THE PEOPLE OF THE STATE OF CALIFORNIA, Ex Rel. ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT

CIVSB2317301

Motion No. 1: Motion for Judgment on the Pleadings/Summary Adjudication

Movant: Plaintiff The People of The State of California

Respondents: Defendant Chino Valley Unified School District

Defendants-in-Intervention Nichole Vicario, et al.

Motion No. 2: Motion for Summary Judgment/Adjudication

Movants: Defendant Chino Valley Unified School District

Defendants-in-Intervention Nichole Vicario, et al.

Respondent: Plaintiff The People of The State of California

Proposed Amicus Brief from the California Department of Education

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PROCEDURAL AND FACTUAL BACKGROUND

The Policy, the Pleadings, and the Preliminary Injunction

In July 2023, the Chino Valley Unified School District (the "District"), via its board (the "Board") adopted a policy which "requires" certificated staff, school counselors, and principals to notify a student's parent(s) or guardian(s) when the student is:

> (a) Requesting to be identified or treated, as a gender (as defined in Education Code section 210.7) other than the student's biological sex or gender listed on the student's birth certificate or any other official records. This includes any request by the student to use a name that differs from their legal name (other than a

commonly recognized diminutive of the child's legal name) or to use pronouns that do not align with the student's biological sex or gender listed on the student's birth certificate or other official records.

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

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

(State's Prior RJN, Ex. 1 [Policy 5020.1 (the "Policy" or the "Old Policy")].)

The Policy also requires parental or guardian notification for any significant physical injury, when a suicide attempt or threat is known, and for any incident or complaint of verbal or physical altercations or bullying. The Policy references the District's support for the "fundamental rights of parent(s)/guardian(s) to direct the care and upbringing of their children, including the right to be informed of and involved in all aspects of their child's education to promote the best outcomes." (The Policy.) The stated purpose of the Policy is to foster trust and communication between the District and the parents/guardians; promote the best outcomes for the pupils' academic and social-emotional success; and involve parents and guardians in the decision-making process for mental health and social-emotional issues of their children at the earliest possible time in order to prevent or reduce potential instances of self-harm. (*Ibid.*)

A month after the Policy was adopted, and following an investigation, The State of California (the "State") commenced the underlying action seeking to enjoin the notification requirement, as it relates to the gender-identity aspects of the Policy, and to declare those portions of the Policy unconstitutional and violative of State law. In particular, the complaint includes causes of action for declaratory and injunctive relief premised upon assertions the Policy violates (1) the right to equal protection under Article I, Section 7 of the California Constitution; (2)

Education Code section 200; (3) Government Code section 11135; and (4) the right to privacy under Article I, Section 1 of the California Constitution. The District answered and a group of District parents intervened. *Amicus* briefs have also been filed, including by the California Department of Education (DOE).

The Court initially granted a temporary restraining order and then a preliminary injunction against the District. In ruling on the preliminary injunction, the Court concluded the State had shown a likelihood of prevailing on the merits as to subdivisions 1.(a) and 1.(b) of the Policy since those provisions violated the Equal Protection Clause, the Education Code, and the Government Code, and the balancing of harm weighed in favor of an injunction. The Court reasoned those portions of the Policy, on their face, discriminated on the basis of sex because gender identity/expression are protected classifications. The Court also noted the Policy failed the strict scrutiny test because gender-neutral alternatives exist and a constitutional violation usually is indicative of irreparable harm for injunction purposes. (4/22/24 Amend. Prelim. Inj. Order.)

As for subdivision 1.(c) of the Policy, the Court determined it violated the constitutional right to privacy as it relates to adult students and that the balancing of interests weighed in favor of injunctive relief. However, the Court also determined that the provision was neutral on its face and would survive rational basis for purposes of the State's discrimination claims. (4/22/24 Amend. Prelim. Inj. Order.)

The State's Motion for Judgment on the Pleadings or for Summary Adjudication

The State now seeks judgment on the pleadings, or in the alternative summary adjudication, as to the first three causes of action in the complaint and as to the fourth cause of action as it relates to subdivision 1.(c) of the policy as applied to adult students. The motion is made on the grounds that subdivisions 1.(a), 1.(b), and 1.(c) violate California's Equal Protection Clause, Education

Code section 200, and Government Code section 1135; and because subdivision 1.(c) of the Policy violates the right to privacy as to the adult students.

The facts presented with the motion indicate the Board met on July 20, 2023, to discuss whether to adopt the Policy. Prior to the vote, the State sent the District a letter indicating the Policy violated the rights of transgender students and would put them at risk of severe harm. Community members, some current and former LGBTQ+ students, teachers, parents, mental health professionals, and State officials also spoke out against the Policy at the meeting. Additionally, letters from transgender students were read aloud. (Fact No.'s 1-17.)

Some individuals spoke in support of the Policy and claimed transgender identity is a "mental illness" a "delusion," or a "damaging ideaolog[y]." (Fact No. 18.) After public comment, one board member stated "there's always been man, women," that transgender identity was "dismantling of our humanity," that it is a "mental illness" and "women are being erased." The board member also indicated the Policy was needed to save children because gender identity was like a "death culture' and "a stop to it" was needed because it was "not going to end with transgenderism." (Fact No. 19.)

A second board member agreed that the Policy was needed to counter the call for the "abolition of family." The Board President also expressed "appreciat[ion]" for the Board member's viewpoints and asserted transgender and gender non-conforming youth need "non-affirming" parental actions so they can "get better." The President also called the State Superintendent of Public Instruction a "danger to [the] students" for "proposing things that pervert children." (Fact No.'s 20-21.)

The Board ultimately voted 4-1 to adopt the Policy. The lone dissenting Board member expressed concern about "shut[ing] the door on students confiding to a staff member or teacher"

thereby preventing the school from being a "supporting place" and that the "notification process" was effectively throwing [students back into the closet and slamming the door]." (Fact No. 23-24.) The Board did not cite or describe any statistical or qualitative evidence to support the Policy nor were statements made considering any alternative policies (including gender-neutral alternatives). The language of the Policy is not disputed (Fact No.'s 24-26) nor is the fact that the District declined the State's request to halt implementing the Policy in August 2023. The pending lawsuit then followed and the Court issued the TRO. (Fact No.'s 31-34.)

The parties further agree that prior to being revised on June 20, 2023, the District's Administrative Regulation 5145.2 provided that the District could only disclose "a student's transgender or gender nonconforming status ... 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." (Fact No. 27.) Regulation 5145.3 also provided that the District "shall offer support services, such as counseling, to students who wish to inform their parents/ guardians of their [transgender or gender nonconforming] status and desire assistance in doing so." (Fact No. 28.) Nothing in the regulations prevented students or parents from initiating conversations about gender identity with one another. (Fact No. 29.)

The State further references a September 1, 2023 e-mail from the Placer Hills Unified School District (PHUSD) to the Board in which it was suggested California "laws and precedence" were against the Policy and questioning whether a possible "work around" was to require parental notification to mandatory changes to student's files or records. (Fact No. 30.) The Board's President responded by stating "I love your work around idea," though the exchange occurred after the Board had already adopted the Policy in this case.

Then, after the issuance of the TRO, Regulation 5020.1 was placed on the Board's agenda. The proposed regulation restated the enjoined provisions of the Old Policy. (Fact No.'s 35-36.) The State issued a cease and desist letter the same date and the Board removed the item from the agenda. (Fact No.'s 37-38.) The matter was then re-placed on the agenda for the September 21, 2023 meeting, though it was again removed from the agenda on the day of the meeting and after the State reiterated its demand. (Fact No.'s 39-41.) The preliminary injunction was then issued on October 19, 2023. (Fact No. 42.)

The parties also agree that on March 7, 2024, the Board approved, on a 4-1 vote, Policy 5010 and Regulation 5010 (the "New Policy" and the "New Regulation"), which made several changes to the parental notification policy in response to the Court's preliminary injunction order. (Fact No. 43.) In a public statement the following day, the District's attorney described the New Policy and New Regulation as "updated" and defended the older version as "common sense and constitutional, particularly in light of [a] recent ruling in [a case involving a policy by Temecula Valley Unified School District or TVUSD]." (Fact No. 44.)

The President of the Board also stated on March 21, 2024, that she stood by the Old Policy proudly and she wanted to make sure the District "doesn't turn into any other district out here in California ... [where] people are sexualizing kids." (Fact No. 45.) A board member echoed those statements before voting for the New Policy and praising the President for stopping "this kind of stuff" that is destroying the lives of .. children" and "sterilizing them mentally so they don't have kids in the future." (Fact No. 46.)

The State additionally references statements made by defense counsel during a video conference, standing by the lawfulness of the Old Policy and indicating the Board does not have plans to reenact the Policy, though acknowledging "none of us" can predict what could be done in

the future. (Fact No. 47.) Finally, the State indicates several school districts in different counties throughout California have adopted identical or similar policies as the Old Policy and the DOE has conducted an investigation and issued a report concluding that the Murrieta Valley Unified School District's (MVUSD) policy violates Education Code section 220. (Fact No.'s 48-40.)

Defendants' Motion for Summary Judgment/Adjudication

Through their own motion, the District and Intervenors ("Defendants") seek summary judgment, or in the alternative summary adjudication as to each of the State's causes of action, on the grounds that the complaint is moot because of the New Policy. Otherwise, Defendants argue the United States Constitution requires public schools to notify parents before social transitioning children in the absence of exigent circumstances; the Old Policy does not discriminate on the basis of any suspect classification; and students do not have a right to privacy with respect to social transitioning in public schools. The motion doubles as the opposition to the State's motion.

The Facts presented by Defendants largely outline the same history provided by the State or otherwise outline the facts leading up to the adoption of the Old Policy, its terms, prior regulations, policies adopted by other school districts, the State's investigation, the procedural history of the lawsuit, the adoption of the New Policy, and the purported lack of intent to reinstate the Old Policy. (Defendants' Fact No.'s 1-16.) Defendants also indicate the primary purpose of social transitioning, which is a medically recognized treatment for gender dysphoria, is to relieve the psychological distress associated with gender incongruence. (Fact No.'s 17-18.)

The State responds by indicating social transitioning may also be pursued by those without gender dysphoria and that while the process is medically recognized, it is non-medical. (Response to Fact No.'s 17-18; see also Fact No.'s 19-21 [outlining additional assertions about social transitioning].) Defendants then conclude parents should be involved in social transitioning

discussions so children are not deprived of parental involvement during such a crucial time and that non-disclosure can drive a "wedge" between the parent and child. (Fact No. 22.) The State, however, contends transitioning occurs in stages, with children often "coming out" to parents after friends and teachers. (Fact No. 22.) There is also a dispute over whether professionals recommend social transitioning without parental knowledge. (Fact No. 23.)

Whether the Action is Moot

"An issue becomes moot when some event has occurred which 'deprive[s] the controversy of its life.' [Citation.] The policy behind a mootness dismissal is that 'courts decide justiciable controversies and will normally not render advisory opinions.'" (*Giraldo v. Department of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 257.)

Here, the undisputed facts indicate the Old Policy and Regulation were replaced with the new ones. (State's Fact No. 42; District's Fact No. 14.) This is significant because the complaint is directed at the Old Policy. (Compl. at ¶¶ 111, 120, 124-125, and 128-132.) Nevertheless, "[t]here are special circumstances under which a court may address the allegations of a complaint as they relate to the *prior* legislation. Where parts of a statute are reenacted in toto in subsequent legislation, the original challenge is not moot. [Citation.] Similarly, the merits of the prior controversy may be examined if they embrace 'a matter of general public interest and there is a likelihood of recurrence of the controversy between ... others similarly situated.'" (*Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1058 [citing *Montalvo v. Madera Unified Sch. Dist. Bd. of Education* (1971) 21 Cal.App.3d 323, 329—addressing a hair length regulation by a school district, repealed and replaced after judgment and prior to appeal].)

Mootness is "an aspect of justiciability that must be decided independently by each court with respect to the facts and legal issues before it." (*Robinson v. U-Haul Co. of California* (2016)

4 Cal.App.5th 304, 322.) Relevant factors include the "number of similar cases pending in various trial courts" (*Ibid.*) and whether there are "published decisions specifically addressing [the issue]" (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.App.4th 1022, 1034–1035, as modified on denial of reh'g (Nov. 21, 2011).) The Court can also consider "whether amicus curiae briefs were filed, whether any other parties intervened in the action, or whether there were currently pending actions elsewhere in the state asserting similar positions" as "[t]he presence of such factors may provide support for a finding of broad public interest," though the mootness issue cannot "legitimately turn on" only those factors and "their absence does not prove the opposite." (*Robinson, supra,* 4 Cal.App.5th at p. 322.)

The Court can further consider whether the "discontinuance [of the action sought to be enjoined] was implemented in good faith," whether there was resistance to amending the offending language, whether the offending language sought to be enjoined was actually "purge[d]" or simply restated in different terms, and whether after the changes the party "continued to insist" that its prior conduct was "valid." (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 316.)

In this case, the facts support the public interest exception to the mootness doctrine. The District resisted the State's position since the Old Policy was adopted despite the legal threats from the State and the District declined the State's invitation to temporarily halt implementation. The New Policy was also only adopted after the lawsuit was filed and the TRO and preliminary injunction were issued. (State's Fact No.'s 16, 23, 31-34, and 42-43; Defendants' Fact No.'s 3-4 and 9-14.) The District still persists in its position as to the legitimacy of the Old Policy. (State's Fact No.'s 44-46; Additional Fact No. 27; and Defendants' Notice of Motion at 2:15-23.)

In fact, the State of California recently enacted AB 1955, which, through Education Code section 220.5 and 220.3, prohibits adopting or enforcing policies requiring disclosure of

information related to a pupil's gender identity or gender expression to any other person without the pupil's consent, unless otherwise required by law. (State's Additional Fact No. 26.) Although AB 1955 is not effective until January 1, 2025, the District has challenged the enactment in a recent lawsuit filed on July 16, 2024. (See *Chino Valley Unified School District, et al. v. Newsom, et al.* (Eastern Dist. Cal., Case No. 2:24-at-00893).) Thus, it would seem possible that the District may persist in advocating for the Old Policy, or some similar version, if it prevails in the federal lawsuit.

While there is new legislation addressing the issue, it is not currently effective and there is otherwise no clear appellate precedent. There are also several cases pending related to mandated disclosure or mandated secrecy policies. (Defendants' Fact No. 6) The intervention and the filing of *amicus* briefs further suggests the public importance exception applies. (State's Fact No. 48 and 50.) On the other hand, the District contends that in the last nine months no new district has enacted a similar policy and at least one of the six districts that had adopted a parental notification policy has amended it. At the same time, however, the District acknowledges the remaining policies are being litigated in three cases and several more are engaged in "administrative law proceedings." (Defendants' Brief at 18:12-16.)

Overall, it is within the Court's discretion to determine that the public importance exception applies and the Court should so find here. To the extent the exception comes down to the District's intentions, subdivision (e) of Code of Civil Procedure section 437c provides that the Court in its discretion may deny summary judgment "if a material fact is an individual's state of mind ... and that fact is sought to be established solely by the individual's affirmation thereof." Thus, to the extent the District wants the Court to accept the stated intention of its declarants regarding the Old Policy, the Court could properly deny Defendants' motion.

The First Three Causes of Action and Sections 1.(a) and 1.(b) of the Old Policy

An overview of the law

The Court previously concluded in granting the preliminary injunction "[t]he United States and California Constitutions prohibit denial of equal protection of the laws. (U.S. Const., 14th Amend.; Cal Const., art. 1, § 7, subd. (a).) The equal protection clause requires the [government] to treat all persons similarly situated alike or, conversely, to avoid all classifications that are 'arbitrary or irrational' and those that reflect 'a bare ... desire to harm a politically unpopular group.' " (*Taking Offense v. State* (2021) 66 Cal.App.5th 696, 722 (*Taking Offense*).) Similarly, Education Code section 220 and Government Code section 11135 prohibit discrimination on the basis of sex, gender identity, and gender expression.

Although the state constitutional guarantee is independent of the federal one, they are applied identically except in the context of gender. In particular, under California law gender classifications are "suspect" for purposes of the equal protection analysis. Such classifications are therefore subject to strict scrutiny as opposed to the heightened or intermediate scrutiny applied under federal law. (*Taking Offense, supra,* 66 Cal.App.5th at p. 722.)

As a result, and since sex-based discrimination includes discrimination based on transgender status, in California transgender discrimination is subject to strict scrutiny. (*Taking Offense, supra,* 66 Cal.App.5th 696 at p. 723 [citing *Bostock, supra,* —— U.S. ——, 140 S.Ct. at p. 1743].) Under that test, the government "must show both that it has a *compelling interest* which justifies the classification and that the classification is *necessary* to further that compelling interest." (*Ibid.* [noting the test is applied because such classifications are so "pernicious and are so rarely relevant to a legitimate governmental purpose"].) However, classification does not itself "deprive a group of equal protection" if the classification is "based upon some difference between

the classes which is pertinent to the purpose for which the legislation is designed." (*Ibid.*) The Court also applies "equal protection principles equally regardless of the gender being discriminated against." (*Ibid.*)

The first prerequisite to an equal protection claim is a showing that the government "has adopted a classification that affects two or more *similarly situated* groups in an unequal manner." (*Taking Offense, supra,* 66 Cal.App.5th 696 at p. 724.) The Court should "not inquire 'whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.'" (*Ibid.*) The law also need not "require things which are different in fact or opinion to be treated in law as though they were the same." (*Ibid.*) Instead, the "similarly situated" prerequisite simply means that "an equal protection claim cannot succeed, and does not require further analysis, unless there is some showing that the two groups are sufficiently similar with respect to the purpose of the law in question that some level of scrutiny is required in order to determine whether the distinction is justified." (*Taking Offense, supra,* 66 Cal.App.5th at p. 724.)

The Court's prior determinations still apply: sections 1.(a) and 1.(b)

As for sections 1.(a) and 1.(b), as the Court previously noted discrimination is built into the operative language of the Policy since a child's requests or actions are treated differently based upon gender incongruity, meaning sex is the determining factor. Since sections 1.(a) and 1.(b) treat otherwise similarly situated students differently based on their sex or gender identity, strict scrutiny applies and the Policy "must be narrowly tailored to serve compelling state interests." (*Taking Offense, supra,* 66 Cal.App.5th at p. 709.) These determinations do not change simply because the procedural posture of the case now differs. This is true because the Court can reach the same conclusions based on the undisputed contents of the Old Policy.

As for whether the sections survive strict scrutiny, one of the stated purposes of the Policy is to prevent or reduce instances of self-harm, i.e. the Old Policy on its face aims to promote child welfare and safety. "There can be no dispute that [child] safety is a compelling governmental interest." (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.) The State's own (prior) evidence even underscored the significant health and safety concerns involving gender non-conforming children and the importance of parental involvement. (Defendants' RJN, Ex. P, Dr. Brady Decl. at ¶¶ 46, 56, 72, and 79.)

Even so, "it is not enough for the government to identify a compelling interest. The government must also show the statute furthers the compelling interest and is 'narrowly tailored to that end.'" (*Taking Offense, supra,* 66 Cal.App.5th at p. 718.) "A challenged use of a classification is narrowly tailored, generally speaking, if there are no alternative means of adequately serving the compelling interest that would impose a lesser burden on the constitutional interest in question." (*People v. Son* (2020) 49 Cal.App.5th 565, 590, as modified (May 29, 2020).) "Only the most exact connection between justification and classification will suffice. [Citation.] The classification must appear necessary rather than convenient, and the availability of ... [gender-neutral] alternatives—or the failure of the legislative body to consider such alternatives—will be fatal to the classification." (*Woods v. Horton* (2008) 167 Cal.App.4th 658, 675 (*Woods*).)

In *Woods, supra,* 167 Cal.App.4th 658, the court of appeal was faced with statutory programs that provided grants to service providers for domestic violence victims. The statutes had gender based classifications. It was undisputed that there was "greater need for services by female victims of domestic violence" but domestic violence was nevertheless a problem for both men and women. (*Id.* at p. 675.) In analyzing equal protection claims against the statutes, the *Woods* court noted "it must be remembered that the rights created by the equal protection clause are not group

rights; they are personal rights guaranteed to the individual." (*Ibid.*) Therefore, the court continued, "[a]rguing that a group of people (here male victims of domestic violence) is too small in number to be afforded equal protection is simply arguing 'that the right to equal protection should hinge on 'administrative convenience'" and administrative convenience is an inadequate interest under a strict scrutiny analysis. (*Ibid.*)

In finding that some of the statutes violated equal protection, the *Woods* court noted there had to be an "exact connection between justification and classification" and that there was no other gender-neutral alternatives. (*Woods, supra,* 167 Cal.App.4th at p. 675.) The statutes did not meet that standard since the programs could have simply been funded on a gender neutral basis. The *Woods* court also determined that simply because women were more often victimized, as compared to men, there was no compelling state interest for the gender classifications.

Here, while the District may have a compelling interest, transgender or gender non-conforming students cannot be lumped together simply because the group as a whole is at greater risk for significant social-emotional concerns or suicide. Such overbroad generalizations are simply insufficient to justify a suspect classification because equal protection rights are held by individuals, not groups, and the Policy treats all transgender children the same irrespective of the child's actual health. The expert evidence submitted also establishes, and State law affirms, there is nothing wrong or pathological with being transgender or gender non-conforming in and of itself. (State's Fact No. 28.)

Therefore, just as it was not enough in *Woods* that women are more victimized by domestic violence, the fact that transgender or gender non-conforming students may have more mental health concerns is not enough to justify the suspect classification, especially if gender neutral alternatives are available to advance the District's interests. However, the State at times appears

to place the burden upon the District of showing the absence of such alternatives, but to the extent the State is the movant it would bear the burden of showing the existence of the alternatives. The State also references the fact that in adopting the Old Policy the Board did not make any statements considering alternative policies (including gender-neutral alternatives). (Fact No. 26.) "The failure of the legislative body to consider such alternatives ... will be fatal to the classification." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 37.) However, simply because statements were not made regarding alternatives does not *ipso facto* mean alternatives were not considered.

In any event, the State has proposed less restrictive alternatives and the Court also previously addressed other potential possibilities. For example, the District could have accomplished its goal of promoting child welfare by adopting a policy that more directly focuses on the existing problems (bullying, mental health, psychological distress, uncertainty about a child's mental welfare in the face of drastic behavior changes, etc.) instead of focusing on the protected group itself. Such proposed alternatives are therefore analogous to the less restrictive gender-neutral funding that was available in *Woods*. Although the alternative policy in this case may, at times, still necessitate disclosure of the child's gender identity, the law does not require a complete absence of government restriction to serve a compelling interest, only the least restrictive means and or gender neutrality.

The District could have similarly adopted a gender-neutral policy that requires disclosure for participation in any type of extracurricular activity or athletic program. To the extent the District's concern is the safety of the child participating in a sport, the Policy could have been tailored to directly address the safety concern that the participation presents (e.g., the size of the child) instead of focusing on the individual's gender expression. Thus, the Old Policy does not survive strict scrutiny to the extent it aims to address the compelling interest of child welfare.

Defendants' Parental Rights Arguments

An overview of the law

To the extent the Policy was also intended to promote parents' "fundamental rights" to rear children, to be informed, and to be involved, in addition to fostering trust between the District and parents, the fundamental rights of parents is undeniable. "The interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [The United States Supreme] Court." (*Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235-1236 [citing *Troxel v. Granville* (2000) 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (plurality opinion) and *Santosky v. Kramer* (1982) 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599, addressing the "Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment"]; see also *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1410.)

"Conversely, parents have affirmative legal duties toward their minor children. Most fundamentally, parents have the 'responsibility' to support their minor children (Fam.Code, § 3900) and must 'exercise reasonable care, supervision, protection, and control' over their conduct." (*In re D.C.* (2010) 188 Cal.App.4th 978, 984-985.) "Parents are also required to ensure their child's attendance at school (Ed.Code, §§ 48260.5, subds. (b)–(c), 48293) and may be held financially responsible for a minor child's misconduct." (*In re D.C., supra,* 188 Cal.App.4th at p. 984.) "[O]ne purpose of the parental liability laws is to encourage responsibility in parents—that is, to encourage parents to exercise effective control over their children." (*Curry v. Superior Court* (1993) 20 Cal.App.4th 180, 187–188.)

In many cases, the rights of parents also trump the rights of their children. As the United States Supreme Court indicated in *Parham v. J. R.* (1979) 442 U.S. 584, 603 (*Parham*), "[s]imply

because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state. The same characterizations can be made for a tonsillectomy, appendectomy, or other medical procedure. Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments ... The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parents' authority to decide what is best for the child." (*Parham v. J. R.* (1979) 442 U.S. 584, 603 [nevertheless noting that a parents' decision to institutionalize a child into a state hospital involves such an invasion that some neutral inquiry should be made, even if informally].)

This Court has also previously referenced *Mirabelli v. Olson* (S.D. Cal., Sept. 14, 2023, No. 323CV00768BENWVG) 2023 WL 5976992, which, although it involved a forced secrecy policy, provided some guidance. In particular, *Mirabelli* indicated it was unaware of any state appellate decisions recognizing a child's "right to quasi-privacy about their gender identity expressions, and none placing such a right above a parent's right to know." In contrast, *Mirabelli* noted decisions describing parents' rights and obligations being superior to rights of the child. For example, the appellate court in *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1410, "categorically reject[ed] the absurd suggestion that defendant's freedom of association trumps a parent's right to direct and control the activities of a minor child, including with whom the child may associate given the long-standing liberty interest held by parents in the care, custody, and control of their children. Such parental rights exist "[w]hether a child likes it or not...." (*Ibid.*)

"Another California court of appeal made it clear that, in a similar Fourth Amendment context, a child's right to privacy and to object to a warrantless search of his room must give way

to a parent's superior right to consent." (*Mirabelli v. Olson* (S.D. Cal., Sept. 14, 2023, No. 323CV00768BENWVG) 2023 WL 5976992, at *10 [referring *In re D.C.*, supra, 188 Cal.App.4th 978, which determined "parents must be empowered to authorize police to search the family home, even over the objection of their minor children" and although a child's "right to privacy may be superior to other, unrelated individuals," parents' rights "are superior to a right of privacy belonging to their child"].)

The rights of parents, and the importance of their involvement, are also affirmed in the Education Code. For instance, under Education Code section 51101, parents "have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children," by having access to their child's school records, observing or volunteering in their child's class room(s), affirmatively receiving information about psychological testing and academic performance standards, and to be informed about unexcused student absences, among other things. Education Code section 51101 also gives parents the right to question "anything" in their child's record the parent feels is inaccurate, misleading, or an invasion of privacy.

A right to review "education records" is similarly found under the Family Educational Rights and Privacy Act or "FERPA." (20 U.S.C. § 1232g and 34 C.F.R. § 99.) "Educational records" is broadly defined to include records "directly related to a student" and 'maintained by an educational agency or institution...." (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 753, *as modified on denial of reh'g (Oct. 26, 2006)* [noting the intent was for *parents* and students to "have access to everything in institutional records maintained for each student in the normal course of business and used by the institution in making decisions that affect the life of the

student"]; see also *Ragusa v. Malverne Union Free School Dist.* (E.D.N.Y. 2008) 549 F.Supp.2d 288, 293 [requests for documents "relating to students' grades, evaluations, and academic performance are undoubtedly 'education records' within the meaning of FERPA].) California has its own version of FERPA, but it defines "pupil records" in "nearly identical terms" to "education records." (*Ibid.* [referencing Ed. Code, § 49061, subd. (b)].)

Invalidation of the Old Policy does not infringe upon parental rights

Although parents have undeniable rights, a determination that the Old Policy is unconstitutional does not directly infringe upon those rights. First, even in the absence of the Old Policy there is no mandated secrecy, unlike in *Mirabelli*, so presumably school personnel can still inform parents when appropriate. Parents are also still free to have conversations with their child about gender and gender identity. Additionally, as noted above parents still have the right to observe a classroom, talk to a teacher, and review educational records. (Ed. Code § 51101.) In other words, a parent actually asserting their rights will likely be informed about the child's gender identity and it is not necessarily the District's position to advance the parental rights, at least to the extent it violates the constitutional rights of a minor. Invalidating the Old Policy, to the extent doing so merely results in inaction by the District, therefore does not directly infringe upon the parental right to be informed nor does it constitute unwarranted state interference, as Defendants suggest.

Even if some infringement of parental rights occurs, the Court must still balance the competing equal protection interests and there are less restrictive means that promote both

To the extent the Old Policy can still be seen as infringing upon a parents' right to be informed, that does not mean the Court should completely disregard the competing equal protection interests. Certainly, that is the case where there are less restrictive alternatives that better

balance the competing interests. For instance, even requiring disclosure only upon parental request would be less restrictive (though undoubtedly that too would be challenged). The District could also potentially create a gender or gender-identity neutral opt-in notification policy. The District could further highlight, via notice to parents, the importance of discussing gender issues with children and the District could further provide notice to parents of their rights under the Education Code, including the rights to observe the classroom, talk with teachers, volunteer, and review educational records. These policies would directly promote the District's stated purpose of keeping parents informed and fostering trust without being discriminatory. The policy could even require disclosure to the fullest extent permitted under privacy law.

Defendants' assertion that invalidating the Old Policy would be unconstitutional because it would result in treatment without parental notification

Defendants also contend that because social transitioning is a form of psychological treatment, parents have a right to be notified when the District engages in social transitioning. In *Mann v. County of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1160-1161, the 9th Circuit concluded that parents' Fourteenth Amendment substantive due process rights were violated when the government "performs [examinations looking for signs of physical and sexual abuse] without notifying the parents about the examinations and without obtaining either the parents' consent or judicial authorization." The court reasoned that "[t]he right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state." (*Ibid.*)

Here, it appears undisputed that social transitioning is a "medically recognized treatment" for gender dysphoria. (Fact No. 18.) Yet it is not true that every gender non-conforming student has gender dysphoria and there also appears to be a triable issue of material fact as to whether

social transitioning is a "medical" treatment even if it is "recognized" as advantageous by the medical community. (Fact No. 19 and Response to Fact No.'s 18 and 19; Brady Decl. at ¶ 21.)

Regardless, while the Court can appreciate Defendants' concerns about pre-treatment parental notification, this case is not directly about a school district actively participating in social transitioning at school. For instance, parents have not challenged a District policy (actual or de facto) requiring or permitting staff to affirm a student's gender identity via social transitioning (with or without parental notification). Parents also have not challenged a policy permitting children to use gender-nonconforming bathrooms or participate in certain sports. Instead, this case only involves a mandated disclosure policy.

Furthermore, section 1.(a) of the policy broadly requires notification if school personnel become "aware" of a child's request to be identified or treated as a gender other than the student's biological sex or gender, i.e. the policy would encompass scenarios other than a direct request made to a teacher. For instance, even if a child asks a peer to use a gender nonconforming name or even if a teacher observes the use of that name amongst peers, the Old Policy applies and it does so regardless of whether District personnel are actually involved in the social transitioning process. Therefore, Defendants' assertion that the District is participating in "treatment" is not entirely accurate, certainly not in the examples provided. The case is therefore unlike *Mann, supra.*

Similarly, most of section 1.(b) of the Old Policy does not entail active involvement by school personnel with respect to the social transitioning because the Old Policy merely involves notification of something a child is already doing. In other words, the Old Policy is not written in terms of limiting notification to when the District intends to have its employees comply with a student's request. Therefore, the Policy is overbroad as not solely encompassing the state action that Defendants contend violate parental rights under *Mann*. Finally, as noted above, simply

because fundamental parental rights are involved does not mean the parental rights absolutely control without any consideration for the equal protection rights, especially where, as is the case here, both interests can be advanced via a different policy.

As a result, Defendants' motion is denied with respect to the first, second, and third causes of action as it relates to sections 1.(b) and 1.(c) of the Old Policy. For the same reasons, the State's motion for summary adjudication as to the first three causes of action is granted as they relate to sections 1.(b) and 1.(c) of the Old Policy. In this regard, the Court also need not rule on the corresponding portion of the motion for judgment on the pleadings.

Section 1.(c) of the Policy and the First Three Causes of Action

As for the conflicting arguments that section 1.(c) of the Old Policy is illegally discriminatory, the Court previously concluded that the section is neutral on its face and passes rational basis. The State concedes that section 1.(c) is gender-neutral on its face, but it nevertheless argues it was enacted with the same discriminatory animus as sections 1.(a) and 1.(b). (State's Opening Brief at 16:9 to 17:2.) However, it has long been recognized that "[i]nquiries into congressional motives or purposes are a hazardous matter" and "the search for the 'actual' or 'primary' purpose of a statute is likely to be elusive" because individual legislators may have voted for a variety of reasons. (*Michael M., supra* 450 U.S. at pp. 469–470.) It is also plausible that minds were changed before or during the vote itself. Even if that were not true, the individual District board member's justification for section 1.(c) could have been different from the justification for sections 1.(a) or 1.(b) of the Policy. The State also appears to concede other portions of the Policy properly address legitimate concerns.

Moreover, the stated purpose of the enactment being challenged is generally accepted and it is only "when an examination of the legislative scheme and its history demonstrates that the

asserted purpose could not have been a goal of the legislation" that the Court "need not in equal protection cases accept at face value assertions of legislative purposes." (*Weinberger v. Wiesenfeld* (1975) 420 U.S. 636, 648.) While there is certainly evidence suggesting section 1.(c) was intended to serve the same improper purpose as sections 1.(a) and 1.(b), it cannot be concluded that section 1.(c) "could not have been" intended to promote the other facially neutral goals of the Old Policy. As a result, the State's motion is denied as to section 1.(c) and the first three causes of action, but Defendants' motion should be granted.

The Fourth Cause of Action and the Right to Privacy.[1]

The claim as applied to adult students

In its current motion the State only challenges section 1.(c) on privacy grounds as it relates to adult students. (State's Motion at 2:6-10.) It also appears that the District concedes that 1.(c) should not apply to adult students, who have protected privacy rights, as the District has never had a practice of notifying parents of adult students. (Defendants' Motion at p. 33, fn. 8.) Thus, the Court should grant summary adjudication in the State's favor as to section 1.(c) of the Old Policy and as it applies to adult students.

The claim as applied to minor students: an overview of the law

Defendants also seek summary adjudication as to section 1.(c) as it relates to minor students. (Notice of Motion at 2:21-23.) A right to privacy is expressly acknowledged in the California Constitution: "All people are by nature free and independent and have inalienable rights.

[1] To the extent there is no reasonable expectation of privacy under either sections 1.(a), (b), or (c), it is not entirely clear how the equal protection analysis is effected, if at all. The equal protection claim is essentially dependent upon, or at least intertwined with, the substance of the privacy claim. If students lack an expectation of privacy and to the extent those rights were not violated, at least arguably there was no injury for purposes of the equal protection analysis. After all, the Policy only discriminates in terms of a separate privacy right that has not been violated.

Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy." (Cal. Const., art. I, § 1.)

In *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1 (*Hill*) the California Supreme Court set forth a framework for analyzing constitutional privacy claims. "[A] plaintiff alleging an invasion of privacy in violation of the state constitutional right to privacy must establish each of the following: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy. ... [¶] .... [¶] A defendant may prevail in a state constitutional privacy case by negating any of the three elements just discussed or by pleading and proving, as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one or more countervailing interests. The plaintiff, in turn, may rebut a defendant's assertion of countervailing interests by showing there are feasible and effective alternatives to defendant's conduct which have a lesser impact on privacy interests." (*Id.* at pp. 39-40.)

"The standard for evaluating the justification for a privacy invasion depends on 'the specific kind of privacy interest involved and the nature and seriousness of the invasion and any countervailing interests.'" (*Mathews v. Becerra* (2019) 8 Cal.5th 756, 769 [citing *Hill, Supra*, at p. 34.) Privacy interests are "generally of two classes: (1) interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy'); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35.)

"Where the case involves an obvious invasion of an interest fundamental to personal autonomy, ... a 'compelling interest' must be present to overcome the vital privacy interest. If, in

contrast, the privacy interest is less central, or in bona fide dispute, general balancing tests are employed." (*Mathews v. Becerra* (2019) 8 Cal.5th 756, 769 [citing *Hill, Supra*, at p. 34 [indicating the general balancing test weighs "the gravity of the governmental interest or public concern served and the degree to which the [challenged government conduct] advances that concern against the intrusiveness of the interference with individual liberty"].)

Whether Students have a legally protected privacy interest

In this case, the information to be disclosed by section 1.(a) of the Policy is, in its benign form, requests, but the requests, if sincere, essentially disclose the student's self-identity. "[A]n individual's right to privacy encompasses not only the state of his mind, but also his viscera, detailed complaints of physical ills, and their emotional overtones." (*Pettus v. Cole* (1996) 49 Cal.App.4th 402, 440–441, as modified on denial of reh'g (Oct. 15, 1996); *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 277.) Depending on the nature of the information sought to be changed within the student records, section 1.(c) could also implicate the same rights.

Section 1.(b) also requires District staff to relay mere information, such as observations that a child is using different sex-segregated facilities or programs. Again though, such disclosures would convey information related to the child's self-perception, if not also medical information, but medical information also falls within a "zone of privacy" protected by the Constitution. (*Pettus, supra,* 49 Cal.App.4th at pp. 440–441.)

As a result, students have a legally recognized privacy interest in the information which would be disclosed under sections 1.(a) and (b), but also at times under section 1.(c). The fact that the students are minors is immaterial, at least for purposes of the first prong of the *Hill* analysis. "The United States Supreme Court has repeatedly held that minors enjoy many of the

constitutional rights of adults," such as the right to freedom of expression and to equal protection because "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." (*Planned Parenthood Affiliates, supra,* 181 Cal.App.3d at pp. 277–278 [collecting cases].) In fact, the "United States Supreme Court has [also] repeatedly declared the constitutional right of sexual privacy applicable to minors," though in the context of a "mature minor" standard. (*Ibid.* [citing, among others, *Planned Parenthood of Missouri v. Danforth* (1976) 428 U.S. 52].)

The type of privacy interest involved

As for whether the privacy interest relates to informational or autonomy privacy, the Policy more clearly implicates informational privacy because it requires disclosure of information, i.e., parents and guardians are to be notified of the student requests, etc. The State had previously attempted to equate the mandated disclosures to cases addressing personal autonomy, but the cases cited involved, for instance, a statute requiring a pregnant minor to obtain parental consent for an abortion, freedom from involuntary sterilization, or freedom to pursue consensual family relations. (*American Academy of Pediatrics v. Lungren* (1997)16 Cal.4th 307, 340; *Hill, supra*, 7 Cal.4th at p. 34.) In contrast, the Policy in this case does not expressly prohibit or require the student to do anything as, instead, it merely requires parental notification.

However, case law instructs "the distinction between the two interests is not sharply drawn" and the disclosure of information may have an impact on personal decisions and relationships. (*Hill, supra*, 7 Cal.4th at p. 30.) For instance, in *Mathews v. Becerra* (2019) 8 Cal.5th 756, therapists sought to prevent mandated disclosures of "revelations made by patients who seek psychotherapy to treat sexual disorders including sexual attraction to children" and admissions of downloading or viewing child pornography. (*Id.* at p. 780.) The disclosures were purportedly required by the Child Abuse and Neglect Reporting Act. In that context the *Matthews* court noted

the "psychiatric patient confides more utterly than anyone else in the world. He exposes to the therapist not only what his words directly express; he lays bare his entire self, his dreams, his fantasies, his sins, and his shame. Most patients who undergo psychotherapy know that this is what will be expected of them, and that they cannot get help except on that condition." (*Id.* at p. 780.)

The *Matthews* court then indicated that a "core aspect of human autonomy is a person's ability to gain control over his impulses or desires so that he does not engage in pathological behaviors." (*Mathews, supra,* 8 Cal.5th at p. 782.) Because the patient's decision to get treatment implicated "a basic interest in self-determination," the *Matthews* court suggested that a forced disclosure by the psychotherapists could be seen as an invasion of an autonomy interest. (*Ibid.*) The court did not, however, fully resolve the issue since the case was on review via demurrer. The court also did not need to determine which balancing test applied, which is a product of which right is involved, because it was undisputed that the government's interest in protecting children was a "weighty one." (*Ibid.*)

In this case, there is no privilege analogous to the psychotherapist-patient privilege applicable in *Matthews* nor does the substance of the information being disclosed by the Policy involve criminal activity which should be prevented. If some perceived instances of anticipated negative parental pressure or stigma were sufficient to morph an invasion of the informational privacy right into one involving autonomy, it would be akin to an exception that swallows the rule. Indeed, the State's prior evidence suggests children "do not want to share [apparently any] important life developments with adults." (Defendants' RJN, Ex. P, Dr. Brady Decl. ¶ 46.)

Furthermore, subsumed into the informational privacy right is the concept that disclosure of the information would cause emotional distress: "A particular class of information is private when well-established social norms recognize the need to maximize individual control over its

dissemination and use to prevent unjustified embarrassment or indignity. Such norms create a threshold reasonable expectation of privacy in the data at issue." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35.)

The State also previously claimed that the Old Policy would force children to stay closeted, but at the same time the State separately claimed children come out "incrementally," first to peers, then teachers, then parents. (Defendants' RJN, Ex. P, Dr. Brady Decl. at ¶ 44.) The Policy, however, does not preclude children from coming out to anyone. Instead, the Policy is only implicated once a child is "requesting" to be "identified or treated" as a different gender or is "accessing" sex-segregated school programs and activities. Thus, children can disclose their gender incongruence to both their peers and to District personnel without implicating the Policy (absent requests). Children can even make "requests" amongst their peers in confidence without implicating the Policy. Furthermore, the Policy only applies to the school setting. As a result, to the extent children have other social settings, other interactions with other adults, etc., the Policy would not necessarily effect a child's ability to come "out" or transition in those contexts.

In fact, it also does not appear that the current Policy is even implicated if children decide to change their appearance. It is only once District staff become aware a child is "request[ing]" to be "identified or treated" as a different gender or is using a different sex-segregated facility or program that the Policy is implicated. In other words, the Policy only dictates that parents should know of certain limited efforts by the child to socially transition once District personnel become aware via requests. For all these reasons, while the students' privacy rights are implicated by the Policy, the better approach is that the Policy relates only to informational privacy.

Whether students have a reasonable expectation of privacy under the circumstances and whether the mandated disclosure constitutes a serious invasion: An overview of the law

Privacy interests are not "independent of the circumstances" and "[e]ven when a legally cognizable privacy interest is present, other factors may affect a person's reasonable expectation of privacy. For example, advance notice of an impending action may serve to 'limit [an] intrusion upon personal dignity and security'" that would otherwise be regarded as serious. (*Hill, supra,* 7 Cal.4th at p. 36 [citing *Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1346, which upheld the use of sobriety checkpoints since drivers had the choice to avoid them without consequence].)

"In addition, customs, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy." (*Hill, supra,* 7 Cal.4th at p. 36-37 [citing, among others, *Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia* (3d Cir.1987) 812 F.2d 105, 114, holding there was no invasion of privacy in a medical and financial disclosure requirement for promotion applicants since applicants were aware of the historical practice of the mandate].) A "reasonable expectation of privacy" is also "an objective entitlement founded on broadly based and widely accepted community norms" and "[t]he protection afforded to the plaintiff's interest in his privacy must be relative to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 36–37.)

The person claiming the privacy right must also "have conducted himself or herself in a manner consistent with an actual expectation of privacy, i.e., he or she must not have manifested by his or her conduct a voluntary consent to the invasive actions of defendant. If voluntary consent is present, a defendant's conduct will rarely be deemed 'highly offensive to a reasonable person' so as to justify tort liability." (*Hill, supra*, 7 Cal.4th at p. 26.) Furthermore, complete privacy also "does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he is a part." (Rest.2d Torts, *supra,*

§ 652D, com. c.) Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right. Thus, the extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 37.)

Whether students have a reasonable expectation of privacy under the circumstances and whether the mandated disclosure constitutes a serious invasion in this case

Here, in the broad sense, minor students at public schools should not reasonably expect that staff would (or should) keep secrets from their parents because of the significantly broad parental rights and obligations—which apply both within and outside of the school setting. It would be unrealistic for society to expect parents to discharge their duties, or hold them accountable for not doing so as outlined above, if information relevant to child development is concealed. Keeping secrets also shows parents are not mutually respected partners in the education of their children as Education Code section 51101 suggests.

While the Court realizes children can, and do, keep secrets from their parents, the Policy in this case is only implicated once a child makes a request to another adult or is openly (at school) using different sex-segregated facilities or programs. In other words, the secrets been revealed, and not to just anyone but to an entire student body, which would include even those within whom the child does not confide and whom are not within the child's social circle. At minimum the child's disclosure is, in the case of requests, to those who act *in loco parentis* or "in place of a parent" during school hours.[2] (*In re William G.* (1985) 40 Cal.3d 550, 566; Ed. Code § 44807.)

[2] While not currently before the Court and thus not directly considered as part of the Court's ruling, the District previously submitted evidence showing staff frequently and affirmatively (via "customs and practices") disclosed information to parents and guardians about their children on academic and non-academic issues alike, including occasionally on issues related to gender-identity or of a sexual nature. The disclosure practices were also shown to

Even in the absence of the mandated notification under the Policy, as previously explained parents have other pre-existing rights, which at times require affirmative disclosures or which even gives parents the right to observe a classroom, talk to a teacher, and review educational records. (Ed. Code § 51101.) Indeed, Education Code section 51101 gives parents the right to question "anything" in their child's record the parent feels is inaccurate, misleading, or an invasion of privacy. Thus, section 51101 acknowledges some level of parental control over both the child's records and privacy rights. A parent clearly cannot protect those rights if they are uninformed about changes made to the records. In this regard, if nothing else children do not have an expectation of privacy under the circumstances as it relates to section 1.(c) of the Policy, at least as against their parents, even if the Policy requires affirmative disclosure.[3]

From a societal "customs" perspective, the concept of children being called different pronouns or names based on their gender-identity or using a different sex-segregated facility or program in public schools is relatively new. In general terms, one who *openly* pushes societal boundaries should reasonably anticipate to have a lesser expectation of privacy in the information that is obtained by public observation. For better or worse, people observe and then talk, debate, or even attack such societal changes.

Thus, whether a parent or guardian hears the "private" information from the child's friend or friend's parent; via a report from school to give context to bullying; observes it directly by happenstance while at school or overseeing remote learning; oversees it on the child's phone,

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have been in line with the District's numerous written policies requiring disclosures to parents on academic and non-academic issues, including policies related to student behavior, health, and safety.

[3] While perhaps the District could keep a "double set of books" (see discussion in *Mirabelli v. Olson* (S.D. Cal., Sept. 14, 2023, No. 323CV00768BENWVG) 2023 WL 5976992, at *5), it would still appear likely that both sets would constitute educational records for purposes of FERPA and the Education Code.

social media accounts, etc.; it seems highly foreseeable that a parent with a minimal level of involvement could find out about those actions implicated by the Policy.

While the acquisition of the knowledge in these circumstances is different than mandated disclosure by school personnel, the realities of the parent's potentially-inevitable discovery coupled with the parental rights tends to suggest there is no reasonable expectation of privacy in the information itself. It is further notable that the State's privacy claim relies heavily upon the suggestion that parents do not already know or do not suspect their child is transgender or gender non-conforming. Just as children can at times keep secrets, parents are not always as unsuspecting as children may think.[4]

It is true that there are some "medical emancipation" statutes which permit a child to obtain medical care in certain contexts without parental consent. (See *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 317.) Even in those cases, some of the statutes permit or require attempted parental notification. (*Ibid.*; Fam. Code, §6922 [permitting parental notification without the minor's consent]; § 6928 [requiring attempted notification, but not consent, in instances of treatment for sexual assault].) While some medical treatment can be obtained by minors without notification or consent, that is largely the exception and those instances are primarily based in or recognized by statute. While AB 1955 was recently enacted, it is not currently in effect.

Although the District must also permit a child to participate in sex-segregated programs and activities of choice, apparently regardless of parental consent (Ed. Code § 221.5), that does not preclude the District from notifying parents and obtaining their involvement. Unlike the medical emancipation statutes, Education Code section 221.5 is silent as to notification even

[4] Although statistics were previously presented indicating when children come "out" to their parents, those appear to be from the child's perspective. In other words, merely because a child contends they came out to their parents at a certain age does not address whether the parent already knew or suspected that the child had a different gender identity (without raising the issue with the child).

though it does address notification related to career counseling. The Legislature could have attempted to interject or recognize privacy rights into section 221.5, as it did in some of the medical emancipation statutes, but it failed to do so. Medical treatment in the privacy of a doctor's office is also not analogous to social transitioning at school. Again, the social transitions at-issue in this case can be observed by everyone present, even those with whom the child does not confide.

There is also authority indicating that disclosure in one context is not a waiver of privacy rights in all contexts. For instance, the parties previously discuss *Nguon v. Wolf* (C.D. Cal. 2007) 517 F.Supp.2d 1177. In that case, the district court found that a student who was outwardly groping and kissing a peer "had no reasonable expectation that her sexual orientation would not be disclosed in the context of her school," but that did not mean the student "forfeited her privacy right in all contexts." (*Id.* at p. 1191.) Since the student's home was "insular," the court found the student could still have a right to privacy as to her sexual orientation at home.

The *Ngoun* court also broadly cited to *U.S. Dept. of Justice v. Reporters Committee For Freedom of Press* (1989) 489 U.S. 749, for the proposition that even if an event is not "wholly private," that does not mean the individual has no interest in limiting disclosure or dissemination of the information. However, *U.S. Dept. of Justice* involved a disclosure of the contents of a "rap sheet" to a third party that was reasonably expected to constitute an unwarranted invasion of personal privacy within the meaning of the law enforcement exemption of Freedom of Information Act. (*U.S. Dept. of Justice v. Reporters Committee For Freedom of Press* (1989) 489 U.S. 749.) In other words, *Nguon* simply cited the broad principals announced in *U.S. Dept. of Justice* despite the fact that the case did not involve minors, parents, or the school setting. *Nguon* also did not discuss parents' fundamental rights, existing school policies, etc. *Nguon* therefore does not persuasively support the State's position.

The parties also previously cited to *Sterling v. Borough of Minersville* (3d Cir. 2000) 232 F.3d 190, but that case is also not helpful. *Sterling* involved a police officer's disclosure of an *adult's* sexual orientation to his family when there was no reason for the officer to infer the family was aware. There was also no governmental purpose for the disclosure. *Nguon* therefore described the disclosure in *Sterling* as "gratuitous." (*Nguon, supra,* 517 F.Supp.2d at p. 1195.) In contrast, this case again involves minors in the school setting and the District has several justifications for the disclosures, even if at times the disclosures are over inclusive.

It is further notable that, going forward, the Education Code, FERPA, and the Policy pre-date any of the conduct or requests implicated by the Policy. Therefore, the statutes and the Policy are analogous to the sobriety check point in *Ingersoll*. Like the driver's choice in *Ingersol*, the students here can avoid the purported privacy intrusion by not taking any action which implicates the Policy. While the Court acknowledges such an effect could tend to support the State's position that autonomy privacy is involved, as noted above the State exaggerates the scope of the Policy. Furthermore, while advanced notice cannot, in and of itself, justify every privacy invasion in every context, it is yet another factor the Court should consider.[5]

In sum, the information disclosed by the Policy is already public, even at times to those not within a student's inner circle. Parents have a long-established fundamental interest in the care and custody of their children, a right which generally overshadows a child's rights. The parents' rights are further supported by the Education Code since parents can observe the classroom, review student records, and even advance their child's privacy rights, among other things. Thus, the

[5] Student knowledge of the Policy had also generally documented by the State's prior evidence. (McFarland Decl. ¶ 31 and 45 [outlining students' knowledge of the Policy]; Hirst Decl. at ¶¶ 15-16 [same]; Chris R. Decl. ¶ 21 [similar evidence offered by a student].) In fact, one student acknowledged the Policy via e-mail to teachers and nevertheless asked to be reference by preferred pronouns and a different name. (Gregory Crow Decl. ¶ 16, Ex. A.)

information at-issue in this case can be discoverable by parents even absent a mandate and the Education Code generally acknowledges the parents' authority over the child's privacy rights.

Some parents could also already know or suspect that their child is transgender or gender non-conforming. Per the Education Code, parents and the District should also be working together as trusted partners, not keeping secrets. These factors are also already known, or should be known, by the students in advance of a request or conduct implicated by the Policy. The Policy also only requires disclosure of the requests or the specific conduct to the minor's parent or guardian, no one else. The Policy does not require parental consent or prohibit any affirmation of the child's gender identity and as noted the scope of the Policy is not as expansive as the State suggests. The Legislature has also not specifically addressed the privacy rights, as it has in some of the medical emancipation statutes, though a new law is set to become effective in 2025.

Under all these circumstances, the minor students do not have a reasonable expectation of privacy against mandated disclosure to parents as to the specific requests and conduct implicated by the Policy.[6] For the same reasons, the mandated disclosure is not a serious invasion.

The countervailing interest prong

The District could also potentially defeat the State's privacy claim by showing, "as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one

[6] Actual parental involvement could be a factor to consider, at least in an "as applied" privacy challenge. However, when an enactment is challenged on its face on privacy grounds, the Court assesses whether the enactment "broadly impinges upon fundamental constitutional privacy rights in its general, normal, and intended application" and then whether the justifications for the statute outweigh its impingement on privacy rights. If the statute broadly impinges, the statute must be narrowly drawn. (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 343.) Here, the expectation of privacy analysis largely has equal applicability regardless of the minor child's age. Indeed, the parental rights in the education records is maintained until the child reaches adulthood. The Policy as a whole would not impose a "substantial burden" on the vast majority of the students given the analysis outlined above. While the Court could envision a very small subclass of students that may be an exception, depending on their parents' involvement and the students' maturity level, the fact that some invasions may occur in the as applied context should not defeat a Policy on its face that otherwise has broad constitutional validity. (See *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 343 [discussing the corollary].)

or more countervailing interests," but the defense is not required here given the analysis above so the inquiry should end. (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373 [noting the two elements are "essential to any breach of privacy cause of action under *Hill* before any balancing of interests is necessary," though nevertheless examining the respective interests because doing so reinforced the court's conclusions]; but see also *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 331 [defense need not be analyzed when there is no "significant intrusion on a privacy interest" but the balancing should take place when there is a "nontrivial invasion of a protected privacy interest"].)

In any event, the Court has already discussed the breadth of parental rights for purposes of addressing the second and third prongs of the *Hill* analyses. The interplay between the parental rights and the right to privacy was also discussed in *Mirabelli v. Olson* (S.D. Cal.) 2023 WL 5976992, at *8–11, which as noted above indicated it was unaware of any state appellate decisions recognizing a child's "right to quasi-privacy about their gender identity expressions, and none placing such a right above a parent's right to know." In contrast, there are decisions describing parents' rights and obligations being superior to the child's rights. The court in *Mirabelli* then outlined several examples. (See *Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1410 [rejecting the "absurd" suggestion defendant's freedom of association trumps a parent's right to direct and control the activities of a minor child, including with whom the child may associate]; *In re D.C.*, *supra*, 188 Cal.App.4th 978, ["parents must be empowered to authorize police to search the family home, even over the objection of their minor children" and although a child's "right to privacy may be superior to other, unrelated individuals," parents' rights "are superior to a right of privacy belonging to their child"].)

For these reasons, Defendants' motion is granted as to the fourth cause of action as it relates to minor students.

Section 5 of the Policy

Finally, the State also previously sought to enjoin section 5 of the policy, which merely outlines how disclosures are made and recorded. The section is therefore only implicated once there is a disclosure, but there can be no disclosures under sections 1.(a), 1.(b), and 1(c) (as it relates to adult students) given the proposed permanent injunction. To the extent section 5 relates to minor students and section 1.(c), section 5 should not be enjoined at all give the reasoning outlined above.

RULINGS

(1) Defendants' motion for summary judgment: DENIED.

a. Beyond the reasons outlined below, if nothing else Defendants concede section 1.(c) of the policy should not apply to adult students based on their privacy rights. (Defendants' Motion at p. 33, fn. 8.) That concession alone would preclude "summary judgment" as not foreclosing on all the State's claims.

(2) Defendants' motion for summary adjudication based upon mootness grounds: DENIED.

a. The Court has discretion to consider matters that are otherwise moot under the public interest exception. (*Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, 1058.) The court can consider the number of cases pending on the issue; the existence of interventions and *amicus* briefs; the absence of controlling authority; whether discontinuance of the conduct sought to be enjoined was in good faith, whether the party continues to insist on its position, among other things. (*Robinson v. U-Haul Co. of California* (2016) 4 Cal.App.5th 304, 322; *Bullis Charter School v. Los Altos School*

Dist. (2011) 200 Cal.App.4th 1022, 1034–1035, as modified on denial of reh'g (Nov. 21, 2011).)

b. The new policy in this case was adopted after cease and desist letters, a request to halt its implementation, the lawsuit, the TRO, and the preliminary injunction; Defendants still insist on the validity of the Old Policy; intervention has occurred; and *amicus* briefs have been filed. (State's Fact No.'s 16, 23, 31-34, 42-46, 48, and 50; Defendants' Fact No.'s 3-4, 6, and 9-14; Defendants' Notice of Motion at 2:15-23; and State's Additional Fact No.'s 26-27.) Defendants also concede there are several cases pending over the same or similar policy (Defendants' Brief at 18:12-16) and there is no clear appellate authority on point.

(3) GRANT the State's Motion for Summary Adjudication as to the First, Second, and Third Causes of Action as they relate to Sections 1.(a) and 1.(b) of the Old Policy and DENY Defendants' Competing Motion as to those Claims.

a. *The child welfare aspect of the policy.*

i. The Court has already determined sections 1.(a) and 1.(b) are discriminatory on their face and subject to strict scrutiny. Those determinations do not change simply because the procedural posture now differs as the contents of the Policy are undisputed. (State's Fact No. 24.) Similarly, "[t]here can be no dispute that [child] safety is a compelling governmental interest." (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

ii. Since it is undisputed that there is nothing wrong or pathological with being transgender or gender non-conforming in and of itself (State's Fact No. 28), the Old Policy in this case is not narrowly tailored. (See by analogy *Woods v. Horton*

(2008) 167 Cal.App.4th 658, 675 (*Woods*).) This is true because the District could have adopted a policy which focused on the existing problems (bullying, mental health, psychological distress, any drastic behavior changes, etc.) instead of focusing on the protected group. The District could have also similarly adopted a gender-neutral policy that requires disclosure for participation in any type of extracurricular activity or athletic program while addressing concerns related to the participation (e.g., the size of the child) instead of focusing on the individual's gender or gender expression.

b. *The parental notification and participation aims of the Old Policy.*

i. While parents do have fundamental rights with respect to the care, custody, and control over children (*Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235-1236) and while in many cases those right trump the rights of the child (*Parham v. J. R.* (1979) 442 U.S. 584, 603; *Mirabelli v. Olson* (S.D. Cal.) 2023 WL 5976992) invalidation of the Old Policy does not infringe upon those rights. There is no forced secrecy in this case; parents are still free to have conversations with their child about gender identity; and parents have the right to observe a classroom, talk to a teacher, and review educational records. (Ed. Code § 51101 [among other rights].) In other words, a parent asserting their rights will likely be informed.

ii. Furthermore, even if the invalidation of the Policy can still be seen as infringing upon parental rights, the Court cannot completely disregard the equal protection rights, especially where, as is the case here, there are less restrictive alternatives that better balance the competing interests. For instance, even requiring disclosure only upon parental request would be less restrictive (though undoubtedly that too

might be challenged). The District could also potentially create a gender and gender-identity neutral opt-in notification policy. The District could further highlight, via notice to parents, the importance of discussing gender issues with children and the District could provide notice to parents of their rights under the Education Code. These policies would more directly promote the District's stated purpose of keeping parents informed and fostering trust. The policy could even require disclosure to the fullest extent permitted under privacy law.

c. *Defendants' assertion that invalidating the Old Policy would be unconstitutional because it would result in treatment without parental notification.*

i. While case law holds that some forms of treatment without parental notification is a violation of the parents' 14th amendment rights (*Mann v. County of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1160-1161), this case is not about the legality of a school district actively participating in transitioning at school over parental objection. Instead, the action merely involves the validity of a notification policy, but notification is broadly required if school personnel become "aware" of a child's request regardless of staff's involvement or lack thereof. In other words, the Old Policy is not written in terms of limiting notification to the District's intent to have its employees comply with a student's request. Therefore, the Policy is overbroad as not solely encompassing the state action that Defendants contend violate parental rights under *Mann*.

ii. Finally, as noted above, simply because fundamental parental rights are involved does not mean the parental rights absolutely control without any consideration for

the equal protection rights, especially where, as is the case here, both interests can be advanced via a different policy.

(4) GRANT Defendants' Motion as to the First Three Causes of Action related to section 1.(c) of the Policy and DENY the State's Corresponding Motion.

a. As the Court previously concluded, section 1.(c) is neutral and passes rational basis. The State nevertheless argues that although the section is neutral on its face, it was enacted with the same animus as sections 1.(a) and 1.(b). (State's Opening Brief at 16:9 to 17:2.) However, the stated purpose of the Policy should be accepted and it is only "when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation" that the Court "need not in equal protection cases accept at face value assertions of legislative purposes." (*Weinberger v. Wiesenfeld* (1975) 420 U.S. 636, 648; see also *Michael M.* (1981) 450 U.S. 464, 469–470 [Inquiries into congressional motives "are a hazardous matter"].)

b. While there is certainly evidence that could suggest section 1.(c) was intended to serve the same purpose as sections 1.(a) and 1.(b), the evidence is not enough to show a triable issue that section 1.(c) "could not have been" included to promote the other facially neutral goals of the Old Policy.

(5) GRANT State's Motion for Summary Adjudication as to the Fourth Cause of Action as it Relates to Adult Students.

a. Defendants concede that 1.(c) should not apply to adult students, who have protected privacy rights, as the District has never had a practice of notifying parents of adult subtends. (Defendants' Motion at p. 33, fn. 8.)

(6) **GRANT Defendants' Motion as to the Fourth Cause of Action is it Relates to Minors**

a. Minor students have a right to privacy as it relates to the information that would be disclose under the Policy. (*Pettus v. Cole* (1996) 49 Cal.App.4th 402, 440–441, as modified on denial of reh'g (Oct. 15, 1996); *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 277.) However, there is no reasonable expectation of privacy under the circumstances contemplated by the Policy nor does mandated disclosure constitute a serious invasion as it relates to disclosures to parents/guardians.

b. Children should generally not expect that school staff will keep secrets in general, keep requests made to them secret from parents, or keep secret from parents public (at school) information about a child given the fundamental rights of parents, parents' corresponding legal obligations, the *in loco parentis* status of staff (*In re William G.* (1985) 40 Cal.3d 550, 566; see also Ed. Code § 44807), the rights outlined under Education Code section 51101 (which if exercised would likely lead to disclosure and which shows a superior parental right over records/information), the public nature of social transitioning (which occurs in the context of the Policy even in the view of those outside the student's inner circle), the relatively recent rise of social transitioning for children, deductions or findings parents can make from their own observations and control of the child or discussions with friends and family, and the student's ability to avoid disclosure (*Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1346).

(7) GRANT and DENY in Part the Motions as to Section 5 of the Policy

a. Section 5 of the policy merely outlines how disclosures are made and recorded. The section is therefore only implicated once there is a disclosure, but there can be no disclosures under sections 1.(a), 1.(b), and 1(c) (as it relates to adult students) given the

proposed permanent injunction. To the extent section 5 relates to minor students and section 1.(c), section 5 should not be enjoined at all.

(8) DENY the State's motion for judgment on the pleadings in part and deem the remainder of the motion moot.

a. Given Defendants' partial success and because the remainder of the motion is moot in light of the rulings in favor of the State.

THE EVIDENTIARY RULINGS

DEFENDANTS' JUNE 20, 2024 REQUEST FOR JUDICIAL NOTICE

Grant judicial notice of Exhibits A-F and P. The documents consist of declarations previously filed by the intervenors and from Dr. Brady. Judicial notice of court records is proper under Evidence Code section 452, subdivision (d).

However, the truth of matters asserted in the declarations are not subject to judicial notice and can be subject to objection. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564–1569; *Garcia v. Sterling* (1985) 176 Cal.App.3d 17, 22.) Notably though, both parties appear to use the judicial notice process in lieu of refiling prior evidence/declarations directly. Nevertheless, the Court should take a "substance over form" approach since both parties have done it and since both parties otherwise address the substance of the evidence as though directly filed.

Grant judicial notice of Exhibits G-J. The documents consist of the preliminary injunction order in *Mae M. v. Komrosky* (Riv. Co. Sup. Ct. Case No. CVSW2306224) and the writ petition and docket in *California Department of Education of Rocklin Unified School District*

(Placer Cot. Sup. Ct. Case No. s-CV-0052605). Again these are court records and judicial notice is proper under Evidence Code section 452, subdivision (d).

Grant judicial notice as to Exhibits K-O. The documents consists of policies adopted by other school districts. Judicial notice of the official acts of the three branches of government is proper (Evid. Code § 452, subd. (c)) and "school board actions can be official acts, and school board policies and regulations may be recognized by judicial notice." (*Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 183; *Physicians Committee for Responsible Medicine v. L.A. Unif'd School Dist.* (2019) 43 Cal.App.5th 175, 183 [Judicial notice of the policies is proper].)

THE STATE'S JULY 25, 2024 OBJECTIONS TO "LAY WITNESS DECLARATIONS"

Overrule all 31 objections. If nothing else, the declarations and assertions made would be relevant and admissible for purpose of the public interest exception to the mootness argument, albeit the evidence is minimally relevant and not necessarily admissible for the truth of the matters asserted. Also, at times and to a very limited extent, some of the evidence would be admissible and relevant for purposes of evaluating the State's privacy claim. The declarations are also analogous to the evidence from the State showing that other segments of the community raised concerns about the District's adoption of the Old Policy.

THE STATE'S APRIL 24, 2024 SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE AND DEFENDANTS' JUNE 20, 2024 OBJECTIONS

Grant judicial notice of Exhibits 7-11 and 13-19. These documents again consist of reporter's transcripts from board hearings, policies and regulations, meeting agendas, or meeting minutes. As noted above, judicial notice of such documents is proper.

Grant judicial notice of Exhibits 23-28. These documents consist of court records from this case, which as noted above can be properly judicially noticed.

Grant the request for judicial notice of Exhibits 20-22 and 12. The request asks for judicial notice of communications from the State to the District and a DOE report. The authenticity of the documents is not disputed and the documents would qualify as official acts of the government.

Grant the request for judicial notice as to Exhibit 29. The document is essentially a press release from defense counsel. "At most," judicial notice as to "the existence of ... press releases" is proper, "but not the truth of their contents." (*Malek Media Group LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 826.)

Overrule Defendants' objection no. 1. The Court had previously granted the State's request for judicial notice, the documents are not offered for the truth of the matters asserted and could be relevant, for instance, to the public interest exception to the mootness issue.

Overrule Defendants' objection no. 2. The objection is to portions of the Board meeting transcript consisting of public comment. Similar to the "lay witness" declarations that Defendants submitted, if nothing else the portions of the transcript would be relevant and admissible for purpose of the public interest exception to the mootness argument

Overrule Defendants' objection no. 3. The objection is to another transcript, but without pincite or recitation of the language objected to. The objection is therefore improper. (*OCFCD v. Sunny Crest Dairy, Inc.* (1978) 77 Cal. App. 3d 742, 753; see also *Rose v. State* (1942) 19 Cal. 2d 713, 742 [discussion in context of motion to strike out inadmissible evidence].)

Overrule Defendants' objection no.'s 4-9. The objections are directed at various correspondence, but the correspondence is relevant to the "insisting" and "persisting" components of the exception to the mootness doctrine and in that regard would not constitute hearsay.

THE STATE'S JULY 25, 2024 SECOND SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE AND DEFENDANTS' AUGUST 9, 2024 OBJECTIONS

Grant judicial notice of Exhibits 1-4 and 7-8. These documents consist of reporter's transcripts from school board meetings, agendas for meetings, or meeting minutes. Exhibit 8 is a reporter's transcript from the PERB hearing in *Associated Chino Teachers v. Chino Valley Unified School District* (Case No. LA-CE-6828-E). As noted above, judicial notice of such documents is proper.

Grant judicial notice of Exhibits 5-6. These documents consist of TVUSD's certified election results and its website showing its vacant board seats. The documents would again logically constitute official records subject to judicial notice.

Overrule Defendants' objection no.'s 2-3. The broad objections to the transcript are improper. (*OCFCD v. Sunny Crest Dairy, Inc.* (1978) 77 Cal. App. 3d 742, 753; see also *Rose v. State* (1942) 19 Cal. 2d 713, 742 [discussion in context of motion to strike out inadmissible evidence].)

Overrule Defendants' objection no.'s 4-95. The objections are all directed at portions of Dr. Brady's declaration, which the Court previously reviewed. Many of the objections are impermissibly asserted to large segments of evidence, which is improper and grounds for overruling the objections. (*OCFCD v. Sunny Crest Dairy, Inc.* (1978) 77 Cal. App. 3d 742, 753; see also *Cole v. Town of Los Gatos* (2012) 205 CA4th 749, 764, 140 CR3d 722, 734, fn. 6 ["where a trial court is confronted on summary judgment with a large number of nebulous evidentiary

objections, a fair sample of which appear to be meritless, the court can properly overrule, and a reviewing court ignore, *all* of the objections on the ground that they constitute oppression of the opposing party and an imposition on the resources of the court"].) The objections are otherwise directed at proper expert opinion, discussions of current research/literature, or critiques/rebuttals to expert opinion.

Overrule objection no. 1. This objection is asserted to the supplemental declaration from attorney Nugent regarding the state of discovery, which is not inadmissible hearsay.

THE STATE'S JULY 25, 2024 OBJECTIONS TO THE DECLARATION FROM DR. ANDERSON AND THE STATE'S AUGUST 20, 2024 OBJECTIONS TO THE SUPPLEMENTAL DECLARATION

Overrule the objections to the Dr. Anderson declarations. Many of the objections are impermissibly asserted to large segments of the declarations, which is improper and grounds for overruling the objections. (*OCFCD v. Sunny Crest Dairy, Inc.* (1978) 77 Cal. App. 3d 742, 753; see also *Cole v. Town of Los Gatos* (2012) 205 CA4th 749, 764, 140 CR3d 722, 734, fn. 6 ["where a trial court is confronted on summary judgment with a large number of nebulous evidentiary objections, a fair sample of which appear to be meritless, the court can properly overrule, and a reviewing court ignore, *all* of the objections on the ground that they constitute oppression of the opposing party and an imposition on the resources of the court"].) Furthermore, as with the declaration from Dr. Brady, the Dr. Anderson declarations generally consist of proper expert opinion, the supplemental declaration is essentially responsive to the State's evidence so it is not impermissible "new evidence with the reply," and the objections at times go to the weight of the evidence.

THE DOCUMENTS SUPPORTING THE MOTIONS

The State's motion is supported by a separate statement of fact; a declaration from attorney Edward Nugent; an August 18 and October 25, 2023 e-mail between counsel; a series of e-mails produced by the District in connection with discovery; and a meet and confer declaration from attorney Delbert Tran.

The State's motion is also supported by "supplemental" request for judicial notice of the transcript from the Board's July 20, 2023 meeting; Board policy 5010 and administrative regulation 5010; Board regulation 5125; Policy 5020.1 adopted by Murrieta Valley Unified School District (MVUSD) and Temecula Valley Unified School District (TVUSD); a DOE investigative report related to MVUSD; the Board's September 7 and 21, 2023 meeting agenda and excerpts from the minutes; the agenda and excerpts from the meeting minutes from the Board's March 7, 2024 meeting; the transcript from the Board's March 21, 2024 meeting; the existence of a September 7, 2023 letter, and corresponding e-mail from the State to the Board; a September 21, 2023 e-mail from the state re-sending the prior communication; the docket in this case; the TRO; excerpts from the transcript from the hearing on the preliminary injunction and the minute order; the formal order on the injunction; a stipulation of uncontested facts and issues; a "publicly available" statement from defense counsel, Liberty Justices Center.

In the supplemental request, the Board also noted that the Court previously took judicial notice of the Policy, the text of Board policy 5141, policy 5141.4 (both the February 2016 and April 2017 versions), policy 5145.3, and the DOE's "Frequently Asked Questions: School Success and Opportunity Act (Assembly Bill 1266)."

The District opposition is supported by a responsive separate statement; evidentiary objections; and a request for judicial notice of the six declarations from the parent-intervenors filed

in connection with the motion to intervene; the February 23, 2023 minute order for the preliminary injunction in the matter of *Mae v. v. Komrosky* (Riv. Co. Sup. Ct., Case No. CVSW2306224), a petition for writ of mandate in *California Department of Education v. Rocklin Unified School District* (Placer Co. Sup. Ct. Case No. S-CV-0052695) and the docket; Anderson Union High School District Board Policy 5020.01 and Policy 5010.11; Murrieta Valley Unified School District Policy 5020.11 Orange unified School District Board Policy 5020.2; Rocklin Unified School District policy 5020; Temecula Valley Unified school District policy 5020.01; and the declaration from Dr. Christine Brady filed on August 29, 2023.

The District's motion is supported by a separate statement, a declaration from Erica Anderson, PHD and her CV; a supplemental declaration from Anderson; a declaration from Dr. Norm Enfield; the request for judicial notice outlined above; agenda and minutes for the Board's June 15 and July 20, 2023 meetings; the July 20, 2023 letter from Attorney General, Rob Bonta; Board Policy 5020.1; an August 4, 2023 Notice of Investigation and Investigative Subpoena; Board Policy 5010; Administrative Regulation 5010; Board Policy 5 145.3 in effect from September 7, 2017 through June 20, 2023; and declarations from Donald Bridge, Andrew Cruz. Jonathan Monroe, James Na and Sonja Shaw.

The State's opposition to the District's motion, and it reply to its own motion, are supported by an opposing separate statement; evidentiary objections, including objections specifically to the Anderson declaration; responses to the District's objections; a supplemental declaration from Nugent; a declaration from Dr. Brady and her CV; a declaration from Christi Bell and her CV; excerpts from the transcript for the May 2 and June 20, 2024 Board meetings; excerpts from the agenda and minutes form TVUSD's July 18, and August 22, 2024 meetings; the election recall results for TVUSD; portions of the TVUSD website; the TVUSD board agenda for December 18,

2023; and a transcript from a PERB hearing. A second supplement request for judicial notice (to which the District has submitted additional objections) as to excerpts from the Board's May 2 and June 20, 2024 meetings. The District has also filed a reply[7] related its motion and a response to the State's objections.

Date: 9.9.24

Judge Michael Sachs

[7] The reply includes a reply separate statement, but no such document is permitted. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)