassment

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

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

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

Measures to Prevent Discrimination

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

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

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

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

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



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

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

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

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

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

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

Enforcement of District Policy

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

1. Removing vulgar or offending graffiti

(cf. 5131.5 - Vandalism and Graffiti)

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

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

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

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

5. Taking appropriate disciplinary action against students, employees, and anyone determined to have
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engaged in wrongdoing in violation of district policy, including any student who is found to have filed a complaint of discrimination that the student knew was not true

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

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

(cf. 5144 - Discipline)

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

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

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

Process for Initiating and Responding to Complaints

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

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

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

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

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

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Transgender and Gender-Nonconforming Students

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

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

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



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

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

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

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

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

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

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

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



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

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

(cf. 1340 - Access to District Records)

(cf. 3580 - District Records)

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



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

(cf. 6145 - Extracurricular and Cocurricular Activities)

(cf. 6145.2 - Athletic Competition)

(cf. 6153 - School-Sponsored Trips)

(cf. 7110 - Facilities Master Plan)

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

(cf. 5125 - Student Records)

(cf. 5125.1 - Release of Directory Information)

(cf. 5125.3 - Challenging Student Records)

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

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

(cf. 5132 - Dress Code)

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11

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 AURORA REGINO,

15 *Plaintiff,*

16 v.

17 SUPERINTENDENT KELLY STALEY, in
her official capacity; CAITLIN DALBY, in
18 her official capacity; REBECCA KONKIN,
in her official capacity; TOM LANDO, in
19 his official capacity; EILEEN ROBINSON,
in her official capacity; and MATT
20 TENNIS, in his official capacity,

21 *Defendants.*
22
23

Case No. _____

VERIFIED COMPLAINT

Jury Trial Demanded

Case: 23-16031, 01/02/2024, ID: 12843391, DktEntry: 38, Page 135 of 174

1 Plaintiff, Aurora Regino, by and through her undersigned counsel, states the
2 following claims for relief against Defendants, each in their official capacity only, and
3 respectfully requests that this Court render a declaratory judgment and preliminary
4 and permanent injunction against Defendants' ongoing violations of the United
5 States Constitution as set forth herein. In support of her claims, Ms. Regino states as
6 follows:

7 INTRODUCTION

8 1. The Due Process Clause of the Fourteenth Amendment to the United
9 States Constitution protects parents' fundamental right to direct the upbringing of
10 their children. This protection includes parents' right to be involved in the decision-
11 making process when a public school decides to socially transition their children from
12 one gender to another.¹ Social transitioning is a powerful psychological intervention
13 affecting a matter of major importance to a child's life—namely, his or her gender
14 identity. Absent a compelling state interest, which is not present here, public schools
15 may not socially transition children without first informing and receiving consent
16 from their parents.

17 2. Like many public-school districts in California, the Chico Unified School
18 District (the "District") has adopted a policy (the "Parental Secrecy Policy" or the
19 "Policy") under which schools in the District will (1) socially transition students who
20

21 ¹ "Social transitioning" refers to the active affirmation of a transgender identity. *See* Affidavit of Dr.
22 Stephen B. Levine, dated January 5, 2023 ("Levine Affidavit") ¶ 12f, attached hereto as Exhibit A. In
23 children, it includes things like calling the child by a new name associated with their new gender,
referring to the child by pronouns associated with their new gender, and allowing the child to use
public bathrooms associated with their new gender. *Id.*

1 express a desire to live as a gender different from that associated with their biological
2 sex while (2) keeping the social transitioning secret from their parents unless the
3 student specifically authorizes the school to inform them. Under the Parental Secrecy
4 Policy, schools in the District are prompting students to question their sexuality and
5 gender, facilitating their social transition to a new gender identity, and integrating
6 this new person into the school ecosystem, all without informing or receiving consent
7 from their parents. Even if the parents would be supportive of their children—as Ms.
8 Regino was here—the Parental Secrecy Policy precludes parents from being a part of
9 this significant and formative event in their children’s lives.

10 3. Ms. Regino’s oldest daughter, A.S., was a fifth-grade student at an
11 elementary school operated by the District during the 2021–2022 school year. In early
12 2022, when A.S. was eleven years old, she informed a school counselor that she “felt
13 like a boy.” Within minutes of A.S. making that statement, the counselor encouraged
14 A.S. to adopt a male identity, which included using a male name and male pronouns.
15 After the meeting, the counselor walked A.S. back to class and informed A.S.’s teacher
16 about A.S.’s new identity. Over the following months, the District used A.S.’s male
17 name and pronouns while at school, and the school counselor provided A.S. with
18 additional information about continuing her transition to a male identity. All of this
19 was kept hidden from A.S.’s mother.

20 4. After several weeks of A.S. identifying as a boy at school, Ms. Regino
21 learned about A.S.’s new gender identity. Ms. Regino was supportive of A.S. but upset
22 that the school had not even informed her that it was socially transitioning her
23

1 daughter from a girl to a boy. She tried to encourage the District to abandon the
2 Parental Secrecy Policy in favor of a policy that would involve parents in students'
3 gender transitions, but she was told that the Policy was required by California law.
4 This is false.

5 5. Despite the District's efforts to socially transition A.S. to a boy, she has,
6 for now, returned to identifying as a girl. She believes her feelings of gender confusion
7 were brought on by the stress of other difficulties in her life. She attends regular
8 counseling sessions with a private therapist to help her to cope with these stressors.

9 6. By socially transitioning A.S. without informing Ms. Regino or obtaining
10 her consent, the District violated Ms. Regino's fundamental right to direct the
11 upbringing of her child. Parents, not schools, have the right and responsibility to
12 make major life decisions on behalf of their minor children. That right is infringed
13 when schools socially transition children from one gender to another without
14 involving their parents.

15 7. Ms. Regino brings this action to vindicate that right. Both of her children
16 still attend school in the District, and the District continues to adhere to the Parental
17 Secrecy Policy. Accordingly, Ms. Regino's parental rights are subject to an ongoing
18 threat. She seeks (1) a declaratory judgment declaring the Parental Secrecy Policy
19 unconstitutional and (2) a preliminary and permanent injunction precluding the
20 District from continuing to enforce the Policy.

21 JURISDICTION AND VENUE

22 8. This action arises under the Fourteenth Amendment to the United
23 States Constitution, 42 U.S.C. § 1983, and 28 U.S.C. §§ 2201 and 2202.

1 Information/index.html, last visited on January 5, 2023, attached hereto as Exhibit
2 D. The Board and its five Members are responsible for oversight, operations, and
3 policy, which includes but is not limited to the Parental Secrecy Policy. *See id.*

4 14. Defendant Caitlin Dalby is a Member of the Board. *See id.* In this
5 capacity, Ms. Dalby is responsible for oversight, operations, and policy, including but
6 not limited to the Parental Secrecy Policy, at the schools within the District. *See id.*
7 At all times relevant to this Complaint, Ms. Dalby was and will be acting under color
8 of California law while performing her duties as a Board Member. Ms. Dalby is sued
9 in her official capacity only.

10 15. Defendant Rebecca Konkin is a Member of the Board. *See id.* In this
11 capacity, Ms. Konkin is responsible for oversight, operations, and policy, including
12 but not limited to the Parental Secrecy Policy, at the schools within the District. *See*
13 *id.* At all times relevant to this Complaint, Ms. Konkin was and will be acting under
14 color of California law while performing her duties as a Board Member. Ms. Konkin
15 is sued in her official capacity only.

16 16. Defendant Tom Lando is a Member of the Board. *See id.* In this capacity,
17 Mr. Lando is responsible for oversight, operations, and policy, including but not
18 limited to the Parental Secrecy Policy, at the schools within the District. *See id.* At
19 all times relevant to this Complaint, Mr. Lando was and will be acting under color of
20 California law while performing his duties as a Board Members. Mr. Lando is sued
21 in his official capacity only.

22 17. Defendant Eileen Robinson is a Member of the Board. *See id.* In this
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1 capacity, Ms. Robinson is responsible for oversight, operations, and policy, including
2 but not limited to the Parental Secrecy Policy, at the schools within the District. *See*
3 *id.* At all times relevant to this Complaint, Ms. Robinson was and will be acting under
4 color of California law while performing her duties as a Board Member. Ms. Robinson
5 is sued in her official capacity only.

6 18. Defendant Matt Tennis is a Member of the Board. *See id.* In this
7 capacity, Mr. Tennis is responsible for oversight, operations, and policy, including but
8 not limited to the Parental Secrecy Policy, at the schools within the District. *See id.*
9 At all times relevant to this Complaint, Mr. Tennis was and will be acting under color
10 of California law while performing his duties as a Board Member. Mr. Tennis is sued
11 in his official capacity only.

12 19. Defendant Kelly Staley is the Superintendent of the District. *See*
13 <http://www.chicousd.org/Our-District/Superintendent/index.html>, last visited on
14 January 5, 2023, attached hereto as Exhibit E. In this capacity, Ms. Staley is
15 responsible for overseeing the implementation of all District policies, including the
16 Parental Secrecy Policy, and she has ultimate supervisory authority over all District
17 employees, which includes all employees working at the schools within the District.
18 At all times relevant to this Complaint, Ms. Staley and was and will be acting under
19 color of California law while performing her duties as Superintendent. Ms. Staley is
20 sued in her official capacity only.

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FACTUAL ALLEGATIONS

The Parental Secrecy Policy

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

21. Under the Policy, schools accomplish social transitioning of students by, among other things, referring to students by a new name associated with their new gender, referring to students by pronouns associated with their new gender, and allowing students to use bathrooms associated with their new gender.

A.S. Joins Ms. Robinson’s “Girls Group” at Sierra View

22. Ms. Regino’s oldest daughter, A.S., is a twelve-year-old biological female. She is currently in sixth grade at Marsh Junior High (“Marsh”), one of the junior high schools in the District. During the 2021–2022 school year, A.S. attended fifth grade at Sierra View Elementary School (“Sierra View”), which is also in the District.

23. In the fall of 2021, A.S. began feeling depressed and anxious. She had just begun puberty, and there had been significant changes in her home life over the preceding months. Her grandfather had recently passed away and her mother (Ms.

1 Regino) had just completed treatment for breast cancer and was in the process of
2 obtaining a degree in nursing. A.S.'s father is disabled due to an injury from an
3 automobile accident and, as a result of the changes at home, A.S. began taking on a
4 greater role in caring for her younger sister, C.S., who was seven years old at the
5 time. The confluence of these events left A.S. feeling mentally exhausted and
6 emotionally confused.

7 24. Mandi Robertson was a school counselor at Sierra View. Throughout the
8 2021–2022 school year, Ms. Robertson regularly visited A.S.'s class to remind them
9 of the services the counselor's office provides.

10 25. One topic that Ms. Robertson regularly raised with the students was
11 sexuality and gender identity. She would encourage students to explore their identity
12 and consider whether they felt like they were not the gender associated with their
13 biological sex. She explained that such feelings were normal and that students should
14 embrace them.

15 26. A.S. took Ms. Robertson's advice. She wondered if her new feelings of
16 anxiety and depression were because she was born the wrong gender. Around
17 December 2021, A.S. began feeling like she might be a boy. These feelings were the
18 result of her exploring her identity consistent with Ms. Robertson's instructions.

19 27. In December 2021, before winter break, A.S. met with Ms. Robertson to
20 discuss her feelings. At that meeting, A.S. did not mention that she felt like a boy.
21 Ms. Robertson encouraged A.S. to join a small group of other girls around her age
22 that she (Ms. Robertson) organized when school resumed the following month (the
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1 “Girls Group”). Ms. Robertson told A.S. that the group was primarily focused on arts
2 and crafts, and that the group would be a good opportunity for A.S. to make new
3 friends. Ms. Robertson provided A.S. with a permission slip for participation in the
4 Girls Group to take home for her mother to sign.

5 28. Ms. Regino agreed that an arts-and-crafts group would facilitate
6 positive social interaction for A.S. with other girls her own age and could help A.S.
7 with her anxiety and depression. Ms. Regino approved of her daughter joining the
8 Girls Group and signed the permission slip allowing A.S. to participate in the group
9 once school began in the spring semester of 2022. The permission slip was for
10 attendance at the Girls Group only, and *not* for one-on-one meetings with Ms. Robertson.

11 29. On or about January 20, 2022, A.S. attended her first Girls Group
12 meeting. The meetings included A.S. and about four of her female classmates, whose
13 ages ranged from 10 to 12 years old. The first one or two meetings of the Girls Group
14 were geared towards arts and crafts, as A.S. anticipated, but the subject of the
15 meetings quickly changed.

16 **Ms. Robertson and the District Socially Transition A.S.**

17 30. After one or two Girl’s Group meetings, A.S. went to Ms. Robertson’s
18 office to tell her that she “felt like a boy” or words of similar effect. Ms. Robertson
19 asked A.S. if she had a boy’s name that she would like to be called and whether she
20 would like to be referred to by male pronouns. A.S. was unsure whether she wanted
21 others at school to start calling her by a male name and pronouns, but she felt
22 pressured by Ms. Robertson, so she responded in the affirmative and told Ms.
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1 Robertson her boy's name was "J.S." During this meeting, Ms. Robertson did not
2 discuss A.S.'s feelings of anxiety and depression. Instead, the discussion focused
3 solely on how to effect A.S.'s social transition to a boy.

4 31. After the meeting, Ms. Robertson walked A.S. back to her classroom and
5 told her teacher that A.S. was now going by the name "J.S." and male pronouns, and
6 her teacher immediately began referring to her as such. Soon thereafter, other
7 teachers and school employees also began referring to A.S. by "J.S." and male
8 pronouns. A.S. did not fully understand what was happening, and she never
9 authorized—or wanted—any District personnel other than Ms. Robertson or her
10 teacher to refer to her by "J.S." or male pronouns.

11 32. Once A.S. "came out" to Ms. Robertson, the Girls Group meetings
12 changed substantially. Instead of arts-and-craft projects, Ms. Robertson now led A.S.
13 and her female classmates in a discussion regarding sexuality and gender identity.
14 They discussed how to cope with feeling like a different gender—specifically, how
15 embracing these feelings and transitioning can alleviate the pain and anxiety of living
16 as the wrong gender.

17 33. Over the course of the spring semester of 2022, A.S. had two additional
18 one-on-one meetings with Ms. Robertson. At these meetings, Ms. Robertson provided
19 A.S. with additional resources regarding her new male identity, such as referring A.S.
20 to a local community group that advocates for LGBTQ+ causes and discussing "breast
21 binding" with her.² A.S. told Ms. Robertson that she wanted to tell her mother about

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23 ² "Breast binding" is the flattening of a biological female's breasts with constrictive clothing to make
the chest appear flat.

1 her new identity, but Ms. Robertson was not supportive of this course of action. She
2 brushed off A.S.'s request and encouraged her to speak with other family members
3 first. At no time did Ms. Robertson suggest A.S. should discuss her feelings with a
4 mental health professional.

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

11 A.S. "Comes Out" to her Grandmother but Returns to her Female Identity

12 35. On or about April 8, 2022, A.S. told her grandmother about her new
13 identity. A.S.'s grandmother informed Ms. Regino of the news later that day.

14 36. Ms. Regino was surprised to learn of A.S.'s transition, and she was
15 shocked that the District had socially transitioned A.S. without involving her, but she
16 was—and is—supportive of her daughter. All she wanted—and wants—was for her
17 daughter to be happy and healthy in whatever identity she chooses. Ms. Regino
18 informed A.S. of her support and told her she would assist her with her transition if
19 that was what she wanted. In addition, Ms. Regino arranged for A.S. to begin
20 attending counseling sessions with a licensed marriage and family therapist to
21 discuss her feelings of depression and anxiety.

22 37. Although Ms. Regino was supportive of her daughter, had Ms. Regino
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1 been involved in the process, she would not have allowed Sierra View to socially
2 transition her daughter without first seeking guidance from a mental health
3 professional. Ms. Regino arrived at this view for several reasons, including but not
4 limited to: A.S.'s young age; the quick onset of A.S.'s feelings of gender confusion; the
5 fact that those feelings appeared to have originated with Ms. Robertson, not A.S.; the
6 existence of other stressors in A.S.'s life that could potentially explain her feelings of
7 gender confusion; and the short duration of A.S.'s feelings of gender confusion.

8 38. Even before A.S. "came out" to her grandmother, she had already begun
9 to question whether she really felt like a boy or wanted to use her male name and
10 male pronouns. But because the Sierra View community now viewed her as a boy,
11 called her by a male name, and referred to her using male pronouns, A.S. felt like she
12 was stuck in the new identity, which she inhabited for the remainder of her fifth-
13 grade year. Her depression and anxiety worsened to the point where she wanted to
14 transfer to a different school.

15 39. Over the rest of the spring semester and summer of 2022, A.S.'s feelings
16 about being a boy continued to desist.

17 40. A.S. was slated to begin sixth grade at Marsh Junior High School
18 ("Marsh"), another school within the District, for the 2022–2023 school year. In
19 addition, C.S. was slated to begin third grade at Sierra View for the 2022–2023 school
20 year.

21 41. By the beginning of the 2022–2023 school year, A.S. began identifying
22 as a girl again. While she continues to identify as a girl, she is still in counseling for
23

1 her depression and anxiety.

2 **Ms. Regino Tries to Persuade the District to Abandon the Policy**

3 42. Soon after learning that the District had socially transitioned A.S. and
4 kept it a secret from her, Ms. Regino had several telephone calls, in-person meetings,
5 and email exchanges with District personnel in which she expressed her concerns
6 about the District's actions.

7 43. In April of 2022, The District's Director of Elementary Education, Ted
8 Sullivan, informed Ms. Regino that California law required schools to socially
9 transition students without informing their parents unless the student authorizes
10 them to do so.

11 44. In addition, Mr. Sullivan emailed Ms. Regino a link to an "FAQ" page on
12 the California Department of Education ("DOE") website regarding Assembly Bill
13 1266 ("AB 1266"). *See* <https://www.cde.ca.gov/re/di/eo/faqs.asp>, last visited on
14 January 5, 2023, attached hereto as Exhibit F, the entirety of which is expressly
15 incorporated by reference under Rule 10(c) of the Federal Rules of Civil Procedure as
16 if stated verbatim herein. AB 1266 was legislation, now codified at Cal. Ed. Code. §
17 221.5, designed to prohibit discrimination in schools based on gender identity.

18 45. On the FAQ page, the California DOE set forth guidance to "assist school
19 districts with understanding and implementing policy changes related to AB 1266."
20 *Id.* The guidance states that, when a transgender student "so chooses, [school]
21 personnel *shall be required to address the student by a name and the pronouns*
22 *consistent with the student's gender identity*, without the necessity of legal
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1 documentation or a change to the student’s official district record.” *Id.* (emphasis
2 added). It further provides that “schools must consult with [the] transgender student
3 to determine who can or will be informed of the student’s transgender status, *if*
4 *anyone, including the student’s family.*” *Id.* (emphasis added). And it provides that
5 “with rare exceptions, schools are required to respect the limitations that a student
6 places on the disclosure of their transgender status, *including not sharing that*
7 *information with the student’s parents.*” *Id.* (emphasis added).

8 46. Mr. Sullivan informed Ms. Regino that, based on this guidance, the
9 Parental Secrecy Policy was required by California law.

10 47. The guidance, however, does not purport to have the force of law, nor
11 does AB 1266 (or any other provision of California law) require schools to adopt the
12 Parental Secrecy Policy. Instead, as relevant here, AB 1266 provides only that
13 California public schools must allow students to “participate in sex-segregated school
14 programs and activities . . . and use facilities consistent with his or her gender
15 identity.” *See* Calif. Educ. Code § 221.5(f). Moreover, even if California law required
16 schools to adopt the Parental Secrecy Policy (and it does not), such law would be in
17 violation of parents’ fundamental right to direct the upbringing of their children.

18 48. As the 2021–2022 school year came to a close, Ms. Regino became
19 concerned that (1) District employees at Marsh could attempt to socially transition
20 A.S. without informing her, like they had done at Sierra View, and (2) District
21 employees at Sierra View could also attempt to transition C.S. without her
22 knowledge, as they had done with her sister. Disappointed by her exchange with Mr.
23

1 Sullivan, Ms. Regino reached out to other District administrators in an effort to
2 convince them that the District should not follow the Parental Secrecy Policy any
3 longer.

4 49. On or about May 5, 2022, Ms. Regino met with the District's Deputy
5 Superintendent, Jay Marchant. Mr. Marchant, like Mr. Sullivan, informed Ms.
6 Regino that the Parental Secrecy Policy was required by California law.

7 50. On or about August 9, 2022, Ms. Regino again met with Mr. Marchant,
8 this time to seek to transfer her younger daughter, C.S., out of Sierra View and into
9 a different school within the District, away from Ms. Robertson. On or about August
10 22, 2022, the District granted Ms. Regino's request, authorizing C.S. to transfer to
11 Parkview, another school within the District.

12 51. Ms. Regino continued to press District administration for assurances
13 that it would no longer enforce the Parental Secrecy Policy. On or about October 10,
14 2022, Ms. Regino met with the District's Superintendent, Kelly Staley, to discuss the
15 issue. In that meeting, Ms. Staley, like Mr. Sullivan and Mr. Marchant, informed Ms.
16 Regino that the Parental Secrecy Policy was required by California law.

17 52. On October 31, 2022, Ms. Regino emailed Superintendent Staley to
18 reiterate her concerns with the Parental Secrecy Policy. On or about November 2,
19 2022, in response to Ms. Regino's follow-up email, Ms. Staley confirmed that the
20 District would continue to apply the Parental Secrecy Policy at its schools, informing
21 Ms. Regino that the District "must work within the confines of the law."

22 53. On information and belief, the District applies the Parental Secrecy
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1 Policy, which includes all of terms listed on the California DOE's guidance document
2 (Exhibit F), at all of its schools, including but not limited to Marsh and Parkview.
3 While Ms. Regino does not have first-hand knowledge of these facts, these allegations
4 are based on the facts that: (1) the California DOE asserts that the provisions of
5 Exhibit F are required by AB 1266; (2) Mr. Sullivan emailed Ms. Regino a link to
6 Exhibit F in response to her questions about the Policy; and (3) Ms. Staley, Mr.
7 Marchant, and Mr. Sullivan all informed Ms. Regino that it was their belief that
8 California public schools were required to enforce the Parental Secrecy Policy, a
9 conclusion that would apply to all of the schools in the District. Based on this fact,
10 the only reasonable conclusion is that the Parental Secrecy Policy, as set forth in
11 Exhibit F, applies at all of the schools in the District, including but not limited to
12 Marsh and Parkview, where Ms. Regino's daughters now attend.

13 **The Threat to Ms. Regino's Rights is Ongoing**

14 54. Ms. Regino respects her daughters' life choices and will be supportive of
15 them no matter what those choices ultimately may be. Ms. Regino simply wants to
16 be involved in her daughters' lives and with choices that have fundamental
17 importance to them, such as choices regarding their gender identity. Because the
18 District applies the Parental Secrecy Policy at the schools Ms. Regino's daughters
19 attend, the Policy presents a real, imminent, and credible threat to her parental right
20 to direct their upbringing insofar as it operates to keep decisions regarding her
21 children's changed gender identities secret from her and allows such decisions to be
22 made without her involvement. Given the quick onset of A.S.'s prior episode of gender
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1 confusion, the continuing existence of stressors in her life, and her ongoing anxiety
2 and depression, the reoccurrence of her prior feelings could happen at any time.
3 Moreover, the same confusion could appear in C.S. at any time, especially considering
4 the two girls' consanguinity and similar life experiences. Further, the District refused
5 to disavow the Parental Secrecy Policy and, by definition, that Policy requires District
6 employees to hide information from parents, thus disrupting one of the primary
7 channels of parental knowledge about their children—namely, their schools. For this
8 reason, Ms. Regino is subject to a real, imminent, and realistic danger that the
9 Parental Secrecy Policy will (again) deprive her of the ability to be involved in the
10 fundamental decisions in her children's lives.

11 55. So long as the Parental Secrecy Policy (or a similar policy) is in place,
12 Ms. Regino faces the constant threat of constitutional harm.

13 CAUSES OF ACTION

14 COUNT ONE

15 Facial Challenge to Parental Secrecy Policy

16 Under 42 U.S.C. § 1983

17 Substantive Due Process

18 56. Ms. Regino hereby incorporates by reference all other paragraphs of this
19 Complaint as though fully set forth herein.

20 57. The Due Process Clause of the Fourteenth Amendment to the United
21 States Constitution protects the fundamental rights of parents to direct the
22 upbringing of their children; to make decisions concerning the care, custody, and
23 control of their children; to direct the medical and mental health decision-making for
their children; and to make private familial decisions regarding their children
without undue interference by the state. These fundamental rights are deeply rooted

1 in our nation's history and tradition and implicit in the concept of ordered liberty.

2 58. On its face, the Parental Secrecy Policy violated in the past—and
3 threatens to violate in the future—Ms. Regino's fundamental right to direct the
4 upbringing of her children; to make decisions concerning the care, custody, and
5 control of her children; to direct the medical and mental health decision-making for
6 her children; and to make private familial decisions regarding her children without
7 undue interference by the state.

8 59. The Parental Secrecy Policy violated—and threatens to violate—Ms.
9 Regino's rights in the following ways, as explained in more detail in the Levine
10 Affidavit (Exhibit A), the entirety of which is expressly incorporated by reference
11 under Rule 10(c) of the Federal Rules of Civil Procedure as if stated verbatim herein:

- 12 a. The Parental Secrecy Policy authorizes children to make mature,
13 consequential, private, and potentially life-altering decisions
14 without parental knowledge or consent by excluding parents
15 from the decision-making process on these matters;
- 16 b. The Parental Secrecy Policy takes from parents and arrogates to
17 District personnel the authority to make these consequential,
18 private, and potentially life-altering decisions for their children
19 by excluding parents from the decision-making process and
20 placing decision-making authority in District personnel;
- 21 c. The Parental Secrecy Policy takes from parents the authority to
22 make these consequential, private, and potentially life-altering
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1 decisions for their children by excluding parents from the
2 decision-making process and placing decision-making authority
3 in their children;

4 d. The Parental Secrecy Policy assumes that parents are not fit
5 parents, capable of making decisions on behalf of their children,
6 which both (1) violates the constitutionally mandated
7 presumptions of fitness and affection unless proven otherwise
8 and (2) impermissibly sows seeds of doubt in children's mind
9 about whether their parents are acting in their best interests,
10 thus creating a rift in the parent-child relationship;

11 e. The Parental Secrecy Policy usurps parents' responsibility as
12 the ultimate decision-maker regarding their children's mental
13 health and well-being, including but not limited to decisions
14 related to their gender identity and expression, and assigns that
15 responsibility to the District;

16 f. The Parental Secrecy Policy conceals important information
17 from parents about their children's mental health and well-
18 being, thus precluding them from taking actions that they would
19 deem in their children's best interests if they were provided with
20 the relevant information;

21 g. The Parental Secrecy Policy authorizes the District to engage in
22 significant psychological treatment of children, in the form of
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1 socially transitioning them to a new gender, without parents'
2 knowledge or consent. When the District socially transitions a
3 student, it is engaging in medical treatment of the child without
4 parents' knowledge or consent;

5 h. The Parental Secrecy Policy results in the District providing
6 substandard psychological treatment of children because
7 parental involvement—and their deep knowledge of their
8 children over their life course, family interactions, and extra-
9 circular environment—is crucial in their diagnosis, assessment,
10 and treatment;

11 i. The Parental Secrecy Policy results in the District providing
12 substandard psychological treatment of children because it
13 assumes that immediate and unqualified affirmation is the only
14 permissible response to a child exhibiting gender confusion
15 whereas, in reality, such a “one size fits all” approach to these
16 issues is a blunt instrument that fails to account for the unique
17 facts involved in each situation;

18 j. The Parental Secrecy Policy results in the District providing
19 substandard psychological treatment of children because District
20 personnel are not trained mental health practitioners in the field
21 and thus are not qualified to provide students expressing gender
22 confusion the care they need;

1 k. The Parental Secrecy Policy results in the District providing
2 substandard psychological treatment of children because
3 creating a situation where a child performs different gender
4 identities and roles at home and school is inherently
5 psychologically unhealthy for the child; and

6 l. The Parental Secrecy Policy results in the District providing
7 unconsented-to psychological treatment because: (1) children are
8 cognitively incapable of giving informed consent to life-altering
9 psychological interventions like social transitioning and the
10 more-drastring gender-affirming care that is likely to follow; (2)
11 District personnel do not have sufficient knowledge of the
12 complexities and risks inherent in the field to provide students
13 sufficient information that they could provide informed consent
14 even if they were cognitively capable of doing so; and (3) District
15 personnel do not have sufficient knowledge of the complexities
16 and risks inherent in the field to themselves evaluate whether
17 social transitioning is appropriate and ethical treatment.

18 60. The Parental Secrecy Policy is not narrowly tailored to any compelling
19 governmental purpose, does not further any important government purpose, and is
20 not supported by any rational basis.

21 61. Ms. Regino has no adequate remedy at law for these deprivations and
22 will suffer serious and irreparable harm to her constitutional rights unless
23

1 Defendants are enjoined as set forth herein.

2 62. Ms. Regino is entitled to declaratory relief and preliminary and
3 permanent injunctive relief invalidating and restraining Defendants from their
4 ongoing violations of her constitutional rights as set forth herein.

5 COUNT TWO
6 As-Applied Challenge to Parental Secrecy Policy
7 Under 42 U.S.C. § 1983
8 Substantive Due Process

9 63. Ms. Regino hereby incorporates by reference all other paragraphs of this
10 Complaint as though fully set forth herein, including but not limited to the Levine
11 Affidavit.

12 64. Defendants' application of the Parental Secrecy Policy to Ms. Regino also
13 violated in the past—and threatens to violate in the future—her parental rights for
14 all of the ways previously set forth herein, including but not limited to the ways set
15 forth in Paragraph 59, including all subparts.

16 65. The District's actions toward Ms. Regino as alleged herein are not
17 narrowly tailored to any compelling governmental purpose, do not further any
18 important government purpose, and are not supported by any rational basis.

19 66. Ms. Regino has no adequate remedy at law for these deprivations and
20 will suffer serious and irreparable harm to her constitutional rights unless
21 Defendants are enjoined as set forth herein.

22 67. Ms. Regino is entitled to declaratory relief and preliminary and
23 permanent injunctive relief invalidating and restraining Defendants from their

1 ongoing violations of her constitutional rights as set forth herein.

2 COUNT THREE
3 Facial Challenge to Parental Secrecy Policy
4 Under 42 U.S.C. § 1983
5 Procedural Due Process

6 68. Ms. Regino hereby incorporates by reference all other paragraphs of this
7 Complaint as though fully set forth herein, including but not limited to the Levine
8 Affidavit.

9 69. On its face, the Parental Secrecy Policy violated in the past—and
10 threatens to violate in the future—Ms. Regino’s fundamental right to direct the
11 upbringing of her children; to make decisions concerning the care, custody, and
12 control of her children; to direct the medical and mental health decision-making for
13 her children; and to make private familial decisions regarding her children without
14 undue interference by the state without providing adequate procedural safeguards,
15 including a thorough investigation, notice, and an opportunity to be heard with
16 respect to the deprivation of parents’ parental rights.

17 70. Ms. Regino has no adequate remedy at law for these deprivations and
18 will suffer serious and irreparable harm to her constitutional rights unless
19 Defendants are enjoined as set forth herein.

20 71. Ms. Regino is entitled to declaratory relief and preliminary and
21 permanent injunctive relief invalidating and restraining Defendants from their
22 ongoing violations of her constitutional rights as set forth herein.
23

COUNT FOUR
As-Applied Challenge to Parental Secrecy Policy
Under 42 U.S.C. § 1983
Procedural Due Process

72. Ms. Regino hereby incorporates by reference all other paragraphs of this Complaint as though fully set forth herein, including but not limited to the Levine Affidavit.

73. As applied, the Parental Secrecy Policy violated in the past—and threatens to violate in the future—Ms. Regino’s fundamental right to direct the upbringing of her children; to make decisions concerning the care, custody, and control of her children; to direct the medical and mental health decision-making for her children; and to make private familial decisions regarding her children without undue interference by the state without providing adequate procedural safeguards, including a thorough investigation, notice, and an opportunity to be heard with regard to the deprivation of her parental rights.

74. Ms. Regino has no adequate remedy at law for these deprivations and will suffer serious and irreparable harm to her constitutional rights unless Defendants are enjoined as set forth herein.

75. Ms. Regino is entitled to declaratory relief and preliminary and permanent injunctive relief invalidating and restraining Defendants from their ongoing violations of her constitutional rights as set forth herein

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Aurora Regino requests the following relief:

1. A declaration that the District’s Parental Secrecy Policy is both facially

1 invalid and invalid as applied to her under the Fourteenth Amendment to the United
2 States Constitution;

3 2. A preliminary and permanent injunction preventing Defendants from
4 continuing to implement the Parental Secrecy Policy, during the pendency of this
5 litigation and at all times in the future, both facially and as applied to Ms. Regino;

6 3. Costs and attorney's fees pursuant to 42 U.S.C. § 1988;

7 4. A trial by jury on all claims for which Plaintiff has such a right; and

8 5. Such further relief that the Court deems just and proper.

9
10 Dated: January 6, 2023

Respectfully submitted,

11
12 By: /s/Harmeet K. Dhillon
13 Harmeet K. Dhillon (SBN 207873)
14 DHILLON LAW GROUP INC.
15 177 Post Street, Suite 700
16 San Francisco, CA 94108
17 (415) 433-1700

18 Mark. Trammell*
19 MTrammell@libertyCenter.org
20 Joshua W. Dixon*
21 JDixon@LibertyCenter.org
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CENTER FOR AMERICAN LIBERTY
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Mount Airy, MD 21771
Telephone: (703) 687-6200

Attorneys for Plaintiff
**Pro Hac Vice Motions Forthcoming*

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VERIFICATION

I, AURORA REGINO, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of eighteen years old, I am competent to make this verification, and have personal knowledge of the matters set forth herein.

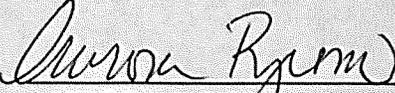
2. I have reviewed the Complaint to be filed on my behalf in this matter.

3. I have personal knowledge of the factual allegations in paragraphs 1–2, 3 (first sentence), 4–23, 28, 35 (second sentence), 36–37, and 40–55 of the Complaint. Those allegations are true and correct to the best of my knowledge.

4. My daughter, A.S., informed me of the factual allegations contained in paragraphs 3 (all sentences other than first sentence), 24–27, 29–35 (first sentence), and 38–39 of the Complaint. Based on my conversations with A.S., and her reputation and character of truthfulness, which I know based on my interactions with her as her mother, I believe these allegations to be true and correct to the best of my knowledge.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on January 5, 2022


AURORA REGINO

VERIFICATION

I, A.S., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am twelve years old. I have personal knowledge of the matters set forth herein.

2. I have reviewed the Complaint to be filed on behalf of my mother in this matter.

3. I have personal knowledge of the factual allegations in paragraphs 3 (all sentences other than first sentence), 24–27, 29–35 (first sentence), and 38–39 of the Complaint. I believe these allegations to be true and correct to the best of my knowledge.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed on January 5, 2022

A.S.

A.S.

**U.S. District Court
Eastern District of California - Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:23-cv-00032-JAM-DMC**

Regino v. Staley
Assigned to: Senior Judge John A. Mendez
Referred to: Magistrate Judge Dennis M. Cota
Case in other court: US Court of Appeals, 23-16031
Cause: 42:1981 Civil Rights

Date Filed: 01/06/2023
Date Terminated: 07/11/2023
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Aurora Regino

represented by **Harmeet Kaur Dhillon**
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San Francisco, CA 94108
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

V.

Defendant

Kelly Staley
Superintendent

represented by **Brian A. Duus**
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2175 North California Boulevard
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ATTORNEY TO BE NOTICED

Defendant

Caitlin Dalby
TERMINATED: 04/12/2023

represented by **Brian A. Duus**
(See above for address)
TERMINATED: 04/12/2023
LEAD ATTORNEY

Jimmie E. Johnson , I
(See above for address)
TERMINATED: 04/12/2023

Louis Anthony Leone

(See above for address)
TERMINATED: 04/12/2023

Defendant

Rebecca Konkin
TERMINATED: 04/12/2023

represented by **Brian A. Duus**
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TERMINATED: 04/12/2023
LEAD ATTORNEY

Jimmie E. Johnson , I
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TERMINATED: 04/12/2023

Louis Anthony Leone
(See above for address)
TERMINATED: 04/12/2023

Defendant

Tom Lando
TERMINATED: 04/12/2023

represented by **Brian A. Duus**
(See above for address)
TERMINATED: 04/12/2023
LEAD ATTORNEY

Jimmie E. Johnson , I
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TERMINATED: 04/12/2023

Louis Anthony Leone
(See above for address)
TERMINATED: 04/12/2023

Defendant

Eileen Robinson
TERMINATED: 04/12/2023

represented by **Brian A. Duus**
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TERMINATED: 04/12/2023
LEAD ATTORNEY

Jimmie E. Johnson , I
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TERMINATED: 04/12/2023

Louis Anthony Leone
(See above for address)
TERMINATED: 04/12/2023

Defendant

Matt Tennis
TERMINATED: 04/12/2023

represented by **Brian A. Duus**
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TERMINATED: 04/12/2023
LEAD ATTORNEY

Jimmie E. Johnson , I
(See above for address)

TERMINATED: 04/12/2023

Louis Anthony Leone
(See above for address)
TERMINATED: 04/12/2023

V.

Intervenor Defendant

GSA Network

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/06/2023	1 F	COMPLAINT against All Defendants by Aurora Regino. (Filing fee \$ 402, receipt number ACAEDC-10632361) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Civil Cover Sheet)(Dhillon, Harmeet) (Entered: 01/06/2023)
01/06/2023	2	MOTION for PRELIMINARY INJUNCTION by Aurora Regino. (Attachments: # 1 Memorandum, # 2 Exhibit A, # 3 Exhibit B, # 4 Proposed Order)(Dhillon, Harmeet) (Entered: 01/06/2023)
01/09/2023	3	SUMMONS ISSUED as to *Caitlin Dalby, Staley Kelly, Rebecca Konkin, Tom Lando, Eileen Robinson, Matt Tennis* with answer to complaint due within *21* days. Attorney *Harmeet Kaur Dhillon* *Dhillon Law Group, Inc.* *177 Post Street, Suite 700* *San Francisco, CA 94108*. (Mena-Sanchez, L) (Entered: 01/09/2023)
01/09/2023	4	CIVIL NEW CASE DOCUMENTS ISSUED (Attachments: # 1 Consent Form, # 2 Order re Filing Requirements, # 3 VDRP) (Mena-Sanchez, L) (Entered: 01/09/2023)
01/10/2023	5	MINUTE ORDER issued by Courtroom Deputy G. Michel for Senior Judge John A. Mendez on 1/10/2023: On the Court's own motion, the hearing on Plaintiff's Motion for Preliminary Injunction, ECF No. 2 , is SET for 2/14/2023 at 1:30 PM in Courtroom 6 before District Judge John A. Mendez. IT IS SO ORDERED. [TEXT ONLY ENTRY] (Michel, G.) (Entered: 01/10/2023)
01/20/2023	6	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Aurora Regino for attorney Eric A. Sell to appear Pro Hac Vice. (Filing fee \$ 225, receipt number ACAEDC-10654067) (Dhillon, Harmeet) (Entered: 01/20/2023)
01/20/2023	7	PRO HAC VICE APPLICATION and PROPOSED ORDER submitted by Aurora Regino for attorney Joshua W. Dixon to appear Pro Hac Vice. Attorney Hoesly, Matthew Michael added. (Filing fee \$ 225, receipt number ACAEDC-10654321) (Hoesly, Matthew) (Entered: 01/20/2023)
01/20/2023	8 F	ORDER signed by Senior Judge John A. Mendez on 1/20/2023 GRANTING 6 Application for Pro Hac Vice. Attorney Eric A. Sell, to appear for Aurora Regino. The Pro Hac Vice attorney is directed to request electronic filing access through PACER. (Reader, L) (Entered: 01/20/2023)
01/20/2023	9 F	ORDER signed by Senior Judge John A. Mendez on 1/20/2023 GRANTING 7 Application for Pro Hac Vice. Attorney Joshua Wallace Dixon, to appear for Aurora Regino. The Pro Hac Vice attorney is directed to request electronic filing access through PACER. (Reader, L) (Entered: 01/20/2023)
01/24/2023	10	NOTICE of APPEARANCE by Michael A Columbo on behalf of Aurora Regino. Attorney Columbo, Michael A added. (Columbo, Michael) (Entered: 01/24/2023)
01/24/2023	11	MINUTE ORDER issued by Courtroom Deputy G. Michel for Senior Judge John A. Mendez on 1/24/2023: Before the Court is Plaintiff's motion for a preliminary injunction. <u>See</u> Mot. for Preliminary Injunction, ECF No. 2 . Federal Rule of Civil Procedure 65 requires that notice must be given to the adverse party prior to granting a preliminary injunction. Fed. R. Civ. P. 65(a)(1). It follows that the Court cannot order preliminary injunctive relief under Rule 65 until defendants have been provided with notice and an opportunity to be heard. To date, no defendant has formally appeared in the action and there is no entry on the docket reflecting service of summons and the complaint on any defendant. Further, Plaintiff has not shown that emergency circumstances warrant the issuance of an injunction without notice and hearing.

		Accordingly, Plaintiff's motion for a preliminary injunction is DENIED as premature without prejudice to renewal at a later date. The hearing set for February 14, 2023 is VACATED. IT IS SO ORDERED. [TEXT ONLY ENTRY] (Michel, G.) (Entered: 01/24/2023)
01/24/2023	12	[DISREGARD - see 17 Minute Order] STIPULATION and PROPOSED ORDER re 2 Motion for Preliminary Injunction Hearing by Aurora Regino. (Attachments: # 1 Proof of Service) (Columbo, Michael) Modified on 1/25/2023 (Michel, G.). (Entered: 01/24/2023)
01/24/2023	13	[DISREGARD - see 17 Minute Order] NOTICE TO RESCHEDULE HEARING re Motion for Preliminary Injunction. Motion Hearing RESET for 2/28/2023 at 1:30 PM in Courtroom 6 before Senior Judge John A. Mendez. (Attachments: # 1 Proof of Service) (Columbo, Michael) Modified on 1/25/2023 (Benson, A.). Modified on 1/25/2023 (Michel, G.). (Entered: 01/24/2023)
01/25/2023	14	NOTICE of APPEARANCE by Brian A. Duus on behalf of Caitlin Dalby, Staley Kelly, Rebecca Konkin, Tom Lando, Eileen Robinson, Matt Tennis. Attorney Duus, Brian A. added. (Duus, Brian) (Entered: 01/25/2023)
01/25/2023	15	NOTICE of APPEARANCE by Jimmie E. Johnson, I on behalf of Caitlin Dalby, Staley Kelly, Rebecca Konkin, Tom Lando, Eileen Robinson, Matt Tennis. Attorney Johnson, Jimmie E. added. (Johnson, Jimmie) (Entered: 01/25/2023)
01/25/2023	16	NOTICE of APPEARANCE by Louis Anthony Leone on behalf of Caitlin Dalby, Staley Kelly, Rebecca Konkin, Tom Lando, Eileen Robinson, Matt Tennis. Attorney Leone, Louis Anthony added. (Leone, Louis) (Entered: 01/25/2023)
01/25/2023	17	MINUTE ORDER issued by Courtroom Deputy G. Michel for Senior Judge John A. Mendez on 1/25/2023: On January 24, 2023, the Court denied Plaintiff's 2 Motion for Preliminary Injunction as premature without prejudice to renewal at a later date. See ECF No. 11 . Accordingly, the parties' Stipulation and Proposed Order, ECF No. 12 , and Notice to Reschedule Hearing, ECF No. 13 , are deemed moot and will not be considered by the Court. IT IS SO ORDERED. [TEXT ONLY ENTRY] (Michel, G.) (Entered: 01/25/2023)
01/25/2023	18	MOTION for PRELIMINARY INJUNCTION by Aurora Regino. Motion Hearing set for 2/28/2023 at 01:30 PM in Courtroom 6 before Senior Judge John A. Mendez. (Attachments: # 1 Notice, # 2 Memorandum , # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Proposed Order, # 7 Proof of Service)(Columbo, Michael) Modified on 1/26/2023 (Benson, A.). (Entered: 01/25/2023)
01/25/2023	19	STIPULATION and PROPOSED ORDER for Preliminary Injunction Hearing by Aurora Regino. (Attachments: # 1 Proof of Service Certificate of Service)(Columbo, Michael) (Entered: 01/25/2023)
01/27/2023	20 F	STIPULATION and ORDER signed by Senior Judge John A. Mendez on 01/26/2023 ORDERING that the Motion for Preliminary Injection shall be held on 2/28/2023 at 01:30 PM in Courtroom 6 before Senior Judge John A. Mendez, DIRECTING Defendants Kelly Staley, Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson and Matt Tennis to file any opposition briefing by 02/14/2023 and Plaintiff to file any reply briefing by 02/21/2023. (Spichka, K.) (Entered: 01/27/2023)
02/14/2023	21	OPPOSITION by Caitlin Dalby, et al., to 18 Motion for Preliminary Injunction. (Attachments: # 1 Request for Judicial Notice, # 2 Declaration of Jimmie E. Johnson, # 3 Declaration of Kelly Staley, # 4 Objections to Expert Affidavit)(Johnson, Jimmie) (Entered: 02/14/2023)

02/14/2023	22	MOTION to INTERVENE by GSA Network. Attorney Shearer, Adam F. added. Motion Hearing set for 3/28/2023 at 01:30 PM in Courtroom 6 (JAM) before Senior Judge John A. Mendez. (Attachments: # 1 Declaration of Ginna Brelsford, # 2 [STRICKEN - see 32 F Order] Proposed Opposition to Motion for Preliminary Injunction, # 3 [STRICKEN - see 32 F Order] Declaration of Dr. Jack Turban, # 4 Conditional Answer, # 5 Proposed Order)(Shearer, Adam) Modified on 2/24/2023 (Michel, G.). (Entered: 02/14/2023)
02/16/2023	23	NOTICE of APPEARANCE by Jennifer Ling Chou on behalf of GSA Network. Attorney Chou, Jennifer Ling added. (Chou, Jennifer) (Entered: 02/16/2023)
02/16/2023	24	NOTICE of APPEARANCE by Elizabeth O. Gill on behalf of GSA Network. Attorney Gill, Elizabeth O. added. (Gill, Elizabeth) (Entered: 02/16/2023)
02/16/2023	25	NOTICE of APPEARANCE by Amanda Goad on behalf of GSA Network. Attorney Goad, Amanda added. (Goad, Amanda) (Entered: 02/16/2023)
02/16/2023	26	NOTICE of APPEARANCE by Ariana Rodriguez on behalf of GSA Network. Attorney Rodriguez, Ariana added. (Rodriguez, Ariana) (Entered: 02/16/2023)
02/21/2023	27	REPLY by Aurora Regino in support of 18 Motion for Preliminary Injunction. (Attachments: # 1 Response, # 2 Declaration)(Dhillon, Harmeet) (Entered: 02/21/2023)
02/21/2023	28	MOTION to STRIKE by Aurora Regino. Motion Hearing set for 4/4/2023 at 01:30 PM before Senior Judge John A. Mendez. (Attachments: # 1 Notice, # 2 Proposed Order) (Dhillon, Harmeet) (Entered: 02/21/2023)
02/21/2023	29	REQUEST for JUDICIAL NOTICE by Aurora Regino in re 27 Reply re Motion for Preliminary Injunction. (Attachments: # 1 Response)(Dhillon, Harmeet) Modified on 2/22/2023 (Benson, A.). (Entered: 02/21/2023)
02/23/2023	30	MINUTE ORDER issued by Courtroom Deputy G. Michel for Senior Judge John A. Mendez on 2/23/2023: Plaintiff's 28 Motion to Strike is noticed for hearing on a date not designated for the Court's civil law and motion calendar. Consequently, the hearing set for 4/4/2023 is VACATED and RESET for 3/28/2023 at 1:30 PM in Courtroom 6 before Senior Judge John A. Mendez. [TEXT ENTRY ONLY] (Michel, G.) (Entered: 02/23/2023)
02/23/2023	31	OBJECTIONS by Defendants Caitlin Dalby, et al., to 27 Reply Evidence in support of Motion. (Johnson, Jimmie) Modified on 2/23/2023 (Benson, A.). (Entered: 02/23/2023)
02/24/2023	32 F	ORDER signed by Senior Judge John A. Mendez on 2/24/2023 GRANTING 28 Motion to Strike; ORDERING that the docket entries at ECF Nos. 22-2 and 22-3 be stricken from the record. (Michel, G.) (Entered: 02/24/2023)
02/28/2023	33	MINUTES (Text Only) for MOTION HEARING before Senior District Judge John A. Mendez held on 02/28/2023. Plaintiff's counsel, Eric Sell and Joshua Dixon, present. Defendants' counsel, Brian Duus, present. The court and counsel discussed the pending motion. Arguments heard. The court SUBMITTED Plaintiff's 18 Motion for Preliminary Injunction. A written order to issue. Court Reporter: M. Valenoti. (York, M) (Entered: 02/28/2023)
02/28/2023	34 F	OPPOSITION by Aurora Regino to 22 Motion to Intervene,. Attorney Graham, Jeremiah added. (Graham, Jeremiah) (Entered: 02/28/2023)
03/01/2023	35	TRANSCRIPT REQUEST by GSA Network for proceedings held on 02-28-2023 before Judge Hon. John A. Mendez. Court Reporter Maryann Valenoti. (Shearer, Adam) (Entered: 03/01/2023)

03/08/2023	36	TRANSCRIPT of Motion Hearing Proceedings held on February 28, 2023, before Senior Judge John A. Mendez, filed by Court Reporter Maryann Valenoti, Phone number 916-930-4275 E-mail mvalenotirmcrrr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 3/30/2023. Redacted Transcript Deadline set for 4/10/2023. Release of Transcript Restriction set for 6/8/2023. (Valenoti, Maryann) (Entered: 03/08/2023)
03/09/2023	37 F	ORDER signed by Senior Judge John A. Mendez on 03/08/2023 DENYING 18 Motion for Preliminary Injunction. (Rodriguez, E) (Entered: 03/09/2023)
03/10/2023	38	REPLY by GSA Network in support of 22 Motion to Intervene. (Shearer, Adam) Modified on 3/15/2023 (Rodriguez, E). (Entered: 03/10/2023)
03/21/2023	39	MINUTE ORDER (Text Only Entry) issued by M York Courtroom Deputy for Senior District Judge John A. Mendez on 03/21/2023: GSA Network's 22 Motion to Intervene now calendared for 03/28/2023 is SUBMITTED without appearance and without oral argument pursuant to Local Rule 230(g). As such, the hearing on said motion is VACATED. If the Court subsequently concludes that oral argument is necessary, a hearing will be set and the parties notified accordingly. (York, M) (Entered: 03/21/2023)
03/27/2023	40	MOTION to DISMISS by Caitlin Dalby, et al.: Motion Hearing set for 5/23/2023 at 01:30 PM in Courtroom 6 (JAM) before Senior Judge John A. Mendez. (Attachments: # 1 Request for Judicial Notice, # 2 Declaration of Jimmie Johnson , # 3 Declaration of Kelly Staley , # 4 Index of Exhibits, # 5 Exhibit A, # 6 Exhibit B , # 7 Exhibit C , # 8 Exhibit D , # 9 Exhibit E, # 10 Exhibit F)(Johnson, Jimmie) Modified on 3/28/2023 (Kastilahn, A). (Entered: 03/27/2023)
03/27/2023	41	JOINT RULE 26(F) REPORT filed by Defendants Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, Kelly Staley, Matt Tennis. (Johnson, Jimmie) Modified on 3/28/2023 (Kastilahn, A). (Entered: 03/27/2023)
04/10/2023	42	FIRST AMENDED COMPLAINT against All Defendants by Aurora Regino. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Proof of Service)(Dhillon, Harmeet) (Entered: 04/10/2023)
04/10/2023	43	OPPOSITION by Plaintiff Aurora Regino to 40 Motion to Dismiss. (Attachments: # 1 Proof of Service)(Dhillon, Harmeet) (Entered: 04/10/2023)
04/11/2023	44	REPLY by Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, Kelly Staley, Matt Tennis re 43 Opposition, 40 Motion to Dismiss, 42 Amended Complaint. (Johnson, Jimmie) (Entered: 04/11/2023)
04/12/2023	45	MINUTE ORDER (Text Only Entry) issued by M York Courtroom Deputy for Senior District Judge John A. Mendez on 04/12/2023: On 04/10/2023, Plaintiff timely filed her First Amended Complaint in response to Defendants' Motion to Dismiss at ECF No. 40 . <u>See</u> FAC, ECF No. 42 ; Fed. R. Civ. P. 15(a)(1)(B). An amended complaint ordinarily moots a motion to dismiss, however, the Court may exercise its discretion to consider a motion to dismiss the original complaint where the amended complaint fails to cure the defects of the original complaint. <u>Appleton v. County of Sacramento</u> , 2005 U.S. Dist. Lexis 35632, fn. 4 (E.D. Cal. Dec. 25, 2005). Accordingly, the Court GRANTS in PART and DENIES in PART Defendants' Motion to Dismiss. The Court GRANTS Defendants' motion as to the individual Board Member Defendants sued in their official capacities. The claims against Defendants Caitlin Dalby, Rebecca Konkin, Tom Lando,

		Eileen Robinson, and Matt Tennis, sued in their official capacities, are hereby DISMISSED with prejudice. As to any other issues raised in the Motion to Dismiss, the Court will take them up at the appropriate time if Defendants file a second motion to dismiss the FAC. The Court thus DENIES the remainder of Defendants' motion without prejudice for refiling. The Court also DENIES Defendant's Request for Judicial Notice without prejudice for refiling. ECF No. 40-1 . The 05/23/2023 hearing on this Motion is hereby VACATED. (York, M) (Entered: 04/12/2023)
04/17/2023	46 F	ORDER signed by Senior Judge John A. Mendez on 4/14/2023 DENYING 22 Motion to Intervene. (Perdue, C.) (Entered: 04/17/2023)
04/17/2023	47	TRANSCRIPT REQUEST by Aurora Regino for proceedings held on 2/28/2023 before Judge John A. Mendez. Court Reporter Maryann Valenoti. (Dhillon, Harmeet) (Entered: 04/17/2023)
04/18/2023	48	STIPULATION and PROPOSED ORDER for 5-Page Limit Extension On Def Kelly Staley's Forthcoming Rule 12 Mtn and Pltf's Opp Thereto by Caitlin Dalby et al., (Johnson, Jimmie) Modified on 4/19/2023 (Licea Chavez, V). (Entered: 04/18/2023)
04/20/2023	49	MINUTE ORDER (Text Only Entry) issued by M York Courtroom Deputy for Senior District Judge John A. Mendez on 04/20/2023: Upon careful review, the Court DECLINES TO ADOPT the parties 48 Stipulation and Proposed Order re Page Limits. The parties shall comply with the page limits set forth in the Court's 4 -2 Order re Filing Requirements when filing the forthcoming motion and related briefing referenced in their stipulation. (York, M) (Entered: 04/20/2023)
04/25/2023	50	MOTION to DISMISS by Kelly Staley. Motion Hearing set for 6/27/2023 at 01:30 PM in Courtroom 6 (JAM) before Senior Judge John A. Mendez. (Johnson, Jimmie) (Entered: 04/25/2023)
04/25/2023	51	REQUEST for JUDICIAL NOTICE by Kelly Staley in re 50 Motion to Dismiss. (Attachments: # 1 Johnson Declaration, # 2 Staley Declaration, # 3 Exhibit A , # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D)(Johnson, Jimmie) Modified on 4/26/2023 (Benson, A.). (Entered: 04/25/2023)
05/09/2023	52	OPPOSITION by Aurora Regino to 50 Motion to Dismiss. (Dhillon, Harmeet) (Entered: 05/09/2023)
05/09/2023	53	OPPOSITION to 51 Request for Judicial Notice by Aurora Regino . (Dhillon, Harmeet) Modified on 5/10/2023 (Licea Chavez, V). (Entered: 05/09/2023)
05/16/2023	54	REPLY by Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, Kelly Staley, Matt Tennis re 50 Motion to Dismiss. (Johnson, Jimmie) (Entered: 05/16/2023)
06/13/2023	55	MINUTE ORDER (Text Only Entry) issued by M York Courtroom Deputy for Senior District Judge John A. Mendez on 06/13/2023: The parties are ORDERED to file an <u>updated</u> Joint Status Report pursuant to the provisions of F.R.Cv.P. 16 and 26, in accordance with Local Rule 240 and the Court's Order Requiring Service of Process and Joint Status Report, within thirty (30) days after the Court's ruling on Defendant's pending 50 Motion to Dismiss. (York, M) (Entered: 06/13/2023)
06/27/2023	56	MINUTES (Text Only) for MOTION HEARING before Senior District Judge John A. Mendez held on 06/27/2023. Plaintiff's counsel, Joshua Dixon, present along with his client Aurora Regino. Defendant's counsel, Brian Duus, present. The Court and counsel discussed the pending motion. Arguments heard.The court SUBMITTED Defendant's 50 Motion to Dismiss. A written order to issue. Court Reporter: Maryann Valenoti. (York, M) (Entered: 06/27/2023)

07/11/2023	57 F	ORDER signed by Senior Judge John A. Mendez on 7/10/2023 GRANTING 50 Motion to Dismiss, all of Plaintiff's claims are DISMISSED with prejudice. CASE CLOSED (Reader, L) (Entered: 07/11/2023)
07/11/2023	58	JUDGMENT dated *7/11/2023* pursuant to order signed by Senior Judge John A. Mendez on 7/10/2023. (Reader, L) (Entered: 07/11/2023)
07/20/2023	59 F	NOTICE of APPEAL by Aurora Regino. (Filing fee \$ 505, receipt number ACAEDC-10972582) (Dhillon, Harmeet) (Entered: 07/20/2023)
07/21/2023	60	APPEAL PROCESSED to Ninth Circuit re 59 F Notice of Appeal filed by Aurora Regino. Notice of Appeal filed *7/20/2023*, Complaint filed *1/6/2023* and Appealed Order / Judgment filed *7/11/2023*. Court Reporter: *Maryann Valenoti*. *Fee Status: Paid on 7/20/2023 in the amount of \$505.00* (Attachments: # 1 Appeal Information) (Reader, L) (Entered: 07/21/2023)
07/26/2023	61	TRANSCRIPT REQUEST by Aurora Regino. Court Reporter Maryann Valenoti. (Dhillon, Harmeet) (Entered: 07/26/2023)
07/28/2023	62	USCA CASE NUMBER 23-16031 for 59 F Notice of Appeal filed by Aurora Regino. (Licea Chavez, V) (Entered: 07/28/2023)
08/17/2023	63	TRANSCRIPT of Motion to Dismiss Proceedings held on June 27, 2023, before Senior Judge John A. Mendez, filed by Court Reporter Maryann Valenoti, Phone number 916-930-4275 E-mail mvalenotirmcrr@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction must be filed within 5 court days. Redaction Request due 9/8/2023. Redacted Transcript Deadline set for 9/18/2023. Release of Transcript Restriction set for 11/16/2023. (Valenoti, Maryann) (Entered: 08/17/2023)
09/08/2023	64 F	MOTION to PUBLISH by Kelly Staley. Motion Hearing set for 10/10/2023 at 01:30 PM in Courtroom 6 (JAM) before Senior Judge John A. Mendez. (Johnson, Jimmie) Modified on 9/11/2023 (Licea Chavez, V). (Entered: 09/08/2023)
09/13/2023	65	MINUTE ORDER (Text Only Entry) issued by M York Courtroom Deputy for Senior District Judge John A. Mendez on 09/13/2023: Defendant's 64 F Motion to Publish is noticed for hearing on a date not designated for the Court's civil law and motion calendar. Consequently, the hearing set for 10/10/2023 is VACATED. Counsel shall contact M York, Courtroom Deputy for District Judge John A. Mendez, via email to obtain an available date to re-notice the motion for hearing. Ms. York can be reached at: MYork@caed.uscourts.gov . (York, M) (Entered: 09/13/2023)
09/25/2023	66	NOTICE to RESCHEDULE HEARING on 64 F Motion to Publish: Motion Hearing SET for 10/31/2023, at 01:30 PM, in Courtroom 6 (JAM), before Senior District Judge John A. Mendez. (Johnson, Jimmie) Modified on 9/29/2023 (York, M). (Entered: 09/25/2023)
10/19/2023	67	MINUTE ORDER (Text Only Entry) issued by M Francel Relief Courtroom Deputy for Senior District Judge John A. Mendez on 10/19/2023: Defendant's 64 F Motion to Publish now calendared for 10/31/2023 is SUBMITTED without appearance and without oral argument pursuant to Local Rule 230(g). As such, the hearing on said motion is VACATED. If the Court subsequently concludes that oral argument is necessary, a hearing will be set and the parties notified accordingly. (Francel, M.) (Entered: 10/19/2023)

10/26/2023	68	<p>MINUTE ORDER (Text Only Entry) issued by M. Francel Relief Courtroom Deputy for Senior District Judge John A. Mendez on 10/26/2023: The Court has received, read and considered Defendant Kelly Staley's unopposed "Motion to Publish ECF 57 in National Reporter System" (ECF No. 64 F). The Court's Order Granting Defendant's Motion to Dismiss (ECF No. 57 F) has been appealed to the Ninth Circuit (ECF No. 59 F) and is pending before that Court. This Court cannot order that a publishing company publish its decision but can only recommend that a specific order be published. Additionally, as Defendant acknowledges, the decision to recommend publication is at the Court's discretion. Given the current status of this case, this Court respectfully DECLINES Defendant's request and DENIES her motion to publish at this time. (Francel, M.) (Entered: 10/26/2023)</p>
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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