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[Fee exempt Pursuant to Govt. Code § 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MAE M., ET AL.,

Plaintiffs,

v.

JOSEPH KOMROSKY ET AL.,

Defendants.

Case No. CVSW2306224

BRIEF OF AMICUS CURIAE CHINO VALLEY UNIFIED SCHOOL DISTRICT IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Judge: Hon. Irma Poole Asberry
Date: January 24, 2024
Time: 8:30 a.m.
Dept.: 05

Complaint Filed: August 2, 2023

INTRODUCTION

If a student is injured, bullied, or exhibits suicidal behavior at school, but does not want their parents to know, will a school hide this information from parents? Of course not. If a student breaks their arm, hits their head, or develops a fever, the school will immediately tell the student's parents. If a student is bullied or involved in a verbal or physical fight, the school will tell the parents. If a student expresses a desire to hurt or kill themself, the school will tell the parents. So, too, must a school tell parents if a student says that they are experiencing gender incongruity or possibly gender dysphoria.

Plaintiffs argue this Court should prohibit schools from informing parents that their children may be at increased risk of psychological, emotional, and physical harassment and abuse, and extremely high rates of suicide and suicide attempts. The Liberty Justice Center supports the Board of Trustees of the Temecula Valley Unified School District (the "Board") and respectfully disagrees.

Plaintiffs seek to preliminarily enjoin the Board from its continued compliance with specific portions of Board Policy 5020.01 ("Policy 5020.01"), a parent notification policy the Board of Trustees adopted on August 22, 2023. Plaintiffs mischaracterize Policy 5020.01, referring to it as, among other pejoratives, a "coercive outing policy." But Plaintiffs fail to acknowledge "who" is being "outed" and to "whom": this policy ensures that parents and guardians receive critical information from professional educators about public actions taken by *the parents' own children*. Instead, Plaintiffs plead their case as though Policy 5020.01 mandates that schools in the District "out" students to the general public, complete strangers, and criminally violent individuals. Plaintiffs portray sharing information with parents, aiming to meaningfully incorporate parents into the education environment, as *discrimination*. But state and federal laws (1) already require schools to interact with parents on a myriad of complicated issues because of the critical role parents play in assisting professional educators with the education of their children, and (2) do not prohibit local policies that require schools to share gender-related information with parents.

As a factual matter, the students affected by the parent notification policy are living their lives in an open and public fashion. They are using chosen names and pronouns consistent with their

professed gender identity; they are accessing school facilities consistent with their gender identity; and they are playing sports and participating in other extra-curricular activities consistent with their gender identity. When the students are referred to by names and pronouns within the classroom, they are doing so in front of others and in a space where parents have the statutory right to be present. When they play sports consistent with their gender identity, they are doing so in front of members of the general public. Thus, Plaintiffs argue that the *only* individuals from whom this information must be kept secret are *parents*.

Plaintiffs fail to understand that the interaction required by Policy 5020.01—between schools and the parents of affected students—serves an important purpose. This interaction allows the professionals to determine, based on their training and experience, whether a parent is aware of their child's social transition and in what ways a parent can best support their child. Experts recognize this specific role of the District, the school, and the professional educators closest to students as a meaningful part of the child's overall experience. Indeed, experts agree that professional educators are in the best position to identify potential issues between parents and their transitioning children, and to coach and counsel parents who may be having difficulty processing what their child is going through. (*See* McLoughlin, *Toxic Privacy: How the Right to Privacy Within the Transgender Student Parental Notification Debate Threatens the Safety of Students and Compromises the Rights of Parents* (2023) 15 Drexel L. Rev. 327, 361–62.)

Plaintiffs ignore the positive impact education professionals have on the counseling and guidance of both students *and* parents. Educators need—and students deserve—parents to be involved in the process of transition.

ARGUMENT

Under California's permissive education code, school districts have "flexibility to create their own unique solutions" to their 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." (*Dawson v. E. Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1019 (citing *Bd. of Educ. v. Pico* (1982) 457U.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 Board properly adopted Policy 5020.01 because it values the role parents play in the educational process and understands that giving parents access to important information about their own children is in students' best interests. And the Board's goal of ensuring transparency between schools and parents is consistent with United States 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 v. Olson* (S.D. Cal. Sept. 14, 2023) No. 3:23-cv-00768-BEN-WVG, 2023 U.S. Dist. LEXIS 163880, at *26–31 (collecting cases).)

Because Policy 5020.01 is consistent with California and federal laws, and because Plaintiffs cannot meet their high burden to show they are likely to succeed on the merits and will suffer irreparable harm absent a preliminary injunction, the Court should find in favor of the Board and deny Plaintiffs' request for a preliminary injunction.

I. Policy 5020.01 is consistent with California law, which requires schools to communicate with parents about their children's education and experiences at school.

Policy 5020.01 must be read in its entirety to fully appreciate how many different topics schools must bring to the attention of parents. Instead, Plaintiffs myopically focus on only a narrow aspect of the policy.

A. The purpose of Policy 5020.01 is to allow schools and parents to collaborate to ensure the best possible outcomes for students.

Policy 5020.01's stated intent—which Plaintiffs ignore—is entirely consistent with California and federal law. Specifically, the express intent is to "[b]ring 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." (FAC, Ex. 2.) The express intent also includes providing "procedures designed to maintain and, in some cases, restore, trust between school districts and parent(s)/guardian(s) of pupils," and to "*[p]romote communication and positive relationships with parent(s)/guardian(s)* of pupils that promote the best outcomes for pupils' academic and social-emotional success." (*Id.* (emphasis added).) The policy expressly promotes collaboration between school staff and parents "in evaluating the needs of students having academic, attendance, social, emotional, or behavioral difficulties and in identifying strategies and programs that may assist such students in maximizing their potential." (*Id.*)

The express intent of Policy 5020.01 does not fit Plaintiffs' narrative, so it goes unmentioned in the Application, even though 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).) This provision of law is based on specific legislative findings:

- "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).)

Section 51101 lists 16 different parental rights and provides 7 examples of how parents can participate. These rights can only be denied in limited situations, which supports the Board's decision to take the same approach in Policy 5020.01: "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).) Yet Plaintiffs seek through this litigation to force schools to violate the Education Code's requirements that schools work *with* parents, not behind their backs. Plaintiffs' position defies common sense, applicable law, and firmly established constitutional law principles.

Indeed, only a few months ago a federal district court in California addressing substantially similar issues—i.e., whether schools may conceal information about a student's gender identity from their parents—found *in favor of parental notification*. (*Mirabelli*, 2023 U.S. Dist. LEXIS 163880.) While *Mirabelli* differs slightly from this case because it involves a policy *prohibiting teachers from notifying parents* about a student's gender identity absent explicit permission from the student (essentially the inverse of the policy at issue here), the decision is still instructive.

In *Mirabelli*, teachers challenged a district policy mandating that teachers keep secrets from parents about a student's gender identity preferences unless the student consents, alleging the policy violates their First Amendment rights. (*Id.* at *3.) Relying heavily on the expert medical opinion of Dr. Erica Anderson and case law affirming parents' constitutional rights to direct the upbringing of their children, the court granted the teachers' motion for a preliminary injunction and prohibited the school from enforcing its secret-keeping policy against the teachers. (*Id.* at *19–31.)

This case, like *Mirabelli*, centers on a parent's right to know critical information about the health and well-being of their children, as well as a school's responsibility to provide parents that information and work with parents to ensure the safety of students.

B. Schools must already notify parents about a wide range of issues involving their children, which Plaintiffs do not dispute.

Plaintiffs argue that children have an unfettered right to prevent schools from notifying their parents of a significant part of their education. Yet Plaintiffs do not object to the provision in the policy requiring parental notification of a student's suicidal intentions based on the student's verbalizations or act of self-harm (Section 3), or of a verbal or physical altercation involving their child, including bullying against their child (Section 4), which would include bullying based upon protected classifications related to gender and gender identity. Professional educators regularly discuss with parents a myriad of highly confidential and sensitive subjects: rape, pregnancy, discipline, grades, fights, and self-harm among them. And with respect to a student's request to change their school records, parents already have a right to inspect those records pursuant to California and federal laws. Notifying parents of changes to records they already have a right to view at any time aligns with the letter and spirit of the law.

It is entirely logical and consistent with the express intent of Policy 5020.01, and of Education Code Sections 51100 and 51101, that parents be notified of these developments. Plaintiffs do not argue there should be no notification if, for example, the *reason* their child is victimized by another student is because their child made an open, known request described in Section 1(a) of the policy, or was openly participating in an activity pursuant to Section 1(b) of the policy. Plaintiffs fail to explain how schools should tell parents why this information was withheld from them, in violation of the law, until something significantly negative has happened to their child.

II. Policy 5020.01 does not discriminate based on gender identity.

Plaintiffs allege that they are likely to prevail on the merits here because they claim Policy 5020.01 is discriminatory and therefore violates Article I, Section 7 of the California Constitution. Yet Plaintiffs provide insufficient evidence to support this claim.

Policy 5020.1 does not discriminate against students based on their gender identity—the policy applies equally to (1) children who wish to socially transition from their birth gender to a different gender and (2) transgender children who have already registered at school as a gender different from their birth gender who wish to detransition back to their gender assigned at birth. Rather, the

policy affirms the constitutional rights that parents already have to "direct the upbringing and education of children under their control." (*Pierce v. Soc'y of Sisters* (1925) 268U.S.510, 535.) Plaintiffs do not claim that the policy discriminates because it requires schools to notify parents if their child is being bullied, even though the policy treats bullied children differently than children who haven't been bullied. Plaintiffs do not cry "discrimination" because the policy requires a school tell a parent if their child is suicidal, even though it treats those children differently than children who are not suicidal. Equally absurd is Plaintiffs' 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, this policy would only discriminate against transgender children if it allowed schools to *hide* this important health-related information from parents, as children facing other health or psychological issues would benefit from parent collaboration, but transgender children would not. Here, however, the Board rightly determined that whether to relay critical information to parents about the health and safety of their child should not depend on a child's gender identity.

Because informing parents about their children's medical 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 a strict scrutiny standard did apply, the fundamental right to parent also invokes a strict scrutiny analysis. Involving parents in important, health-related decisions concerning their children is an overriding right that trumps a government's right to keep secrets from parents based solely on whether a child gives consent.

For discrimination claims, strict scrutiny only applies when a government "has adopted a classification that affects two or more *similarly situated groups* in an unequal manner." (*Woods v. Horton* (2008) 167 Cal.App.4th 658, 670.) "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 . . . ." (*Id.*) For example, laws that invoke the birth process cannot be said to discriminate based on gender because men and women are not similarly situated as to the birth process.

Here, children requesting to be socially transitioned are not similarly situated to children not requesting to be socially transitioned. The former group raises important issues about their health that the latter group does not. The policy does not address children who don't ask to be socially transitioned, regardless of their gender identity, because that *inaction* doesn't invoke the same need to involve parents in medical decisions being made about their children.

Plaintiffs' 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 school would be obligated to notify parents. Additionally, as noted in Policy 5020.01, in cases of suicidal intentions, the school 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 school takes with regard to 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 that, until recently, was completely non-controversial. However, in this case—and this case only—Plaintiffs seek to prohibit professional educators from communicating with parents, instead substituting parents' contributions to the successful transition of children with those of Plaintiffs. To keep parents in the dark about the health and safety of their children is not only ill-advised, it could directly harm students.

CONCLUSION

For the reasons above, the Court should deny Plaintiffs' Motion for a Preliminary Injunction.

Respectfully submitted,

Dated: January 19, 2024

LIBERTY JUSTICE CENTER

By: Emily Rae

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