Court of Appeal No. G064332
Superior Court Case No. CVSW2306224

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

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MAE M. THROUGH GUARDIAN AD LITEM ANTHONY M. et al.,
PLAINTIFFS-APPELLANTS,
vs.
JOSEPH KOMROSKY et al.,
DEFENDANTS-APPELLEES

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On Appeal from the Superior Court of Riverside, California
The Honorable Eric Keen
Department 6

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# BRIEF OF AMICI CURIAE CHINO VALLEY UNIFIED SCHOOL DISTRICT IN SUPPORT OF DEFENDANTS-APPELLEES AND IN SUPPORT OF AFFIRMANCE

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## I. 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 in the name of creating a "supportive school environment"? Of course not. If a student breaks their arm, hits their head, or develops a fever, a 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. This was the conclusion the lower court reached in denying Appellants' request for a preliminary injunction, and its decision was undoubtedly correct.

Appellants argue that 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—and specifically prohibit the Board from continuing to comply with specific portions of Board Policy 5020.01, a parent notification policy that it adopted on August 22, 2023. Amicus Chino Valley Unified School District supports the Board of Trustees of the Temecula Valley Unified School District (the "Board") and respectfully disagrees.

Appellants mischaracterize the policy they seek to enjoin by referring to it as, among other pejoratives, a

"coercive outing policy." But Appellants fail to acknowledge *who* is being "outed" 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, Appellants plead their case as though Policy 5020.01 mandates that schools in the district "out" students to the general public, complete strangers, and violent criminals. Appellants portray sharing information with parents, aiming to meaningfully incorporate parents into the education environment, as *discrimination*. And Appellants suggest that a supportive school environment requires hiding basic information from parents. 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 in public at school; 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 a statutory right to be present. When they play sports consistent with the gender with which they identify, they are doing so in front of members of the general public. Thus, Appellants argue that the *only* individuals from whom this information must be kept secret are *parents*.

Appellants fail to understand that the interaction Policy 5020.01 requires—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.)

Appellants 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.

Parents cannot be involved in this process if they have no knowledge of what is happening while their child is at school 35+ hours per week.

## II. ARGUMENT

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)[1] ; *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) 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).)

[1] https://www.cde.ca.gov/re/lr/cl/localcontrol.asp.

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 Appellants 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 Appellants' request to reverse the denial of their request for preliminary injunction.

## III. POLICY 5020.01 IS CONSISTENT WITH CALIFORNIA LAW, WHICH REQUIRES SCHOOLS TO COMMUNICATE WITH PARENTS ABOUT THEIR CHILDREN'S EDUCATION AND EXPERIENCES AT SCHOOL

Reading Policy 5020.01 in its entirety reveals just how many different topics schools must bring to the attention of

parents. Instead, Appellants myopically focus on only one 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 Appellants continue to ignore—is entirely consistent with California and federal law. Specifically, its 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 Appellants' narrative, so it goes unmentioned in their 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 Appellants seek through this litigation to force schools to violate the Education Code's requirements that schools work *with* parents, not behind their backs. Appellants' position defies common sense, applicable law, and firmly established constitutional law principles.

Indeed, in 2023 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 that 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 Appellants do not dispute

Appellants argue that children have an unfettered right to prevent schools from notifying their parents of a significant part of their education. Yet Appellants 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; therefore, Section 1(c) is entirely consistent with the broad right of parents to view "education records" under FERPA and California law. (20 U.S.C. § 1232g.)

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. Appellants 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. Appellants 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.

### C. Minor students at public schools do not have a reasonable expectation of privacy that requires readily discernible information about them to be kept secret from their own parents

In a review of a similar policy enacted by Amicus Chino Valley Unified School District, the Court concluded that "minor students at public schools should not reasonably expect that staff would (or should) keep secrets from their

parents because of the significantly broad parental rights and obligations." (*California v. Chino Valley Unified School District*, (Cal. Super. Ct. San Bernardino Cty. Sept. 9, 2024) Case No. CIVSB2317301, Court Order on Motions for Summary Adjudication ("CVUSD Order") at 30.) Parents have pre-existing rights, even requiring affirmative disclosures from schools, guaranteed by the Education Code. The Education Code acknowledges parental control over both the child's records and privacy rights, and protection of those rights requires informing parents about changes made to the records. (*Id*. at 31.) Further, the type of information that is implicated by the policy is "already public" and the reality is that "a parent with a minimal level of involvement" could inevitably discover such information about their child's gender-identity because much of it is readily observable by peers and other members of the public. Clearly if a child is being called by a different name or pronouns while at school, or using a different locker room or bathroom facility, most if not all of their classmates will be aware of this development—a child cannot claim a privacy right in this public activity any more than they could claim a privacy right in the color of the outfit they wore to Homecoming. Thus, a lessened expectation of privacy attaches to this type of information, especially when coupled with parental authority over a child's privacy rights and the broad rights granted to parents by the Education Code. (*See id*. at 30-35.)

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## IV. POLICY 5020.01 DOES NOT DISCRIMINATE BASED ON GENDER IDENTITY

Appellants 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 Appellants 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) 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 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) 268 U.S. 510, 535.) Appellants 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. Appellants do not cry "discrimination" because the policy requires a school to tell a parent if their child is suicidal, even though it treats those children differently than children who are not suicidal. Equally absurd is Appellants' 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. (*Reno v. Flores* (1993) 507 U.S. 292, 301–302.) Limits on a parent's fundamental right can only be upheld if they are necessary and the least restrictive way to serve a compelling government interest. 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.

Even under a strict scrutiny analysis, "classification does not itself 'deprive a group of equal protection' if the classification is 'based upon some difference between the classes which is pertinent to the purpose for which the

legislation is designed.'" (CVUSD Order at 11-12.) Further, a policy that appears discriminatory is permissible under strict scrutiny if it is narrowly tailored to further a compelling government interest. Parental rights and the necessity of parental involvement to promote child safety are the motivating interests behind Policy 5020.01 and "there can be no dispute that [child] safety is a compelling governmental interest." (*Id.* at 13 (quoting *Jonathan L. v. Super. Ct.* (2008) 165 Cal.App.4th 1074, 1104).) The movant bears the burden of showing the existence of alternatives that are more narrowly tailored to achieving the important interest in child safety, and Appellants have failed to do so here. It is not at all clear that an alternative policy would adequately protect parental rights and the safety of children; indeed, the Court reviewing CVUSD's similar policy acknowledged in its most recent ruling that an alternative policy "may, at times, still necessitate disclosure of the child's gender identity." (CVUSD Order at 15.)

Despite Appellants' accusations that the Board is invoking "pernicious stereotypes" by addressing the realities of the mental health issues and increased suicide rates of students experiencing gender dysphoria, Appellants' own allegations describe a population of students who are facing considerable challenges that result in higher rates of depression and suicide. Appellants also suggest that "a lack of supportive environment at home" is the cause of a transgender child's mental anguish and that the solution is to

keep parents in the dark under the guise of creating a supportive school environment. But a supportive school environment and supportive home environment are both important to a transgender student's mental health; these are not interchangeable—school is not an adequate, equivalent replacement for a home—and they certainly are not mutually exclusive. Appellants insist that parents will abuse their child if they are notified that the child is experiencing gender dysphoria (*see* Principal Brief of Plaintiffs-Appellants at 9), but in CVUSD none of the 15 parents who were notified of their children's trans-identities harmed their children or were accused of abuse or neglect. How can parents create a supportive home environment if they are unaware of their child's status and activities during the 35 or more hours a week that the child spends at school? If any other group of students were facing the same obstacles, the school would be obligated to notify parents in order to facilitate the family's ability to address their child's needs outside of school hours.

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 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 that, until

recently, was completely non-controversial. However, in this case—and this case only—Appellants seek to prohibit professional educators from communicating with parents, instead substituting parents' contributions to the successful transition of children with those of Appellants. To keep parents in the dark about the health and safety of their children is not only ill-advised; it directly harms students.

## V. CONCLUSION

For the reasons above, the Court should affirm the lower court's denial of Appellants' motion for preliminary injunction.

Respectfully submitted,

October 2, 2024

Respectfully submitted,

By: 

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## WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(a))

The text of this brief consists of 3,543 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief.

October 2, 2024

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**PROOF OF SERVICE**
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 251 South Lake Avenue, Suite 360, Pasadena, Ca. 91101.

On October 2, 2024, I served the following document(s) described as **BRIEF OF AMICI CURIAE CHINO VALLEY UNIFIED SCHOOL DISTRICT IN SUPPORT OF DEFENDANTS-APPELLEES AND IN SUPPORT OF AFFIRMANCE** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 2, 2024, at Pasadena, California.

Ashlie T. Kennedy

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