

No. G064332

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

MAE M. ET AL.,
Plaintiffs-Appellants,

v.

STEVEN SCHWARTZ ET AL.,
Defendants-Respondents.

Riverside County Superior Court, Case No. CVSW2306224
The Honorable Eric Keen (Dept. 6)

**DECLARATION OF JONATHAN BENNER IN SUPPORT
OF AMICUS CURIAE THE ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA'S BRIEF IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

ROB BONTA
Attorney General of California
MICHAEL L. NEWMAN
Senior Assistant Attorney General
LAURA L. FAER (SBN 233846)
JAMES F. ZAHRADKA II (SBN
196822)
Supervising Deputy Attorneys
General

JONATHAN BENNER (SBN 318956)
ALEXANDER SIMPSON (SBN 235533)
*EDWARD NUGENT (SBN 330479)
Deputy Attorneys General
State Bar No. 330479
455 Golden Gate Avenue,
Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 229-0113
Fax: (510) 622-2270
E-mail: Edward.Nugent@doj.ca.gov
**Counsel of Record*

*ATTORNEYS FOR AMICUS CURIAE
THE ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA*

I, Jonathan Benner, declare as follows:

1. I am over the age of 18 years and a U.S. citizen. I know the following facts based on my own personal knowledge, and, if called as a witness, I could and would testify competently to the truth of the matters set forth below.

2. I am an attorney licensed to practice in the State of California. I am a Deputy Attorney General in the California Department of Justice, located at 600 West Broadway #1800, San Diego, CA 92101, and I am counsel of record for the State of California, amicus curiae in the above-captioned proceeding.

3. On July 16, 2024, the California Department of Education (“CDE”) issued an Investigation Report, in which the CDE determined that paragraphs 1(a) and (b) of the Temecula Valley Unified School District’s (“TVUSD”) Board Policy 5020.01 facially violate the non-discrimination provisions of section 220 of the Education Code. A true and accurate copy of the CDE’s July 16, 2024 Investigation Report is attached as Exhibit A.

4. On September 9, 2024, the Superior Court of California, County of San Bernardino permanently enjoined the Chino Valley Unified School District’s (“CVUSD”) materially indistinguishable forced disclosure policy in *People of the State of California v. Chino Valley Unified School District* (Super. Ct. San Bernardino Cty., 2023, No. CIVSB2317301). A true and accurate copy of excerpts from the Superior Court’s order is attached as Exhibit B.

5. Prior to CVUSD’s adoption of its forced disclosure policy, CVUSD had in place Administrative Regulation 5145.3,

entitled “Nondiscrimination/Harassment of Students,” which provided a number of protections for students, including prioritizing the consent and best interest of students before disclosure of any student’s transgender or gender-nonconforming status and providing for such disclosure only when there was strong evidence of the need to protect a student’s physical health or mental well-being. On July 20, 2023, CVUSD’s Board of Education voted to adopt its forced disclosure policy and amend Administrative Regulation 5145.3, which removed those protections. A true and accurate copy of CVUSD’s former Administrative Regulation 5145.3, reflecting in strikethrough text the amendments made by the CVUSD Board of Education, is attached as Exhibit C.

6. On November 27, 2023, a TVUSD official informed the California Department of Justice that, at the Board of Trustees’ direction, TVUSD restricted all grade 1-7 students from accessing any of the hundreds of biographies previously included as supplemental social studies materials. A true and accurate copy of this email correspondence is attached as Exhibit D.

7. On December 7, 2023, the TVUSD official confirmed, in response to follow-up questions from the California Department of Justice, that the Board of Trustees directed that the biographies be made unavailable to students unless directly assigned by their teachers. The official also confirmed that the Board of Trustees directed this restriction because one of the biographies was of San Francisco Supervisor Harvey Milk, California’s first openly gay elected official and an LGBTQ+

rights leader. A true and accurate copy of this email correspondence is attached as Exhibit E.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on October 1, 2024 in San Diego, California.

Jonathan Benner

Jonathan Benner

EXHIBIT A



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

**CALIFORNIA DEPARTMENT OF EDUCATION
Direct Investigations Office
Investigation Report
Case Matter No. 2024-0065**

July 16, 2024

Local Educational Agency: Temecula Valley Unified School District (TVUSD)
Date Complaint Received by the CDE: April 19, 2024
Subject of Complaint: Discrimination on the basis of gender identity and expression
Report Mailed: July 16, 2024

INVESTIGATION PROCEDURES AND DETERMINATION

The California Department of Education (CDE) received a complaint requesting the CDE directly investigate an official action taken by the Temecula Valley Unified School District (TVUSD) School Board on August 22, 2023, that was alleged to be discriminatory as to a certain subset of students defined by characteristics protected under California Law. In response, the CDE engaged in a review of publicly available information and reached a determination that the complaint has merit, pursuant to *California Code of Regulations*, Title (5 CCR), Section 4664, subdivision (a)(5), consistent with the details found in the conclusion section of this Investigation Report.

SUMMARY OF COMPLAINT AND ALLEGATION

On April 19, 2024, the CDE received written communication from the complainants. In that communication, the Complainants discussed concerns relative to an official action taken by the TVUSD School Board on August 22, 2023. Pertinent to the CDE, the complainant expressly stated:

August 22, 2023, marked a pivotal moment in the governance of Temecula Valley Unified School District, as the Board enacted Policy BP 5020.01, mandating Parent Notification. Regrettably, this decision poses a significant threat to the safety and well-being of LGBTQ+ students within our community.

In that same communication the complainants specifically requested of the CDE:

We urgently request the California Department of Education conduct a thorough investigation into this discriminatory policy.

JURISDICTION

The CDE's jurisdiction to address the Complainant's request to determine whether the TVUSD School Board's action on August 22, 2023, relative to "LGBTQ+ students" is discriminatory is set forth in subparagraph (F) of paragraph (1), of subdivision (a) of *Education Code (EC)* section 33315 and paragraph (5) of subsection (a) of 5 *CCR*, Section 4650.¹

The CDE elected to directly intervene, determining that the policy in question (referred to as "Board Policy 5020.01" or "BP 5020.01") raised serious questions as to whether its implementation would result in immediate denial of students' right to be free from discrimination. Additionally, the CDE determined that referring the complaint to the District would be futile inasmuch the District's Board itself had approved BP 5020.01 and, therefore, District administrators are not in a position to make a final determination as to the legality of BP 5020.01.

PROCEDURES OF THE INVESTIGATION

The procedures undertaken in this investigation are governed by the Uniform Complaint Procedures (UCP) statute and regulations. In this case, the investigation included a review of publicly available information from the TVUSD's Board meeting on August 22, 2023, including review of the minutes, and the language of approved Board Policy 5020.01, Regulation 5020 (BP 5020.01). On June 13, 2024, the CDE invited TVUSD to submit any additional information that it would like to provide to the CDE. TVUSD did so on July 11, 2024. No witnesses were interviewed as the adoption of BP 5020.01 was a formal action contained in the minutes of the Board meeting and publicly displayed on the district's website.

FINDINGS OF FACT

Pertinent to the allegation set forth above in the Summary of the Complaint and Allegation, the CDE makes the following findings of fact:

1. On August 22, 2023, in a regular meeting of the TVUSD Board, the Board added BP 5020.01, Regulation 5020 (titled: "Parent Notification") to Regulation 5020. (This finding is based on the official TVUSD website: [View Policy 5020.01: ^Parental Notification \(eboardsolutions.com\)](#))

¹ The relevant text of the applicable statutes and regulations are included in **Appendix A** attached to this report.

2. The content of BP 5020.01 reads, in pertinent part, as follows:

This parental notification policy requires the following:

1. *Principal/designee, certificated staff, and 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:*
 - 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 bathrooms or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.*

(This finding is based on the official TVUSD website: [View Policy 5020.01: ^Parental Notification \(eboardsolutions.com\)](#))

3. The published August 22, 2023, TVUSD Board minutes pertinent to BP 5020.01 are as follows:

O. ACTION ITEMS

1. *PROPOSED BOARD POLICY - PARENTAL NOTIFICATION - 5020.01*

Motion to waive the second reading and to adopt the proposed Board policy 5020.01 - Parental Notification.

The Board discussed this action item.

Amended motion: Motion to use the supporting document either Chino, or Murrieta. They are going to strip the language from it and add Temecula, and that is it. And part of that motion is to waive the second reading.

Motion made by: Joseph Komrosky

Motion seconded by: Jennifer Wiersma

Voting:

Allison Barclay - No

Steven Schwartz - No

Danny Gonzalez - Yes

Joseph Komrosky - Yes

Jennifer Wiersma - Yes

Result: Passed

(This finding is based on the official TVUSD website: [View Regular Meeting of the Board of Trustees of the Temecula Valley Unified School District: eBoardsolutions](#))

APPLICABLE AUTHORITY

California has stated an intent to allow all persons in public schools to be free of discrimination based on characteristics enumerated in California law. Among other such protected characteristics, California expressly prohibits discrimination by public education agencies on the basis of gender, gender identity, gender expression and sexual orientation (*EC* Sections 200 and 220)

APPLICATION OF LAW TO FINDINGS OF FACT

As the *EC*, Section 220 makes clear, the prohibition against discrimination based on gender, gender identity, gender expression, and sexual orientation applies to *all persons* in public schools. Thus, the right to be free from discrimination applies to students. BP 5020.01 on its face violates the prohibition against discrimination set forth in *EC* Section 220 for the reasons set forth below:

Summary of Analysis

The basis for determining that BP 5020.01 violates the non-discrimination provisions of *EC* Section 220 is that BP 5020.01, in its terms, effectively singles out, applies to and *only* affects a particular group of students defined by legally protected characteristics. The basis for finding noncompliance is discussed in detail below:

Facially Discriminatory Policy

BP 5020.01, parental notification policy paragraphs 1(a) and (b) on their face fail to comply with the nondiscrimination requirements in *EC* Section 220. Specifically, BP 5020.01, parental notification policy paragraphs 1(a) and (b) require specified school personnel to single out and report communications and/or actions made exclusively by students who express a gender other than that identified at birth by:

(a) Requesting to be identified as a gender other than child's biological sex or gender; including a request to use a name or pronouns that do not align with the child's biological sex or gender;

(b) Accessing sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender.¹

The inherent nature of the communications and/or actions school personnel are required to report makes such notification applicable *exclusively* to this class of students. That is to say, the nature of the communications and/or actions subject to BP 5020.01, parental notification policy, paragraphs 1(a) and (b) limits the rule's applicability to the students who identify with or express a gender other than that identified at birth. Indeed, the very content of the student communication and/or action subject to mandatory notification constitutes a self-identification of the student-speaker/actor as a member of a class of persons who fall within the statutory protections of *EC* Section 220 relative to nondiscrimination. BP 5020.01, parental notification policy, explicitly requires school personnel to contact parents in these specific circumstance make a request as set forth in paragraph (1) (a) or access or facilities as set forth in paragraph (1) (b).

Hence, the very content of the communication or action triggering the policy identifies the student as a person who identifies with or expresses a gender other than that identified at birth—a classification of personal characteristics protected by law. By its terms, the mandates of BP 5020.01, parental notification policy, paragraphs (1)(a) and (b) harms students by providing sensitive information that is unique to students who would otherwise fall within categories the state has deemed should not be singled out under *EC* Sections 200 and 220.

To further clarify, the policy mandates that sensitive often private information, which is unique to a class of students with protected characteristics, must be disclosed by school administrators even if the student does not consent to the parent disclosure. This policy circumvents a student's determination of when and where to share private personal information regarding gender identification and expression and it is required to be divulged without regard for the nuances of the relationship between the student and parent.

These harms and risks of harm to the students, their constitutional rights of privacy and the protections afforded by California's anti-discrimination policies are significant.

¹ *EC* Section 221.5(f) states: "A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed in the pupil's records."

Also bearing on this analysis is the fact that the parental notification mandates of BP 5020.01, paragraphs (1)(a) and (b) on their face do not further an educational or school administrative purpose. Nor does the policy imply any such purpose. It simply intervenes in personal student-parent relationship issues for purposes entirely extraneous to the educational needs of the student and the administrative needs of the school. Finally, given the mandatory notification requirements of BP 5020.01, paragraphs (1)(a) and (b), students who may otherwise exercise their right to make any of the requests or take any of the actions addressed in BP 5020.01, paragraphs (1)(a) and (b) are more likely to forego their rights in order to avoid personal and family difficulty.

CONCLUSION

For the reasons discussed above, BP 5020.01, paragraphs (1)(a) and (b) on their face fails to comply with *EC* Section 220's prohibitions against discrimination. The CDE finds the District's policy—BP 5020.01, paragraphs (1)(a) and (b)—*on their face* single out and are directed exclusively toward one group of students *based on* that group's legally protected characteristics of identifying with or expressing a gender other than that identified at birth. And the application of that policy adversely impacts those students. Finally, BP 5020.01, paragraphs (1)(a) and (b) do not expressly or implicitly provide any educational or school administrative purpose justifying either form of discrimination.

CORRECTIVE ACTIONS

The corrective actions addressing the findings of noncompliance are set forth in accordance with Title 5 *CCR* Sections 4664(a)(6) and (7) and Section 4670.

Corrective Actions Applicable to TVUSD:

1. Within 10 calendar days of receipt of this Investigation Report:

The TVUSD Superintendent must provide written notification to all District employees, parents/guardians and students as follows, verbatim, including bold type where indicated:

The California Department of Education has determined that TVUSD Board Policy 5020.01, Parental Notification, paragraphs (1)(a) and (b), violates California Education Code Section 220's ban on discrimination against students based on gender identity and expression.

The policy states:

1. Principal/designee, certificated staff, and 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:

- 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 bathrooms or changing facilities that do not align with the student's biological sex or gender listed on the birth certificate or other official records.

I am writing to inform you that, based on the California Department of Education's determination, **TVUSD will not implement paragraphs (1)(a) and (b) of Board Policy 5020.01.**

2. All of the following apply to the required written notification above:
 - a. It must be signed by the District Superintendent.
 - b. It must contain the notification above, verbatim, including bold type where indicated.
 - c. It must appear in a "stand-alone" communication; that is, it is not to be contained in a communication that addresses other topics.
 - d. It must be transmitted via a method(s) that has proven to reach every District employee, parent/guardian and student.
3. Within 15 calendar days of receipt of this Investigation Report:

TVUSD must provide CDE's Direct Investigations (DI) Office with evidence of compliance with these corrective actions including:

- a. Superintendent's statement that the required written notification has been provided, including date and method of transmittal;
- b. Copy of the written notification provided to District employees; and
- c. Copy of the written notification provided to parents/guardians and students.

RIGHT TO RECONSIDERATION

Either party may request a reconsideration of this Investigation Report by making a request within **30 days of the date of this letter** to:

Direct Investigations Office
CDEDI@cde.ca.gov

Pursuant to Title 5, *CCR* section 4665, the Request for Reconsideration must specify and explain why:

- (1) Relative to the allegation(s), the Department Investigation Report lacks material findings of fact necessary to reach a conclusion of law on the subject of the complaint, and/or
- (2) The material findings of fact in the Department Investigation Report are not supported by substantial evidence, and/or
- (3) The legal conclusion in the Department Investigation Report is inconsistent with the law, and/or
- (4) In a case in which the CDE found noncompliance, the corrective actions fail to provide a proper remedy.

(Title 5, *CCR* Section 4665 (a).)

APPENDIX A

APPLICABLE LAW

California Education Code (EC) Section 200 State Policy; purpose

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

EC Section 220 Discrimination

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

EC Section 33315 Uniform Compliance Complaints

(a) The Superintendent shall establish and implement a system of complaint processing, known as the Uniform Complaint Procedures, for educational programs specified in paragraph (1). The department shall review the regulations set forth in Chapter 5.1 (commencing with Section 4600) of Division 1 of Title 5 of the California Code of Regulations pertaining to uniform complaint procedures and, on or before March 31, 2019, shall commence rulemaking proceedings to revise those regulations, as necessary, to conform to all of the following:

(1) The Uniform Complaint Procedures shall apply to all of the following:

...

(F) The filing of complaints that allege unlawful discrimination, harassment, intimidation, or bullying against any protected group as identified under Sections 200 and 220 and Section 11135 of the *Government Code*, including any actual or perceived characteristic as set forth in Section 422.55 of the *Penal Code*, or on the basis of a person's association with a person or group with one or more of these actual or perceived characteristics, in any program or activity conducted by an educational institution, as defined in Section 210.3, that is funded directly by, or that receives or benefits from, any state financial assistance. . . .

**Title 5 CCR Section 4650.
Basis of Direct State Intervention.**

(a) The CDE may at its discretion directly intervene without waiting for an LEA investigation if one or more of the following situations exist:

...

(5) The complainant alleges that the complainant would suffer immediate and irreparable harm as a result of an application of a district-wide policy that is in conflict with state or federal law covered by this chapter, and that filing a complaint with the LEA would be futile.

Title 5 CCR Section 4651. Notification.

(a) When the Department accepts a complaint requesting direct state intervention pursuant to section 4650, it will immediately notify the complainant in writing of the determination. If the complaint is not accepted, it shall be referred to the LEA for local investigation or referred to another agency pursuant to section 4611.

(b) When the CDE declines direct intervention for a complainant who requests anonymity pursuant to section 4650(a)(2), the CDE will not forward the complaint to the LEA pursuant to section 4640 without the complainant's permission.

Title 5 CCR Section 4663. Department Investigation Procedures.

(a) The investigator(s) shall request all documentation and other evidence regarding the allegations in the complaint.

(b) The investigation shall include an opportunity for the complainant, or the complainant's representative, or both, to present the evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations.

(c) Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegations.

(d) Refusal by the local educational agency to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

Title 5 CCR Section 4664. Department Investigation Report.

(a) In cases of direct state intervention, the CDE shall issue a Department Investigation Report. The Department Investigation Report shall include the following:

- (1) A summary of the allegations in the complaint;
- (2) A description of the general procedures of the investigation;
- (3) Citations of applicable law and regulations;
- (4) Department findings of facts;
- (5) Department conclusions;
- (6) Corrective actions for the LEA or other public agency as defined in section 3200, if applicable;
- (7) Time line for corrective actions, if applicable;
- (8) Notice that any party may request reconsideration of the Department Investigation Report from the Superintendent within 30 days of the date of the report;
- (9) For those federal programs for which there is a right to appeal to the United States Secretary of Education, the parties shall be notified of that right.

(b) The CDE must issue a written Department Investigation Report to the complainant within 60 days of receipt of the complaint, unless the parties have agreed to extend the time line or the CDE documents exceptional circumstances and informs the complainant, or the matter has been resolved at the local level or judicially decided.

Title 5 CCR Section 4665. Reconsideration of Department Investigation Report.

(a) Within 30 days of the date of the Department Investigation Report, either party may request reconsideration by the Superintendent or the Superintendent's designee. The request for reconsideration shall specify and explain why:

- (1) Relative to the allegation(s), the Department Investigation Report lacks material findings of fact necessary to reach a conclusion of law on the subject of the complaint, and/or
- (2) The material findings of fact in the Department Investigation Report are not supported by substantial evidence, and/or
- (3) The legal conclusion in the Department Investigation Report is inconsistent with the law, and/or

(4) In a case in which the CDE found noncompliance, the corrective actions fail to provide a proper remedy.

(b) In evaluating or deciding on a request for reconsideration, the CDE will not consider any information not previously submitted to the CDE by a party during the investigation unless such information was unknown to the party at time of the investigation and, with due diligence, could not have become known to the party. This prohibition does not prohibit the CDE from seeking and obtaining information from any source necessary to issue an accurate Department Investigation Report.

(c) Within 60 days of the receipt of the request for reconsideration, the Superintendent or the Superintendent's designee shall respond in writing to the parties. Such response may include a denial of the request for reconsideration, or modifications to the Department Investigation Report necessary to ensure factual and legal accuracy.

Pending the Superintendent's response to a request for reconsideration, the Department Investigation Report remains in effect and enforceable, unless stayed by a court.

(d) Appeals from investigations of complaints involving Child Development contractors, whether public or private, shall be made to the Superintendent of Public Instruction as provided in subsection (a) except as otherwise provided in division 19 of title 5 of the Code of California Regulations.

(e) For those federal programs for which there is a right to appeal to the United States Secretary of Education, the parties shall be notified of that right.

Title 5 CCR Section 4670. Enforcement.

(a) Upon determination that a local agency violated the provisions of this chapter, the Department shall notify the local agency pursuant to sections 4633(g)(3) or 4664(b) that it must take corrective action to come into compliance. If corrective action is not taken, the Department may use any means authorized by law to effect compliance, including, but not limited to:

(1) The withholding of all or part of the local agency's relevant state or federal fiscal support in accordance with state or federal statute or regulation;

(2) Probationary eligibility for future state or federal support, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state or federal funding to a local agency under this chapter shall be made until the Department has determined that compliance cannot be secured by other means. . . .

EXHIBIT B

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

SEP 09 2024

By Wimala Blanchard
WIMALA BLANCHARD, Deputy

**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

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)

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.)

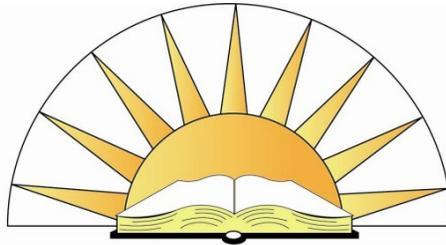
Therefore, just as it was not enough in *Woods* that women are more victimized by domestic violence, the fact that transgender or gender non-conforming students may have more mental health concerns is not enough to justify the suspect classification, especially if gender neutral alternatives are available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

EXHIBIT C



CHINO VALLEY
UNIFIED SCHOOL DISTRICT

Student Achievement • Safe Schools • Positive School Climate
Humility • Civility • Service

BOARD OF EDUCATION

AGENDA

July 20, 2023

BOARD OF EDUCATION

Donald L. Bridge
Andrew Cruz
Jonathan Monroe
James Na
Sonja Shaw

SUPERINTENDENT

Norm Enfield, Ed.D.

5130 Riverside Drive, Chino, CA 91710
www.chino.k12.ca.us

CHINO VALLEY UNIFIED SCHOOL DISTRICT
REGULAR MEETING OF THE BOARD OF EDUCATION
Don Lugo High School, MPR - 13400 Pipeline Ave, Chino, CA 91710
4:40 p.m. – Closed Session • 6:00 p.m. – Regular Meeting
July 20, 2023

AGENDA

- The public are invited to address the Board of Education regarding items listed on the agenda. Comments on an agenda item are accepted during consideration of that item, or prior to consideration of the item in the case of a closed session item. Persons wishing to address the Board are requested to complete and submit to the Administrative Secretary, Board of Education, a "Request to Speak" form available at the entrance to the Board room.
- In compliance with the Americans with Disabilities Act, please contact the Administrative Secretary, Board of Education, if you require modification or accommodation due to a disability.
- Agenda documents distributed to members of the Board of Education less than 72 hours prior to the meeting are available for inspection at the Chino Valley Unified School District Administration Center, 5130 Riverside Drive, Chino, California, during the regular business hours of 7:30 a.m. to 4:30 p.m., Monday through Friday.
- Order of business is approximate and subject to change.

The meeting is live streamed on the District's YouTube channel at https://www.youtube.com/channel/UCWKinB4PTb_uskobmwBF8pw.

I. OPENING BUSINESS

I.A. CALL TO ORDER – 4:40 P.M.

1. Roll Call
2. Public Comment on Closed Session Items
3. Closed Session

Discussion and possible action (times are approximate):

- a. Conference with Legal Counsel, Existing Litigation (Government Code 54956.9(d)(4)): San Bernardino Superior Case No. SB 2300095. (Tao Rossini, APC) (30 minutes)
- b. Conference With Legal Counsel, Anticipated Litigation (Government Code 54956.9(e)(1)): One matter. (Atkinson, Andelson, Loya, Ruud, & Romo) (10 minutes)
- c. Student Discipline Matter (Education Code 35146, 48918 (c) & (j)): Expulsion case 22/23-71. (5 minutes)
- d. Student Readmission Matters (Education Code 35146, 48916 (c)): Readmission Cases 22/23-18 and 22/23-38. (5 minutes)
- e. Public Employee Appointment (Government Code 54957): Elementary Principals, Junior High School Principal, and High School Assistant Principals. (10 minutes)
- f. Conference with Labor Negotiators (Government Code 54957.6): A.C.T. and CSEA negotiations. Agency designated representatives: Lea Fellows, Sandra Chen, Joseph Durkin, and Jaime Ortega. (10 minutes)
- g. Public Employee Performance Evaluation (Government Code 54957): Superintendent. (10 minutes)

I.B. RECONVENE TO REGULAR OPEN MEETING – 6:00 P.M.

1. Report Closed Session Action
2. Pledge of Allegiance

Proceedings of this meeting are recorded.

III.E.3. Supervised Internship Agreement with University of Massachusetts Global; Fieldwork and Internship Agreement with University of La Verne; Clinical Affiliation Agreement with Emerson College; and Student Teaching Agreement with Central State University’s College of Education

Page 172

Recommend the Board of Education approve the Supervised Internship Agreement with University of Massachusetts Global; Fieldwork and Internship Agreement with University of La Verne; Clinical Affiliation Agreement with Emerson College; and Student Teaching Agreement with Central State University’s College of Education.

IV. INFORMATION

IV.A. ADMINISTRATION

IV.A.1. Revision of Administrative Regulation 5145.3—Nondiscrimination/Harassment of Students

Page 207

Recommend the Board of Education receive for information the revision of Administrative Regulation 5145.3—Nondiscrimination/Harassment of Students.

IV.A.2. Revision of Bylaws of the Board 9320—Meetings and Notices

Page 215

Recommend the Board of Education receive for information the revision of Bylaws of the Board 9320—Meetings and Notices.

IV.A.3. Revision of Bylaws of the Board 9322—Agenda/Meeting Materials

Page 228

Recommend the Board of Education receive for information the revision of Bylaws of the Board 9322—Agenda/Meeting Materials.

IV.B. CURRICULUM, INSTRUCTION, INNOVATION, AND SUPPORT

IV.B.1. Williams Settlement Legislation Quarterly Uniform Complaint Report Summary for April Through June 2023

Page 236

Recommend the Board of Education receive for information the Williams Settlement Legislation Quarterly Uniform Complaint Report Summary for April through June 2023.

IV.C. FACILITIES, PLANNING, AND OPERATIONS

IV.C.1. Annual Report Per Board Policy 3470 Debt Issuance And Management

Page 238

Recommend the Board of Education receive for information the annual report per Board Policy 3470 Debt Issuance and Management.

CHINO VALLEY UNIFIED SCHOOL DISTRICT

Our Motto:

Student Achievement • Safe Schools • Positive School Climate
Humility • Civility • Service

DATE: July 20, 2023
TO: Members, Board of Education
FROM: Sonja Shaw, President, Board of Education
**SUBJECT: REVISION OF ADMINISTRATIVE REGULATION 5145.3—
NONDISCRIMINATION/HARASSMENT OF STUDENTS**

=====

BACKGROUND

Board policies, administrative regulations, and Bylaws of the Board are routinely developed and revised as a result of changes in law, mandates, federal regulations, and current practice. Administrative Regulation 5145.3—Nondiscrimination/Harassment of Students is being updated to correspond with new Board policy 5020.1—Parental Notification.

Old language to be deleted is ~~lined through~~.

Consideration of this item supports the goals identified within the District’s Strategic Plan.

RECOMMENDATION

It is recommended the Board of Education receive for information the revision of Administrative Regulation 5145.3—Nondiscrimination/Harassment of Students.

FISCAL IMPACT

None.

SS:pk

NONDISCRIMINATION/HARASSMENT OF STUDENTS (cont.)

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

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

When a verbal report of unlawful discrimination, including discriminatory harassment, intimidation, retaliation, or bullying, is made to or received by the principal or compliance officer, or designee, he/she shall make a note of the report and encourage the student or parent/guardian to file the complaint in writing, pursuant to Administrative Regulation 5145.7 – Sexual Harassment. Once notified verbally or in writing, the principal or compliance officer, or designee, shall begin the investigation and shall implement immediate measures necessary to stop the discrimination and ensure that all students have access to the educational program and a safe school environment. Any interim measures adopted to address unlawful discrimination shall, to the extent possible, not disadvantage the complainant or a student who is the victim of the alleged unlawful discrimination.

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

(cf. 5141.4 - Child Abuse Prevention and Reporting)

Transgender and Gender-Nonconforming Students

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

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

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

NONDISCRIMINATION/HARASSMENT OF STUDENTS (cont.)

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

Transgender student means a student whose gender identity is different from the gender he/she was assigned at birth.

Regardless of whether they are sexual in nature, acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment are prohibited.

Administrative Regulation 5145.7 shall be used to report and resolve complaints alleging discrimination against transgender and gender-nonconforming students.

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

4. ~~Right to privacy: a student's transgender or gender-nonconforming status is his/her private information and the District shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the District has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the District shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the District pursuant to 34 CFR 99.31. Any District employee to whom a student's transgender or gender-nonconforming status is disclosed shall keep the student's information confidential. When disclosure of a student's gender identity is made to a District employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless he/she is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the District's ability to meet the student's needs related to his/her status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days.~~

NONDISCRIMINATION/HARASSMENT OF STUDENTS (cont.)

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

(cf. 1340 - Access to District Records)
(cf. 3580 - District Records)

- 2-1. Determining a student's gender identity: the compliance officer shall accept the student's assertion of his/her gender identity and begin to treat the student consistent with his/her gender identity unless District personnel present a credible and supportable basis for believing that the student's assertion is for an improper purpose.
- 3-2. Addressing a student's transition needs: the compliance officer shall arrange a meeting with the student and, if appropriate, his/her parents/guardians to identify and develop strategies for ensuring that the student's access to education programs and activities is maintained. In addition, the compliance officer shall identify specific school site employee(s) to whom the student may report any problem related to his/her status as a transgender or gender-nonconforming individual, so that prompt action could be taken to address it.
- 4-3. Accessibility to sex-segregated facilities, programs, and activities: when the District maintains sex-segregated facilities, such as restrooms and locker rooms, or offers sex-segregated programs and activities, such as physical education classes, intermural sports, and interscholastic athletic programs, students shall be permitted to access facilities and participate in programs and activities consistent with their gender identity. To address any student's privacy concerns in using sex-segregated facilities, the District shall offer available options such as a gender-neutral or single-use restroom or changing area, a bathroom stall with a door, an area in the locker room separated by a curtain or screen, access to a staff member's office, or use of the locker room before or after the other students. However, the District shall not require a student to utilize these options because he/she is transgender or gender-nonconforming. In addition, a student shall be permitted to participate in accordance with his/her gender identity in other circumstances where students are separated by gender, such as for class discussions, yearbook pictures, and field trips. A student's right to participate in a sex-segregated activity in accordance with his/her gender identity shall not render invalid or inapplicable any other eligibility rule established for participation in the activity.

NONDISCRIMINATION/HARASSMENT OF STUDENTS (cont.)

(cf. 6145 - Extracurricular and Cocurricular Activities)
(cf. 6145.2 - Athletic Competition)
(cf. 6153 - School-Sponsored Trips)
(cf. 7110 - Facilities Master Plan)

~~5.~~ 4. Student records: a student's legal name or gender as entered on the mandatory student record required pursuant to 5 CCR 432 shall only be changed pursuant to a court order. However, at the written request of a student or, if appropriate, his/her parents/guardians, the District shall use the student's preferred name and pronouns consistent with his/her gender identity on all other District- related documents. Such preferred name may be added to the student's record and official documents as permitted by law.

(cf. 5125 - Student Records)
(cf. 5125.1 - Release of Directory Information)

~~6.~~ 5. The District shall not provide or otherwise carry out any of its extracurricular or activities separately, or require or refuse participation therein by any of its pupils on the basis of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability. (5 CCR Section 4925)

All pupil clubs shall have equal access to District facilities to conduct a meeting and a fair opportunity to meet within the limited open forum of the District, if the District has a limited open forum. (5 CCR Section 4927)

Membership in student clubs must be open to all pupils regardless of sex, sexual orientation, gender, ethnic group identification, race, ancestry, national origin, religion, color, or mental or physical disability. (5 CCR Section 4926)

Chino Valley Unified School District
Regulation approved: September 7, 2017
Revised: October 19, 2017
Revised: March 7, 2019
Revised: June 1, 2023
REVISED:

EXHIBIT D

From: [Francisco Arce](#)
To: [Jonathan Benner](#)
Cc: [Laura Faer](#); [James Zahradka](#); [Christina Riehl](#); [Brendan Hamme](#); [Brian Bilford](#)
Subject: Re: Response to 9.25.23 Information Request - Telephone/Videoconference Call
Date: Monday, November 27, 2023 4:25:12 PM

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hello Mr. Benner,

I can confirm that the District will be making a recommendation that the Governing Board approve the product created by the 4th Grade Curriculum Design Subcommittee, which is based on the TCI Social Studies Alive! textbook. It is important to note that the district is still operating under the board's direction that the Biography section not be available to students in the 4th grade. In order to ensure that this occurs, we had to turn off the biography sections for student access for 1-7 grade levels. However, teachers have access and are able to download biographies for instructional use. Again, this is the current plan, pending Governing Board review.

EXHIBIT E

From: [Francisco Arce](#)
To: [Christina Riehl](#)
Cc: [Jonathan Benner](#); [Laura Faer](#); [James Zahradka](#); [Brendan Hamme](#); [Brian Bilford](#)
Subject: Re: Response to 9.25.23 Information Request - Telephone/Videoconference Call
Date: Thursday, December 7, 2023 4:11:33 PM

EXTERNAL EMAIL: This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hello,

I hope this email finds you well. Please know that I have worked with members of our Educational Support Services division to find answers to the questions you sent on November 28, 2023. Please see those responses below.

We continue to work on gathering the materials that were also requested and acknowledged as a CPRA request in my email dated December 1, 2023 and will produce those as soon as possible.

Questions and Responses:

Please advise as to what “turn[ing] off” the biographies means;

- The TCI curriculum provides an online resources bank, for which the District has the option of making the biography sections available or unavailable to students. The committee has decided, based on the direction provided by the board, that this option not be activated. When students are using the TCI online platform with district internet, they are not able to access the online address to the TCI Biographies. Teachers are still using these biographies by downloading the material and attaching it to the learning management systems that they use (See Saw or Canvas).
- In the same vein, are the biography sections only available online? If so, what platform are they available on?
 - It is correct to state that the biography sections are only available online. The menu on the left side bar of the TCI “Social Studies Alive” online curriculum has a link labeled “Biographies”. When this link is clicked, the user can access a list of historical figures and relevant materials such as written historical context about the person, video footage with content about the historical figure, and other related content. However, these are also available on the online teacher resources, and teachers are able to make copies of the materials to post for students or to hand physical copies of the articles and information resources to students.
- You indicated that the biographies are still available to teachers for instructional use—please confirm whether the biographies will be taught as part of the lessons they relate to. And if not, in what grades or classrooms will they not be taught?
 - Teachers have access to the Biography sections, and can use those resources as supplemental material to support student learning. The subcommittee developed a Unit Plan Organizer (UPO) for Unit 8 Lesson 12, which includes use of several Biography sections. This UPO will also be provided as part of your request for the full and complete copy of the product created by the 4th Grade Curriculum Design Subcommittee, which is based on the

TCI Social Studies Alive! textbook, and will be recommended to the Governing Board. We are compiling all requested disclosable materials and will be providing them soon.

- Please advise as to when and in what format and for what reason the Board gave the direction that the Biography section not be available to students in the 4th grade, and any documents related to that direction;
 - During the May 16, 2023 TVUSD Board Meeting, the Governing Board expressed concerns related to the 4th grade TCI Curriculum, and a specific historical figure referenced in the Biography section. As such, a curriculum committee, which included Governing Board Members Alison Barclay and Jennifer Wiersma, along with several different TVUSD, came together to help develop a 4th grade Curriculum Map and parameters for the teaching of this curriculum. TCI does not function under the ability to only remove this portion of their supplemental materials. Under the Board's direction, TVUSD worked to develop a solution. That solution included providing access to the teachers, but not the students.

- In your email you stated that the biography sections would be “turn[ed] off” not only for 4th grade students, but for all students in grades 1-7. Please advise why this was necessary, and provide a grade-by-grade list of which materials are unavailable to students due to this change.
 - It was necessary to turn off the Biography section for students in grades 1-7 due to the functionality and setup related to the TCI online curriculum. We are not able to only turn off this section for one particular grade level. It is important to point out that teachers still have full access to the Biography sections and can, and do, use them as resources to support student learning.
 - The request for the grade-by-grade list will be provided in accordance with the CPRA process. We are compiling all requested disclosable materials and will be providing them soon.

- The “4th Grade Subcommittee” document the District provided to us contained a link to a “[Curriculum Map](#)” that we lack access to. Can you please provide this document and/or grant access to this document?
 - The request for the “Curriculum Map” will be provided in accordance with the CPRA process. We are compiling all requested disclosable materials and will be providing them soon.

- Finally, do you know when the District will be making its recommendation to the Governing Board regarding approval of the product created by the 4th Grade Curriculum Design Subcommittee?
 - The District is recommending that the committee, including the two aforementioned Governing Board members, come together on Monday, December 11, 2023 to review the final product once again and make a recommendation to take this item forward for board review. Given the timeframe for board meeting agenda posting and notices, it is likely that this matter will go to a Governing Board meeting in January (date TBD based on December calendaring).