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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT,

Defendant.

And

NICHOLE VICARIO, et al.,

Defendants-Intervenors

Case No. CIVSB2317301

DEFENDANTS' COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION, AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

Documents Filed Concurrently
1. Notice of Motion
2. Motion for Summary Judgment; Opposition to Motion for Judgment on Pleadings;
3. Evidence in Support of Defendants' Motion
4. Response to Separate Statement;
5. Separate Statement;
6. Request for Judicial Notice;
7. Defendants' Evidentiary

	Objections; and
8.	[Proposed] Order
Judge:	Hon. Michael A. Sachs
Date:	August 16, 2024
Time:	8:30 AM
Dept.:	S-28

Complaint Filed: August 28, 2023

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Pursuant to California Code of Civil Procedure Section 437c and the parties' May 3, 2024 Stipulated Combined Briefing and Briefing Schedule, Defendant Chino Valley Unified School District (the "District") and Defendants-Intervenors Nichole Vicario, Richard N. Wales, Jr., Misty Startup, Darice De Guzman, Kristi Marcos, and Kristal Barret ("Intervenors") (collectively, with the District, "Defendants") submit this combined memorandum of points and authorities (1) in support of their Motion for Summary Judgment or, in the Alternative, Summary Adjudication and (2) in opposition to Plaintiff's Motion for Judgment on the Pleadings or, in the Alternative, Summary Adjudication ("Plaintiff's Motion").[1]

INTRODUCTION

The Court should grant Defendants' Motion because the District rescinded Board Policy 5020.1 ("BP 5020.1" or the "Old Policy") and replaced it with Board Policy 5010 ("BP 5010") and Administrative Regulation 5010 ("AR 5010") (collectively, the "New Policy") on March 7, 2024.[2] The New Policy is facially neutral and, unlike the Old Policy, does not contain any references to gender; instead, it only requires—in relevant part—that the District notify parents if their child requests to change their official or unofficial school records. Because the Old Policy no longer exists, the case is moot and summary judgment in favor of Defendants is appropriate.

Moreover, even if this case were not moot, Defendants are still entitled to summary judgment because the U.S. Constitution requires that (with limited exceptions) public schools notify parents before socially transitioning their children. Thus, the Old Policy satisfied a constitutional requirement that protected parents' fundamental rights. The State cannot obtain an injunction that would require the District to maintain an unconstitutional policy, which enjoining the Old Policy effectively would have done.

Because the case is moot, the Court should also deny Plaintiff's Motion. But even if that were not the case, Plaintiff would still not be entitled to judgment on the pleadings or summary

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[1] Several mootness-related arguments in support of Defendants' Motion are also made in opposition to the mootness arguments made in Plaintiff's Motion. For the sake of efficiency, both arguments are presented together in Section I of this combined brief.

[2] The district has no plans or intentions to restore the Old Policy.

adjudication because BP 5020.1 *was not* discriminatory. Indeed, the Old Policy applied equally to all students who expressed a desire to socially transition at school, regardless of whether that child identified as transgender. Further, the District had a compelling interest in enacting the Old Policy—namely, involving parents in their children's lives when they are in school, particularly with respect to issues that affect a child's health and well-being. Indeed, California law and the recognized constitutional right of parents to direct the upbringing of their child require that parents be informed of such issues. Moreover, the Old Policy *did not* violate students' privacy rights. Children do not have a reasonable expectation of privacy when they request to be *openly identified or treated* as a different gender at school. Nor do children have the right to decide that otherwise public information—known to everyone in the school environment—must be hidden from their parents.

The purpose of the Old Policy was to give parents access to important information about their children, ensure transparency between schools and parents, and encourage schools to collaborate with parents—because that is what is in children's best interests. Because the Old Policy was not discriminatory, did not violate student privacy rights, and otherwise complied with California law, the Court should deny Plaintiff's Motion.

STATEMENT OF FACTS

Prior to the District adopting BP 5020.1, the District's policy regarding parental notification (or lack thereof) was governed by Administrative Regulation 5145.3 ("AR 5145.3"), which the District adopted in September 2017. (Declaration of Dr. Norm Enfield ("Enfield Decl."), ¶ 11, Ex. H.) This policy, with limited exceptions, required that children—including kindergarteners—give written consent before the District could inform a parent that their child requested to socially transition their gender at school. (*Id.*)

The President of the District's Board of Education (the "Board"), Sonja Shaw, recommended that the Board adopt BP 5020.1during its meeting of June 15, 2023. (Enfield Decl., ¶ 3, Ex. A.) On July 20, 2023, the Board received a letter from the California Attorney General, Rob Bonta, attempting to dissuade the Board from adopting BP 5020.1. (*Id.*, ¶ 4, Ex. B.) On the same day, and after lengthy public comment, the Board voted to approve BP 5020.1 and adopted it

by a vote of 4 to 1. (*Id.*, ¶ 5, Ex. C.)

In enacting BP 5020.1, the District's intent was to:

> (I) Provide procedures designed to maintain and, in some cases, restore, trust between school districts and parent(s)/guardian(s) of pupils[;]
>
> (II) Bring parent(s)/guardians(s) into 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[; and]
>
> (III) Promote communication and positive relationships with parent(s)/ guardian(s) of pupils that promote the best outcomes for pupils' academic and social-emotional success.

(Enfield Decl., ¶ 5, Ex. D.)

After the District adopted BP 5020.1, five other school districts in California adopted similar policies in August and September 2023. (Defendants' Request for Judicial Notice ("RJN"), Exs. J–N.) These districts include Anderson Union High School District (August 22, 2023); Murrieta Valley Unified School District (August 10, 2023); Orange Unified School District (September 2023); Rocklin Unified School District (September 6, 2023); and Temecula Valley Unified School District (August 22, 2023). (*Id.*)

On August 4, 2023, the Office of the Attorney General informed the District that it had opened an investigation into the legality of BP 5020.1 and concurrently issued a subpoena seeking a wide range of documents, which the District produced. (Enfield Decl., ¶ 6, Ex. E.)

On August 28, 2023, Plaintiff filed its Complaint in this action, alleging various claims challenging the legality of BP 5020.1. (RJN, Ex. I.) On August 29, 2023, Plaintiff filed an Ex Parte Application for Temporary Restraining Order ("TRO") and Order to Show Cause Re: Preliminary Injunction seeking to enjoin BP 5020.1, which the Court heard on September 6, 2023 and subsequently granted. (*Id.*) The Court held a full hearing on Plaintiff's preliminary injunction motion on October 19, 2023, during which the Court made a preliminary oral ruling on Plaintiff's preliminary injunction motion. (*Id.*) On January 11, 2024 the Court entered its preliminary injunction order, which preliminarily enjoined subdivisions 1.(a) and 1.(b) of BP 5020.1 but held that BP 5020.1 subdivision 1.(c) did not violate California law as it relates to minors under the age

of 18. (*Id.*) Thus, subdivision 1.(c) was not enjoined as applied to minors. On April 22, 2024, the Court issued a slightly revised preliminary injunction order, which clarified—but did not materially change—the terms of the preliminary injunction as it relates to BP 5020.1 subdivisions 1.(a), 1.(b), and 1.(c). (*Id.*)

On March 7, 2024, the Board voted 4-1 to rescind BP 5020.1 in full and replace it with BP 5010 and AR 5010.[3] (Enfield Decl., ¶ 7, Exs. F, G.) In conformity with the Court's statements at the hearing on Plaintiff's motion for preliminary injunction and order partially granting that motion, the New Policy removed any mention of sex, gender, or gender identity, and instead states in pertinent part: "Principal/designee, certificated staff, and/or school counselors, shall notify the parent(s)/guardian(s), in writing, within three days from the date any district employee, administrator, or certificated staff, becomes aware that a student is requesting to change any information contained in the student's official or unofficial records." (*Id.*, Ex. F.)

As of March 7, 2024, BP 5020.1 no longer exists, and the District has no plans or intentions to reinstate it. (Enfield Decl., ¶¶ 7–10; Declaration of Sonja Shaw ("Shaw Decl."), ¶¶ 3–6; Declaration of Don Bridge ("Bridge Decl."), ¶¶ 3–6; Declaration of Andrew Cruz ("Cruz Decl."), ¶¶ 3–6; Declaration of Jonathan Monroe ("Monroe Decl."), ¶¶ 3–6; Declaration of James Na ("Na Decl."), ¶¶ 3–6.) Instead, the New Policy governs going forward.

ARGUMENT

I. Defendants are entitled to summary judgment.

A. Legal Standard

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) "There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.*) The

[3] Anderson Union High School District subsequently changed its parental notification policy to align more closely with the District's BP 5010 on April 16, 2024. (RJN, Ex. O.)

moving party bears the initial burden to make a prima facie showing that there is no genuine issue of material fact. (*Id*.)

A defendant moving for summary judgment satisfies his or her initial burden by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Cal. Code Civ. Proc., § 437c (p)(2).) A defendant may do this by showing that the plaintiff does not possess nor could reasonably attain evidence that would allow a trier of fact to find any underlying material fact "more likely than not." (*Aguilar*, 25 Cal. 4th at 845.) Once this burden is met, the plaintiff must then demonstrate the existence of a genuine issue of material fact. To meet this burden, the plaintiff must display substantial and admissible evidence that creates a triable issue. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.) Theoretical, imaginative, or speculative submissions are insufficient to avoid summary judgment. (*See Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 481 ("[S]peculation is impermissible, however, and is grounds for granting summary judgment.").)

B. This case is moot because the Old Policy (BP 5020.1) no longer exists, and none of the exceptions to mootness apply.

This action is moot and Defendants are entitled to summary judgment because, in March 2024, the District rescinded the Old Policy (BP 5020.1) and replaced it with the New Policy (BP 5010 and AR 5010). Yet Plaintiff's Complaint does not even mention the New Policy—it challenges only the Old Policy. Plaintiff's Complaint seeks several forms of relief, including:

(i) A declaration that the disputed provisions in the *Old Policy* are unconstitutional under the California Constitution and/or violate California law;

(ii) A preliminary injunction enjoining the District from implementing certain provisions of the *Old Policy* (which the Court already issued in this case before the District adopted its New Policy); and

(iii) A permanent injunction enjoining the District from implementing certain provisions of the *Old Policy*.

Because all of the relief Plaintiff seeks relates to the Old Policy, and because the Old Policy was rescinded more than three months ago on March 7, 2024, the action is moot and

summary judgment in favor of Defendants is warranted.

In California, courts may only decide cases that involve justiciable controversies. (*Cuenca v. Cohen* (2017) 8 Cal.App.5th 200, 216.) Justiciability embodies the principle that "courts will not entertain an action which is not founded on an actual controversy." (*Id*.) Courts are tasked "to decide controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*In re D.P.* (2023) 14 Cal.5th 266, 276 (quoting *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863).) "A case becomes moot when events render it impossible for a court, if it should decide the case in favor of plaintiff, to grant him any effective relief." (*Id.* (internal quotation marks and brackets omitted).)

Effective relief requires two necessary elements. "First, the plaintiff must assert ongoing harm." (*Id*.) "Second, the harm must be redressable or capable of being rectified by the outcome the plaintiff seeks." (*Id*.) "If events have made such relief impracticable, the controversy has become . . . moot." (*Parkford Owners for a Better Cmty. v. Cty. of Placer* (2020) 54 Cal.App.5th 714, 722.) When events "render a case moot," the court "should generally dismiss it." (*Id*.) A case is moot when "the question addressed was at one time a live issue in the case" but no longer has merit "because of events occurring after the judicial process was initiated." (*Younger v. Super. Ct.* (1978) 21 Cal.3d 102, 120.)

1. The case is moot because the District rescinded BP 5020.1, which is the only policy at issue in Plaintiff's Complaint.

The policy that the District originally enacted that is the focus of Plaintiff's Complaint—BP 5020.1—no longer exists. Therefore, the case is moot, and the Court should grant summary judgment in favor of Defendants.

"[A]n intervening change in the law—namely, the repeal or modification of a statute under attack or subsequent legislation correcting a challenged deficiency—that is the crux of a case may result in mootness." (*Shaw v. L.A. Unified Sch. Dist*. (2023) 95 Cal.App.5th 740, 773 (collecting cases).) For example, *City of L.A. v. County of L.A.* involved the constitutionality of a taxation mechanism which, after litigation had commenced, "had been dismantled" by the newly enacted

Proposition 13. ((1983) 147 Cal.App.3d 952, 958.) Because the original facts of the case were "no longer . . . operative," the court dismissed the case as moot. (*Id*. at 959.) Additionally, in *Bell v. Bd. of Supervisors,* the lack of an actual controversy became apparent when the legislature repealed the legislation that the plaintiff challenged. ((1976) 55 Cal.App.3d 629, 636.) Because of the repeal, the situation facing the court was "materially different" from that which originally confronted the court. (*Id*.)

Likewise, here, the policy originally at issue in the case, BP 5020.1, has been "dismantled" by the newly enacted BP 5010. As a result, the original facts on which Plaintiff premised its Complaint are no longer "operative." Because BP 5020.1, including the language to which Plaintiff objects, has been repealed, no actual controversy exists. The current situation is "materially different" from that which originally faced the Court, because the policy at issue no longer exists. Without the objectionable language that Plaintiff originally challenged, an "actual controversy" does not exist, and the case is not justiciable. (*Cuenca,* 8 Cal.App.5th at 216.)

The District cannot implement the Old Policy—because it has been removed and replaced with the New Policy—so the relief Plaintiff seeks cannot be granted. Without redressability, this case is moot.

2. The voluntary cessation exception to mootness does not apply because the evidence establishes the District has no intention of restoring BP 5020.1.

Contrary to Plaintiff's argument (*See* Plaintiff's Motion at 22:4–25:7), the voluntary cessation exception to mootness cannot save Plaintiff's case. The voluntary cessation exception only applies if there is "a reasonable probability that issues concerning [the challenged legislation] will arise again," (*In re Austin J*. (2020) 47 Cal.App.5th 870, 881 n.5) or "there is no assurance that [a policy will not be reenacted] in the future." (*Marin Cty. Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 929; *see also RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434 (the voluntary cessation exception applies if "there is a *reasonable expectation* the allegedly wrongful conduct will be repeated" (emphasis added)); *Ctr. For Local Gov't Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146, 1157 (same); *Phipps v. Saddleback Valley Unified Sch. Dist.* (1988) 204 Cal.App.3d 1110, 1117 ("A court of equity will

not afford an injunction to prevent in the future that which in good faith has been discontinued in the absence of any evidence that the acts are likely to be repeated in the future.").)

Here, the District has not merely promised not to enforce BP 5020.1. It has rescinded it in its entirety and provided assurances in the form of sworn declarations that it has no intentions or plans to re-adopt BP 5020.1. (Enfield Decl., ¶¶ 7–10; Shaw Decl., ¶¶ 3–6; Bridge Decl., ¶¶ 3–6; Cruz Decl., ¶¶ 3–6; Monroe Decl., ¶¶ 3–6; Na Decl., ¶¶ 3–6.) On these facts, the voluntary cessation exception to mootness does not apply.

Plaintiff's reliance on *Robinson v. U-Haul Co. of Cal.* (2016) 4 Cal.App.5th 304 is misplaced. In that case, the defendant's assertion that it would not enforce an unenforceable covenant "d[id] not provide sufficient reassurance to the court that [its] unenforceable covenant [would] not have some effect detrimental" to its dealers or customers. (*Id*. at 315.) Here, by contrast, the Old Policy has been rescinded and the District has provided sworn "reassurance" that it has no plans to re-adopt it. (Enfield Decl., ¶¶ 7–10; Shaw Decl., ¶¶ 3–6; Bridge Decl., ¶¶ 3–6; Cruz Decl., ¶¶ 3–6; Monroe Decl., ¶¶ 3–6; Na Decl., ¶¶ 3–6.) Moreover, it would make little sense for the Board to repeal the Old Policy only to restore it and subject itself to the same legal challenges by Plaintiff, which would undoubtedly have the resources and the will to swiftly bring another lawsuit.

Similarly, this case differs from *In re J.G.* (2008) 159 Cal.App.4th 1056. There, a prisoner challenged California Department of Corrections and Rehabilitation ("CDCR") policies that prevented him from appearing in person at his parole hearing. (*Id*. at 1061–62.) The CDCR argued that the case was moot after it arranged for the inmate to appear in person at his hearing and claimed it would continue to facilitate the inmate's physical appearance at future hearings but did not actually change any of its policies. (*Id*. at 1063.) Because the CDCR's statements were not sufficient without a change in policy, the Court concluded the issues raised by the inmate were justiciable. (*Id*.) Here, again, the District *has* changed its policy, and it has demonstrated that the Old Policy will not be adopted again. Indeed, the District's actions here have gone above and beyond the CDCR's actions in *In re J.G.* because rescinding the policy affects all students in the District, not just a single person like the inmate in *In re J.G.* Accordingly, there is no evidence to

support a reasonable likelihood that the District will re-adopt BP 5020.1. The voluntary cessation exception to mootness therefore does not apply.

3. The Court should exercise its discretion and find the public interest exception to mootness does not apply in this case.

Contrary to Plaintiff's argument (Plaintiff's Motion at 25:9–12), the public interest exception does not warrant deciding this case on the merits despite its mootness. Although the Court has discretion to apply that exception (*Robinson*, 4 Cal.App.5th at 319), Plaintiff has presented no compelling reasons why it should do so here.

Although there is no clear test that explains exactly what makes the exception applicable, the cases on which Plaintiff relies show the exception applies: (i) in situations that were likely to recur between the parties in the litigation; (ii) in situations presenting an issue of broad public concern that were likely to recur in larger society; (iii) as to issues of grave public importance that had not been addressed by other courts; or (iv) in cases with some combination of these three circumstances. (*See Bullis Charter Sch. v. Los Altos Sch. Dist.* (2011) 200 Cal.App.4th 1022, 1034–35.)[4] None of those circumstances warrant applying the exception here.

As explained above in Section I.B.2, this case does not present a situation in which the issue is likely to recur between the parties in this case because the District has repealed the challenged policy and has no intention of reenacting it. (Enfield Decl., ¶¶ 7–10; Shaw Decl., ¶¶ 3–6; Bridge Decl., ¶¶ 3–6; Cruz Decl., ¶¶ 3–6; Monroe Decl., ¶¶ 3–6; Na Decl., ¶¶ 3–6.)

Further, Plaintiff's argument that the issues in this case are "likely to recur" in society at large are unavailing. In the last nine months, no school district in California has adopted a policy

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[4] (*See also Robinson*, 4 Cal.App.5th at 318–19; *In re D.P.*, 14 Cal.5th at 282; *Johnson v. Hamilton* (1975) 15 Cal.3d 461, 465; *Cal. Correctional Peace Officers Ass'n v. State of Cal*. (2013) 82 Cal.App.4th 294, 304–05; *Newsom v. Super. Ct.* (2021) 63 Cal.App.5th 1099, 1110–11; *Lemat Cor. v. Barry* (1969) 275 Cal.App.2d 671, 673 n.2; *Steffes v. Cal. Interscholastic Federation* (1986) 176 Cal.App.3d 739, 745; *Nathan G. v. Clovis Unified Sch. Dist*. (2014) 224 Cal.App.4th 1393, 1397 n.4; *John A. v. San Bernardino City Unified Sch. Dist*. (1982) 33 Cal.3d 301, 307; *Montalvo v. Madera Unified Sch. Dist. Bd. of Educ*. (1971) 21 Cal.App.3d 323, 329; *Kidd v. State* (1998) 62 Cal.App.4th 386, 399; *Madera Cty. v. Gendron* (1963) 59 Cal.2d 798, 804; *In re Lee* (1978)78 Cal.App.3d 753, 756.)

similar to BP 5020.1.[5] In fact, at least one other school district that had a policy similar to the District's Old Policy has, like the District, replaced that policy with a policy substantially similar to the District's New Policy. (RJN, Ex. O.) Plaintiff's unsubstantiated claim that adjudicating BP 5020.1 is necessary because that policy is an issue of "broad public interest" is premised on its unfounded concern that more districts might adopt policies similar to BP 5020.1. But the evidence simply does not support this contention, particularly when the trend is that school districts that adopted policies similar to the District's Old Policy are opting to replace it with policies that are similar to the District's New Policy. (*Id.*) To the extent any districts retain a policy similar to the Old Policy, Plaintiff can readily challenge those policies in separate lawsuits specifically addressing them, including the circumstances of their enactment. There is no need for this Court to do so prematurely without the relevant parties before the Court.

Indeed, litigation regarding policies that are similar to BP 5020.1 is already ongoing, and proceeding to the merits in this case could result in conflicting decisions. Of the six districts that had or have policies similar to BP 5020.1, three are currently involved in civil litigation concerning those policies (Chino Valley, Rocklin, and Temecula),[6] and all six are engaged in administrative law proceedings regarding those policies.

It would make little sense to force Defendants to defend a policy that the District has voluntarily *repealed* and therefore no longer has a vested interest in defending, even as school districts that have adopted (and *not* repealed) substantially identical policies continue to defend those policies in ongoing proceedings. Continued litigation of this case on the merits, despite its mootness, would be needlessly duplicative, would waste public resources, could result in conflicting decisions, and thus would not serve the public interest.

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[5] To date, only six school districts in California have adopted parental notification policies akin to the District's Old Policy: Anderson Union High School District; Chino Valley Unified School District; Murrieta Valley Unified School District; Orange Unified School District; Rocklin Unified School District; and Temecula Valley Unified School District. Each of these school districts adopted its parental notification policy in August or September 2023. (RJN, Exs. J–N.)

[6] (RJN, Ex. G (*Mae M. v. Komrosky*, No. CVSW2306224 (Riverside County Super. Ct.), Feb. 23, 2024 Order on Motion for Preliminary Injunction ("Mae Decision")); H (*California Dept' of Education v. Rocklin Unified Sch. Dist*., No. S-CV-0052605 (Placer County Super. Ct.), Apr. 10, 2024 Petition for Writ of Mandate).)

Because the case is moot and no exception to mootness applies, the Court should grant Defendants' Motion.

C. Summary Judgement should be granted in Defendants' favor because parental notification is required by the United States Constitution.

If the Court were to consider the merits of Plaintiff's mootness claims, Defendants would still be entitled to summary judgment. This is particularly true considering many of the State's arguments in this case are fact-specific, unique to Chino Valley's enactment and implementation of the Old Policy, and go beyond the face of the Old Policy. There simply is no public interest whatsoever in a fact-bound adjudication that will have little impact on other cases involving similar policies, each of which has different operative facts.

Even if the Old Policy's parental notification provisions violated California law as Plaintiff alleges (and they did not), California law would be preempted by the U.S. Constitution, which *requires* that public schools notify parents before socially transitioning their children in the absence of exigent circumstances. Because the U.S. Constitution requires that parents be notified when the District socially transitions their children, the Old Policy was not unlawful due to its parental notification provisions. Moreover, the State cannot obtain an injunction that would require the District to maintain an unconstitutional policy. Yet that is the practical effect of the State's argument here. For this reason, too, the Court should grant summary judgment in Defendants' favor.

1. A school that fails to notify parents it is socially transitioning their children violates the constitutional rights of parents.

Under the First and Fourteenth Amendments, parents have a fundamental right to direct the "care, custody, and control" of their minor children. (*Troxel v. Granville* (2000) 530 U.S. 57, 65 (plurality op.) (noting that the right arises under the Due Process Clause of the Fourteenth Amendment; *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235 (noting that the right also arises under the First Amendment).) This right rests on the common-law presumptions that (1) "parents possess what a child lacks in maturity, experience, and capacity for judgment" and (2) the "natural bonds of affection [between parent and child] lead parents to act in the best interests of their

children." (*Parham v. J.R.* (1979) 442 U.S. 584, 602.)

The U.S. Constitution requires that schools notify parents before socially transitioning their children for three reasons.

First, social transitioning is a form of psychological treatment, and parents have the right to be notified when the State performs healthcare treatment on their children. (*Parham, supra*, 442 U.S. at 602 (holding that parents have the right to direct the psychological care of their children); *Mann v. Cnty. of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1161 (holding that the state must "notify[] parents" before conducting healthcare examinations on children); *see also T.F. v. Kettle Moraine School Dist.* (Wis. Cir. Oct. 03, 2023) No. 2021CV1650, 2023 WL 6544917, at *5 (holding that socially transitioning a child against parents' wishes "directly implicates an infringement against the parental . . . right to direct the care for their child").)

The conclusion that social transitioning is a form of psychological treatment is not in dispute. As the District's expert, Dr. Erica E. Anderson, has testified, "the primary purpose of social transitioning is to relieve the psychological distress associated with having a mismatch between one's natal sex and gender identity." (Declaration of Dr. Erica E. Anderson ("Anderson Decl."), ¶ 9; *see also id.* at ¶ 36 (noting that social transition "is a type of psychosocial treatment").) Moreover, while the State's expert, Dr. Christine Brady, disagrees with Dr. Anderson on many points, Dr. Brady *agrees* that social transitioning is a form of psychological treatment. According to Dr. Brady, "social transition . . . is a medically recognized *treatment* for gender dysphoria." (RJN, Ex. P, ¶ 19.C (emphasis added); *see also id.* ¶¶ 34–35 "Social Transition is a Treatment for Gender Dysphoria").) Because the experts agree that social transitioning is a form of treatment, it follows that school policies that allow minor children to be socially transitioned without parental notification violate parents' federal constitutional rights.

It is true that there are certain situations involving exigent circumstances where the state may render healthcare treatment to children without parental notification. (*See, e.g., Mueller v. Auker* (9th Cir. 2009) 576 F.3d 979, 995 (holding that the state may perform healthcare treatment on child where there is "reasonable cause to believe that the child is imminent danger of serious bodily injury"); *D.C.M.M. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark* (Nev. Sept. 8, 2023)

2023 WL 5837974, at *2 (holding healthcare treatment without parental notice permissible where child needed immediate medical attention for serious medical condition and parents could not be located).) But this is not one of those situations. Unlike emergency medical care, social transitioning does not forestall serious bodily injury, and social transitioning is intended to be a slow, deliberative process in which parental notification is always feasible.

Moreover, it does not matter that it is students—and not the school—who are initiating the request to be socially transitioned. As a matter of law, minors lack the "maturity, experience, and capacity for judgment" needed to "make sound judgments concerning many decisions, including their [own] need for medical care." (*Parham, supra*, 442 U.S. at 603; *see also Roper v. Simmons* (2005) 543 U.S. 551, 569 (noting that children are "vulnerable . . . to negative influences and outside pressures, including peer pressure" and often make "impetuous and ill-considered . . . decisions")). Parents—not the State, and not the child—have the "primary role" in raising their children. (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 232.) This rule, which contemplates parental direction over children's healthcare decisions, protects children from their own imprudent decisions. (*See Parham, supra*, 442 U.S. at 603.) If the rule were otherwise, it would be permissible for a school to employ doctors to, for example, distribute Adderall to students before class to help them focus without informing their parents, so long as the students voluntarily sought the medication. That is not the law. (*See, e.g., Mario V. v. Armenta* (N.D. Cal. May 12, 2021) 2021 WL 1907790 (holding parents' rights violated when school secretly conducted blood-sugar tests on willing students).)

Second, parents have the right to be involved in "important decisions" in their children's lives (*C.N. v. Ridgewood Bd. of Educ.* (3d Cir. 2005) 430 F.3d 159, 179 (quotations omitted)), which undoubtedly includes the decision whether to socially transition the child. The U.S. Supreme Court and the Ninth Circuit have held, for example, that the state may not unduly interfere with parents' involvement in decisions regarding child visitation (*Troxel, supra*, 530 U.S. 57), whether to send their children to private school (*Pierce, supra*, 268 U.S. 510), the subjects children can be taught at private school (*Meyer, supra*, 262 U.S. 390), and whether their children can go out in public at night (*Nunez by Nunez v. City of San Diego* (9th Cir. 1997) 114 F.3d 935,

952). Even if social transitioning were not a form of psychological treatment (and it is), the decision whether to socially transition a child falls squarely within these precedents.

It is beyond dispute that changing how a child's gender identity is acknowledged by those in the child's social environment at school is an important decision in the life of the child. Moreover, the undisputed evidence in this case establishes the importance of this decision. It is undisputed that "a social transition represents one of the most difficult psychological changes a person can experience." (Anderson Decl., ¶ 46.) It is undisputed that a social transition "often leads to other medical interventions later in life," such as puberty blockers and cross-sex hormones, the impacts of which can be "irreversible." (*Id.*, ¶ 8.g.) It is undisputed that "[n]o professional medical association . . . recommends social transition of children and adolescents without a careful assessment and treatment plan." (*Id.*, ¶ 8.h.) It is undisputed that socially transitioning children without parental involvement deprives children of parental guidance during this crucial time in the child's life and, instead, "drive[s] a wedge between the parent and child." (*Id.*, ¶¶ 81, 83.) And it is undisputed that "[n]o professional association . . . recommends that school officials facilitate the social transition of a child or adolescent without parental knowledge." (*Id.*, ¶ 8k.) For these reasons, parents must be involved in decisions regarding "what [their] minor child[ren are] called" by their school. (*Ricard v. USD 475 Geary Cnty., KS Sch. Bd.* (D. Kan. May 9, 2022) No. 522CV04015HLTGEB, 2022 WL 1471372, at *8).

"In the end," school policies that "exclude[] a parent from knowing of, or participating in, that kind of choice, is as foreign to federal constitutional and statutory law as it is medically unwise." (*Mirabelli v. Olson* (S.D. Cal. Sept. 14, 2023) No. 3:23-CV-00768-BEN-WVG, 2023 WL 5976992, at *9.)

Third, parents have the right to be free from "unwarranted state interference" in the integrity of their family, including their relationships with their children. (*Keates, supra*, 883 F.3d at 1235 (cleaned up)); *Lee v. City of Los Angeles* (9th Cir. 2001) 250 F.3d 668, 686; *see also Marsh v. Cnty. of San Diego* (9th Cir. 2012) 680 F.3d 1148, 1152 (holding that parents have the right to determine how photographs of their deceased children's bodily remains are disseminated).) Socially transitioning children without notifying their parents constitutes "undue

state interference" with the family. From the clothing and toys parents give their children, to the friends parents allow their children to have, to the sports parents allow their children to play, the parent-child relationship is deeply shaped by the child's gender. School policies that recognize a child's asserted gender identity while keeping parents in the dark necessarily impact the "emotional bond[s]" between parents and their children. (*Ovando v. City of Los Angeles* (C.D. Cal. 2000) 92 F. Supp. 2d 1011, 1021; *see also Doe v. Dickenson* (D. Ariz. 2009) 615 F. Supp. 2d 1002, 1014 (holding parent stated a claim for violation of family integrity where state action causing physical injury to child fundamentally altered the nature of the parent-child relationship). Moreover, as with the "important decisions" line of cases, such policies treat parents as the enemy, impermissibly driving a wedge into the parent-child relationship that lies at the heart of the family just when the child needs parental care and guidance most. (*Patel v. Searles* (2d Cir. 2002) 305 F.3d 130, 134, 140 (holding state's acts that created "mistrust among the members of [plaintiff's] family towards him" violated right to family association).) Schools violate the U.S. Constitution when they inject themselves into these family relationships without notifying parents of their own actions.

Moreover, socially transitioning students in secret from their parents does not fall within the scope of schools' implied authority over children under the *in loco parentis* doctrine. Under that doctrine, schools have "inferred parental consent" that gives them "a degree of authority . . . commensurate with the task that the parents ask the school to perform"—namely, to educate their children. (*Mahanoy Area Sch. Dist. v. B.L.* (2021) 141 S.Ct. 2038, 2052 (Alito, J., concurring).) Consistent with that authority, schools must have the authority to (1) control "the information to which [students]" are exposed as part of the curriculum and (2) decide "how" students are taught, including things like "the hours of the school day, school discipline, [and] the timing and content of examinations." (*Fields v. Palmdale Sch. Dist.* (9th Cir. 2005) 427 F.3d 1197, 1200, 1206 ("*Fields I*"), *opinion amended on denial of reh'g sub nom. Fields v. Palmdale Sch. Dist. (PSD)* (9th Cir. 2006) 447 F.3d 1187 ("Fields II").) But socially transitioning students without parental notification is not within the scope of that inferred delegation—parents do not hand children off so schools may secretly facilitate changing their gender identity.

In short, as courts have recognized, parents' rights do not stop at "the threshold to the schoolhouse door." (*C.N.*, 4 supra, 30 F.3d at 185 n.6; *Fields II*, supra, 447 F.3d at 1190–91 (deleting language from *Fields I* stating otherwise).) "It is not educators, but parents who have primary rights in the upbringing of children" (*Gruenke v. Seip* (3d Cir. 2000) 225 F.3d 290, 307), and parents cannot play this crucial role if their children's school is actively concealing its actions from them (*see Mirabelli, supra,* 2023 WL 5976992, at *9; *Ricard, supra,* 2022 WL 1471372, at *8; *T.F., supra,* 2023 WL 6544917, at *5).

To be clear, Defendants do not assert that the U.S. Constitution requires that a school must notify parents if it merely has a suspicion—or even has direct knowledge—that a child has a transgender identity. Nor do Defendants assert that the U.S. Constitution requires that a school must notify parents if they have a suspicion—or even direct knowledge—that their child is gay, lesbian, or bisexual. The Old Policy did not require (or even encourage) District employees to do either of these things. Rather, Defendants assert only that the U.S. Constitution requires schools to notify parents when schools take the *affirmative step* of socially transitioning their children at school. Doing so constitutes the provision of psychological treatment, makes an important decision in the life of the child, and constitutes unwarranted State interference in the family, thus triggering the parental right to notification.

Thus, this case is not about the "outing" of children, as the State falsely asserts. Rather, it is about whether parents have the right to notice when schools take the affirmative act of socially transitioning their children. Under the U.S. Constitution, they do. And for this reason, the Court may not reach a contrary conclusion under the California constitutional or statutory law. (*See Armstrong v. Exceptional Child Center, Inc*. (2015) 575 U.S. 320, 326 (explaining that under the Supremacy Clause of the Constitution, "a court may not hold a civil defendant liable under state law for conduct federal law requires" (citation omitted)).)

2. Policies that require schools to conduct secret social transitions do not satisfy strict scrutiny.

As the Supreme Court of the United States has repeatedly held, the parental right is "fundamental." (*Washington v. Glucksberg* (1997) 521 U.S. 702, 719; *see also Troxel,* 530 U.S. at

67 (plurality op.); id. at 80 (Thomas, J., concurring).) When the state interferes with rights that are deemed "fundamental," the state's action must comply with strict scrutiny. (*Reno v. Flores* (1993) 507 U.S. 292, 301–302; *Nunez, supra,* 114 F.3d at 952.) School policies that fail to require parental notification before schools socially transition children—like AR 5145.3, the policy that pre-dated the Old Policy ("Parental Secrecy Policies")—do not satisfy this standard. (See Enfield Decl., ¶ 11, Ex. H.)

To satisfy strict scrutiny, the state must demonstrate that "the infringement is narrowly tailored to serve a compelling government interest." (*Nunez, supra*, 114 F.3d at 952; *see also Pierce v. Jacobsen* (9th Cir. 2022) 44 F.4th 853, 862 (observing that the state bears the burden of proving its actions comport with strict scrutiny).) Parental Secrecy Policies like AR 5145.3 do not satisfy this test. As an initial matter, the State has not even argued that Parental Secrecy Policies comply with strict scrutiny, preferring instead to bury its head in the sand and pretend as if parental rights were not even at issue in this case. Because the State bears the burden of proof on this point, it has necessarily failed to satisfy its burden.

Moreover, the record establishes that Parental Secrecy Policies like AR 5145.3 do not satisfy strict scrutiny. The State's allegations in this case suggest that it believes Parental Secrecy Policies are necessary to protect transgender-identifying children from being abused by their parents. (*See, e.g.*, Compl. ¶ 33 (alleging that transgender-identifying children may be subject to "abuse if their parents . . . learn of their identity").) But while the prevention of child abuse is obviously an important governmental interest in the abstract, the State "has no interest . . . in protecting children from their parents unless it has some reasonable evidence that the parent is unfit and the child is in imminent danger." (*Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1142 n.14.) Because Parental Secrecy Policies like AR 5145.3 require schools to socially transition children in secret from their parents without evidence that the parent is unfit and the child is in imminent danger, these policies are not supported by a compelling government interest.

In addition, Parental Secrecy Policies like AR 5145.3 are not narrowly tailored. Again, these Policies do not require the District to make a finding that students who want to be socially transitioned in secret would be subject to child abuse if that information were disclosed to their

parents. (*See* Enfield Decl., ¶ 11, Ex. H.) This runs directly contrary to the constitutionally mandated presumptions of parental fitness and affection that undergird the parental right. As the U.S. Supreme Court put it in *Parham*, the "statist notion that governmental power should supersede parental authority in *all* cases because *some* parents abuse and neglect [their] children is repugnant to American tradition." (*Parham, supra*, 442 U.S. at 603 (emphasis in original); *see also Troxel, supra*, 530 U.S. at 68 (reversing state court visitation decision that failed to presume parental fitness) (plurality op.); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972) (invalidating statute that that presumed unmarried fathers were unfit parents).) Because Parental Secrecy Policies like AR 5145.3 presume parents will harm their children, they impermissibly reverse the constitutionally mandated presumptions of parental fitness and affection that underlie the parental right. (*Ricard, supra*, 2022 WL 1471372, at *8 (holding parental secrecy policy overbroad "because it prohibits the disclosure of preferred name and pronoun information to parents without any assessment of whether disclosure would actually pose a risk" of harm to the child).)

To be sure, the State may overcome the presumptions of parental fitness and affection in individual cases by making specific findings that specific parents are either unfit or will not act in their child's best interests. To that end, many District personnel are mandated reporters under the Child Abuse and Neglect Reporting Act (Cal. Penal Code § 11164, *et seq*.), and, therefore, must report suspected child abuse to the State for investigation. But here, there is no dispute over the fact that Intervenors are fit parents and will act in the best interests of their children. (See Declaration of Nichole Vacario, dated September 4, 2023, ¶¶ 3–4; Declaration of Richard Wales, Jr., dated September 4, 2023, ¶¶ 3¬–4; Declaration of Misty Startup, dated September 4, 2023, ¶¶ 3–4, 7–8; Declaration of Darice De Guzman, dated September 4, 2023, ¶¶ 4–5; Declaration of Kristi Marcos, dated September 4, 2023, ¶ 4–5; Declaration of Kristal Barret, dated September 4, 2023, ¶¶ 3–4, attached to Defendants' RJN as Exhibits A–F.) Accordingly, if Intervenors' children ask to be socially transitioned at school, the District would violate the U.S. Constitution if it failed to notify Intervenors before doing so. Because the U.S. Constitution requires the District to notify parents before socially transitioning their children, the Old Policy was not unlawful due to its parental notification provisions.

3. The Court may not prohibit what the Constitution requires.

The State's requested relief in this lawsuit—a permanent injunction against the Old Policy—would constitute an unconstitutional remedy insofar as the practical effect of such a remedy would be to require the District to return to AR 5145.3, which is unconstitutional. "Any injunctive relief must . . . comply with . . . [the] federal constitution[]." (*Padilla-Martel*, 78 Cal.App.5th 139, 155 (citing *People ex rel. Busch v. Projection Room Theater* (1976) 17 Cal.3d 42, 55).) The State cannot prevail on any of its claims without ultimately obtaining a remedy that prohibits the District from doing what the Constitution requires. Because such an injunction would violate the United States Constitution, the State's efforts to enjoin the Old Policy fail as a matter of law.

II. Plaintiff is not entitled to judgment on the pleadings or summary adjudication.

A plaintiff's motion for judgment on the pleadings is the equivalent of a demurrer to an answer and is tested by the same standards. (*Sebago, Inc. v. City of Alameda* (1989) 211 Cal.App.3d 1372, 1379; *Allstate Ins. Co. v. Kim W.* (1984) 160 Cal.App.3d 326, 330–331.) In ruling on a motion for judgment on the pleadings, a court must treat all of the defendant's allegations as true, and the motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense. (*Allstate Ins. Co.*, 160 Cal. App. 3d at 330–331.)

Here, Plaintiff fails to establish it is entitled to judgment on the pleadings because (1) the case is moot (as explained in Section I above) and (2) Defendants' Answers to Plaintiff's Unverified Complaint generally deny the allegations in Plaintiff's Complaint and assert numerous affirmative defenses—including that parental notification is required by the U.S. Constitution—thus raising factual issues that cannot be resolved as a matter of law on the pleadings. For example, the parties dispute: (i) whether BP 5020.1 placed any students in "danger of imminent, irreparable harm," (Compl. ¶ 11); (ii) whether BP 5020.1 was adopted to "create and harbor animosity, discrimination, and prejudice towards . . . transgender and gender nonconforming students" (*id.* ¶ 12); (iii) whether gender identity is invariably an immutable characteristic in all children (*id.* ¶ 23); (iv) the credibility and veracity of various scientific studies (and the statistics

contained therein) that Plaintiff relied on in its Complaint (*id*. ⁋⁋ 25–31, 34, 35); (v) the credibility of witnesses and veracity of their statements that Plaintiff relied on in its Complaint (*id*. ⁋⁋ 43–56, 66, 88–103); (vi) the context of statements made in support of BP 5020.1 and whether any such statements support "animus" (*id*. ⁋⁋ 57–64); and (vii) that BP 5020.1 "resulted in forced disclosures of students' gender identity . . . causing harm." (*Id.* ⁋ 108.)

And even if these factual disputes surrounding BP 5020.1 did not exist or were immaterial (they are material), Plaintiff still would not be entitled to judgment on the pleadings or summary adjudication because BP 5020.1 was not discriminatory, did not violate student privacy rights, and its parental notification provisions are required by the U.S. Constitution (for the same reasons discussed above in Section I.C.). Therefore, the Court should deny Plaintiff's Motion.

A. Plaintiff is not entitled to judgment on the pleadings or summary adjudication because the case is moot.

The Court need not reach the merits of Plaintiff's Motion. For the same reasons stated in Section I.B in support of Defendants' motion for summary judgment, Plaintiff is not entitled to judgment on the pleadings or a permanent injunction against the Old Policy because this case is moot. "In the absence of exceptional circumstances, in equitable actions, the right to judgment or decree is not limited to the facts as they existed at the commencement of the action, but the relief administered is such as the nature of the case and the facts as they exist at the close of the litigation demand. An injunction will not be granted where at the time of the hearing conditions have so changed that no unlawful act is threatened." (*Mallon v. Long Beach* (1958) 164 Cal.App.2d 178, 189.) Here, there is no threat that the District will implement or enforce a policy that no longer exists, and the District has provided assurances in sworn declarations stating it has no plans or intentions to re-adopt the Old Policy. (Enfield Decl., ¶¶ 7–10; Shaw Decl., ¶¶ 3–6; Bridge Decl., ¶¶ 3–6; Cruz Decl., ¶¶ 3–6; Monroe Decl., ¶¶ 3–6; Na Decl., ¶¶ 3–6.) Therefore, the Court should deny Plaintiff's Motion.

B. BP 5020.1 did not discriminate based on sex or gender identity; therefore, strict scrutiny does not apply.

The District's now-rescinded BP 5020.1 did not discriminate based on sex or gender

identity and did not apply disparately to two or more similarly situated groups. (RJN, Ex. G at 12–13 (*Mae* Decision).) Rather, as the Court held in *Mae M.* regarding a policy that is materially indistinguishable from the District's Old Policy, the Old Policy applied "equally to all students within the district." (Id. at 12.)

Indeed, the Old Policy applied equally to (1) transgender-identifying children who wished to socially transition; (2) formerly transgender-identifying children who had already registered at school as a gender different from their birth gender who wished to detransition; and (3) students who may not have had a transgender identity but who simply wished to use a new name or pronouns different from those associated with their birth sex. The Old Policy was facially neutral and was designed to further parents' constitutional right to "direct the upbringing and education of children under their control." (*Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 535.; Enfield Decl., ¶ 5, Ex. D.)

Therefore, because the Old Policy applied "equally to cisgender and transgender/gender nonconforming students," it was a "gender-neutral enactment . . . subject to the 'rational relationship' test, [under which] the burden is on the party attacking the enactment to establish the constitutional invalidity." (*Mae* Decision at 12–13.) And, as in *Mae M.*, the District's "purpose in involving parents in the decision-making process and restoring trust is furthered by a mandatory parental notification when a student [made] any of the request[s] in [subdivisions] 1.(a)–(c) of the [Old] Policy." (*Id.* at 13.)

The Old Policy did nothing more than distinguish between children who ask to go by a new name and pronoun and those who do not. Plaintiff does not dispute that a policy requiring schools to notify parents if their child is being bullied is not discriminatory, even though the policy treats bullied children differently than children who have not been bullied. Similarly, Plaintiff does not claim that a policy requiring schools to notify parents if their child is suicidal is discriminatory, even though the policy treats those children differently than children who are not suicidal. Equally absurd is Plaintiff's claim that it is "discriminatory" to notify parents when their child is expressly requesting to be treated in a way that is consistent with gender incongruity or gender dysphoria. Indeed, it would be discriminatory against transgender-identifying children to

hide important health-related information from their parents. The District discloses important health-related information to parents of cisgender-identifying children precisely because it is better for children that their parents be involved their upbringing. Hiding important information from the parents of transgender-identifying children only denies them the benefit of having their parents involved in this critical area of their lives.

Because informing parents about their children's health-related information is not discriminatory as a matter of law, it is not necessary for the Court to undertake a strict scrutiny analysis. But even if strict scrutiny applied, the District had a compelling interest in ensuring its students do not receive unnecessary and harmful psychological interventions at school that occur without parental involvement. Moreover, the fundamental right to parent also invokes a strict scrutiny analysis—involving parents in important, health-related decisions concerning their children is an overriding federal right that trumps a government's authority to keep secrets from parents based solely on whether a child gives consent. (*See supra*, Section I.C.)

The District has a compelling interest in involving parents in their child's education, including in matters concerning the child's health and well-being, as required by California law and the recognized federal constitutional right of parents to direct the upbringing of their child. (*See* Educ. Code § 51100 and 51101; *Pierce*, 268 U.S. at 535.)

It defies common sense to claim that children requesting to be socially transitioned must be treated the same as children not requesting to be socially transitioned—indeed, it would be impossible to do so. The former group raises important health-related issues that the latter group does not. The District's Old Policy did not address children who do not ask to be socially transitioned because that *inaction* does not invoke the same need to involve parents in health-related decisions being made about their children. Even under the policy that existed before BP 5020.1 was adopted, AR 5145.3, children who asked to socially transition were not treated the same as children who did not ask to socially transition. (*See* Enfield Decl., ¶ 11, Ex. H.) Naturally, children who socially transition at school receive special treatment in order to accommodate their request, which may include developing a gender support plan and changing various school records to reflect the student's desired change in gender identity. The District's Old Policy merely

involved parents in the system that existed long before the Old Policy was enacted, which already treated students who asked to socially transition differently from students who didn't.

Plaintiff's own allegations describe a population of students who are facing considerable challenges that result in higher rates of depression and suicide. If any other group of students were facing the same obstacles, the District would be obligated to notify parents. Additionally, as noted in BP 5020.1, in cases of suicidal intentions, the District will hold the student and keep them under supervision "until the parent/guardian and/or appropriate support agent or agency can be contacted and has the opportunity to intervene." This portion of the Policy is emblematic of the approach the District takes regarding student safety: involving parents in the overall intervention plan.

The involvement of parents in the overall health and safety of their children is a longstanding concept which, until recently, was non-controversial. The District's Old Policy respected parents' constitutional right to "direct the upbringing and education of children under their control." (*Pierce, supra*, 268 U.S. at 535.) However, in this case—and this case only—Plaintiff seeks to prohibit professional educators from communicating with parents, instead substituting educators for parents. To keep parents in the dark about the health and safety of their children is not only ill-advised, but also could directly harm students. The District has a compelling interest in respecting the constitutional rights of parents and protecting students from harm.

Further, the District's Old Policy was narrowly tailored to advance this nondiscriminatory interest. The Old Policy limited disclosure when necessary in alignment with the Education Code; "This section does not authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction." (Educ. Code § 51101(d).)

Plaintiff claims that the Old Policy failed narrow tailoring because it "lack[ed] any exception for students who may face emotional, physical or psychological abuse at home." (Plaintiff's Motion at 20:1–4.) This is false. California already has laws that protect children in the case of suspected child abuse or neglect. (Pen. Code § 11165.9.) Neither BP 5020.1 nor any of the

District's policies in any way undercut that law or the duty of teachers or school administrators, as mandatory reporters under Penal Code Section 11165.9, to notify law enforcement if they suspect a child is being abused. Plaintiff's suggestion to the contrary is a red herring.[7] Here, the Old Policy was narrowly tailored because it included within its scope the requirements of Penal Code Section 11165.9 requiring that cases of suspected abuse or neglect be reported to authorities.

Further, Plaintiff's suggestion that the policy that preceded BP 5020.1—AR 5145.3—was a viable alternative is disingenuous. AR 5145.3 demanded that schools keep secrets from parents—potentially even lie to them—regarding their child's gender identity *unless* the child gave permission to tell the parents. (Enfield Decl., ¶ 11, Ex. H (requiring the District to 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.") That policy has been the subject of many lawsuits in California and would expose the District to liability from teachers who do not want to lie and parents who do not want to be lied to. (*See generally, e.g., Mirabelli*, 2023 WL 5976992; *Regino v. Staley* (E.D. Cal. Mar. 9, 2023) No. 2:23-cv-00032-JAM-DMC, 2023 WL 2432920, appeal docketed, No. 23-16031 (9th Cir. July 25, 2023).)

BP 5020.1 served the District's compelling interest of ensuring parents are involved in important decisions regarding their children's psychological care at school and was narrowly tailored to exclude situations where teachers or school administrators suspected abuse or neglect. AR 5145.3, which predicated parental notification on student consent, was not a viable alternative that ensured parents' constitutional right to parent was protected. Therefore, the Court should deny Plaintiff's request to issue a permanent injunction as to the now-defunct BP 5020.1.

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[7] Plaintiff conflates actual suspected abuse or neglect with a child's subjective view of how their parents may react to the news of the child's request to socially transition at school. Yet, in no other context do we prioritize the concerns of the child over the right of the parent to know information about that child. If a child is failing a class and asks that the school not tell their parents because they are afraid of how their parents will react, the school will still inform the parents over the child's objection. Similarly, if child is the victim of a fight but is afraid of how their parent will react, the school still informs the parent.

C. BP 5020.1 does not violate student privacy rights.

In a footnote, Plaintiff states that it "maintain[s] and preserve[s] [its] argument that this autonomy privacy right forbids the same sweeping forced disclosure for minor students." (Plaintiff's Motion at 17:26, n.10[8] .) This passing reference, without any argument, is insufficient to preserve the issue, let alone establish that Plaintiff is entitled to judgment on the pleadings or summary adjudication. (*AmeriGas Propane, L.P. v. Landstar Ranger, Inc*. (2010) 184 Cal.App.4th 981, 1001 n.4 ("Furthermore, when counsel asserts a point but fails to support it with reasoned argument and citations to authority, the court may deem it to be forfeited, and pass it without consideration.").)

Moreover, Plaintiff is mistaken. No court has held that minor children have a privacy right to keep secret from their parents the fact that they are socially transitioning at school. Although minor children undoubtedly have some constitutionally protected privacy rights, such rights are not as robust in the school setting as they are outside the school setting (*In re William G*. (1985) 40 Cal.3d 551, 558, 558 n.6), and, more generally, minor children's privacy rights are not as broad as the privacy rights that are enjoyed by adults. (*Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 335 n.19.) This is particularly true here, where the right at issue is an alleged right for minor children—some of whom could be as young as five years old—to keep secrets from their parents, not unrelated third parties. Considering parents have the right to know what is going on in their minor children's lives, (*Hodgson v. Minnesota*, (1990) 497 U.S. 417, 483 (noting that "[u]nder the common law, parents had the right . . . to be notified of their children's actions") (Kennedy, J. concurring)), the Court should reject the State's half-hearted request to interpose the California constitution between parents and their minor children.

Moreover, a necessary element of a privacy right is a reasonable expectation of privacy (*Mirabelli*, 2023 WL 5976992, at *10), and BP 5020.1 applied only to students who requested to

[8] The District does not dispute Plaintiff's argument that students 18-years-old and older have privacy rights. (*See* Plaintiff's Motion at 17:3–14.) As noted, the District has never had the practice of notifying parents about information regarding adult students. (Declaration of Edward Nugent in Support of Plaintiff's Motion, ¶ 35, Ex. 31.)

be openly identified or treated as a new gender. Children have no reasonable expectation of privacy in something that occurs throughout the school environment. As the *Mirabelli* court held, "[a] student who announces the desire to be publicly known in school by a new name, gender, or pronoun and is referred to by teachers and students and others by said new name, gender, or pronoun, can hardly be said to have a reasonable expectation of privacy or expect non-disclosure." (*Id*.) In addition, in *Leibert v. Transworld Systems, Inc*. (1995) 32 Cal.App.4th 1693, 1702, the Court of Appeals affirmed the dismissal of an invasion of privacy cause of action because the adult plaintiff's sexual orientation was not confidential, and the court concluded that, "as a matter of law," the plaintiff "cannot state a claim for infringement of a legally protected informational privacy interest." The same is true here.

Further, in *Wyatt v. Fletcher* (5th Cir. 2013) 718 F.3d 496, 499, the United States Court of Appeals for the Fifth Circuit confronted the ability of schools communicating with parents head on:

> We hold that there is no clearly established law holding that a student in a public secondary school has a privacy right under the Fourteenth Amendment that precludes school officials from discussing with a parent the student's private matters, including matters relating to sexual activity of the student.

The information that was required to be shared with parents under BP 5020.1—a child's request to be socially transitioned at school—is consistent with this idea and therefore does not violate a minor student's privacy right. Indeed, California law requires that school officials disclose information to parents. (*See, e.g.*, Educ. Code §§ 51101, 48980 (mandating annual notice to parents regarding multiple rights and responsibilities of parents); 48911 (communicating to parent after suspension of student).) And the Legislature has specifically carved out circumstances where student confidentiality is required. (*See, e.g*., Educ. Code § 49602 (communications of a personal nature between students age 12 and older and school counselors are confidential); 46010.1 (requiring notification to parents that students in grades 7 to 12 may be excused from school to obtain confidential medical services without parental consent).) *It has not done so here*.

D. BP 5020.1 otherwise complies with California law.

Under California's permissive education code, school districts have "flexibility to create

their own unique solutions" to address their own "diverse needs unique to their individual communities and programs." (Educ. Code § 35160.1.; CAL. CONST. art. XI, § 7 (granting local governments—including school districts—legislative power).) In fact, according to the California Department of Education, "more local responsibility is legally granted to school districts and county education officials than to other government entities and officials." (Cal. Dep't. Ed., *Local Control – Districts and Counties* (Nov. 16, 2022), https://www.cde.ca.gov/re/lr/cl/localcontrol.asp; see also Educ. Code § 35160.)

Further, the Supreme Court "has long recognized that school boards have broad discretion in the management of school affairs" under state law. (*Dawson v. E. Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1019 (citing *Bd. of Educ. v. Pico* (1982) 457 U.S. 853, 866).) "Therefore, local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values" and "it is generally permissible and appropriate for local boards to make educational decisions based upon their personal social, political and moral views." (*Id.* (internal quotation marks and citations omitted).)

Here, the District properly adopted BP 5020.1 because it values the role parents play in the educational process and believes that giving parents access to important information about their own children is in students' best interests. (Enfield Decl., ¶ 5, Ex. D.) And the District's goal of ensuring transparency between schools and parents is consistent with U.S. Supreme Court decisions "historically and repeatedly declar[ing] that parents have a right, grounded in the Constitution, to direct the education, health, and upbringing, and to maintain the well-being of, their children." (*Mirabelli*, 2023 WL 5976992, at *8 (collecting cases).)

The purpose of BP 5020.1 was to encourage schools to collaborate with and inform parents to ensure the best possible outcomes for students. (Enfield Decl., ¶ 5, Ex. D.) California law expresses the same objectives. "Parents and guardians of pupils enrolled in public schools *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* . . . ." (Educ. Code § 51101 (emphasis added).) Schools are required to work *with* parents, not behind their backs.

"Involving parents and guardians of pupils in the education process is fundamental to a healthy system of public education"; "[r]esearch has shown conclusively that *early and sustained family involvement at home and at school* in the education of children results both in improved pupil achievement and in schools that are successful at educating all children"; "[a]ll participants in the education process benefit when schools genuinely *welcome, encourage, and guide families into establishing equal partnerships with schools to support pupil learning*"; and "[f]amily and school collaborative *efforts are most effective when they involve parents and guardians* in a variety of roles at all grade levels, from [PK-12]." (Educ. Code § 51100 (emphasis added).) Yet Plaintiff seeks through this litigation to force schools to violate the Education Code's requirements that schools work *with*—not *against*—parents. Plaintiff's position defies common sense, applicable law, and firmly established constitutional law principles.

Thus, if the Court were to address the merits of Plaintiff's Motion, the motion must fail.

CONCLUSION

Defendants respectfully request that the Court grant their Motion for Summary Judgement, or, in the Alternative, Summary Adjudication, and deny Plaintiff's Motion for Judgment on the Pleadings or, in the Alternative, Summary Adjudication.

Dated: June 20, 2024

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