

1 LIBERTY JUSTICE CENTER
2 Emily Rae (State Bar No. 308010)
3 erae@libertyjusticecenter.org
4 440 N. Wells Street, Unit 200
5 Chicago, Illinois 60654
6 Telephone: (312) 637-2280

7 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
8 A Professional Law Corporation
9 Anthony P. De Marco (State Bar No. 217815)
10 ADeMarco@aalrr.com
11 William A. Diedrich (State Bar No. 233982)
12 WDiedrich@aalrr.com
13 20 Pacifica, Suite 1100
14 Irvine, California 92618
15 Telephone: (949) 453-4260
16 Fax: (949) 453-4264

17 *Attorneys for Amicus Curiae Chino Valley Unified School*
18 *District*

[Fee exempt Pursuant to
Govt. Code § 6103]

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF RIVERSIDE

21 MAE M., ET AL.,
22
23 Plaintiffs,
24
25 v.
26 JOSEPH KOMROSKY ET AL.,
27
28 Defendants.

Case No. CVSW2306224

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

Reservation Number: 298713397568

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

Complaint Filed: August 2, 2023

1 **INTRODUCTION**

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

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

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

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

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

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

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

22 **ARGUMENT**

23 Under California’s permissive education code, school districts have “flexibility to create their
24 own unique solutions” to their address their own “diverse needs unique to their individual
25 communities and programs.” (Educ. Code § 35160.1.; CAL. CONST. art. XI, § 7 (granting local
26 governments—including school districts—legislative power).) In fact, according to the California
27 Department of Education, “more local responsibility is legally granted to school districts and
28 county education officials than to other government entities and officials.” (Cal. Dep’t. Ed., *Local*

1 *Control – Districts and Counties* (Nov. 16, 2022), <https://www.cde.ca.gov/re/lr/cl/localcontrol.asp>;
2 *see also* Educ. Code § 35160.)

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

10 Here, the Board properly adopted Policy 5020.01 because it values the role parents play in the
11 educational process and understands that giving parents access to important information about
12 their own children is in students’ best interests. And the Board’s goal of ensuring transparency
13 between schools and parents is consistent with United States Supreme Court decisions
14 “historically and repeatedly declar[ing] that parents have a right, grounded in the Constitution, to
15 direct the education, health, and upbringing, and to maintain the well-being of, their children.”
16 (*Mirabelli v. Olson* (S.D. Cal. Sept. 14, 2023) No. 3:23-cv-00768-BEN-WVG, 2023 U.S. Dist.
17 LEXIS 163880, at *26–31 (collecting cases).)

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

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

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

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

1 Policy 5020.01’s stated intent—which Plaintiffs ignore—is entirely consistent with California
2 and federal law. Specifically, the express intent is to “[b]ring parent(s)/guardians(s) into the
3 decision-making process for mental health and social-emotional issues of their children at the
4 earliest possible time in order to prevent or reduce potential instances of self-harm.” (FAC, Ex. 2.)
5 The express intent also includes providing “procedures designed to maintain and, in some cases,
6 restore, trust between school districts and parent(s)/guardian(s) of pupils,” and to “[p]romote
7 *communication and positive relationships with parent(s)/guardian(s)* of pupils that promote the
8 best outcomes for pupils’ academic and social-emotional success.” (*Id.* (emphasis added).) The
9 policy expressly promotes collaboration between school staff and parents “in evaluating the needs
10 of students having academic, attendance, social, emotional, or behavioral difficulties and in
11 identifying strategies and programs that may assist such students in maximizing their potential.”
12 (*Id.*)

13 The express intent of Policy 5020.01 does not fit Plaintiffs’ narrative, so it goes unmentioned
14 in the Application, even though California law expresses the same objectives. “Parents and
15 guardians of pupils enrolled in public schools *have the right* and should have the opportunity, as
16 mutually supportive and respectful partners in the education of their children within the public
17 schools, *to be informed by the school, and to participate in the education of their children*”
18 (Educ. Code § 51101 (emphasis added).) This provision of law is based on specific legislative
19 findings:

- 20 • “involving parents and guardians of pupils in the education process is fundamental to a
21 healthy system of public education”;
- 22 • “[r]esearch has shown conclusively that *early and sustained family involvement at*
23 *home and at school* in the education of children results both in improved pupil
24 achievement and in schools that are successful at educating all children”;
- 25 • “[a]ll participants in the education process benefit when schools genuinely *welcome,*
26 *encourage, and guide families into establishing equal partnerships with schools* to
27 support pupil learning”; and
28

- 1 • “[f]amily and school collaborative *efforts are most effective when they involve parents*
2 *and guardians* in a variety of roles at all grade levels, from [PK-12].”

3 (Educ. Code § 51100 (emphasis added).)

4 Section 51101 lists 16 different parental rights and provides 7 examples of how parents can
5 participate. These rights can only be denied in limited situations, which supports the Board’s
6 decision to take the same approach in Policy 5020.01: “This section does not authorize a school to
7 inform a parent or guardian, as provided in this section, or to permit participation by a parent or
8 guardian in the education of a child, if it conflicts with a valid restraining order, protective order,
9 or order for custody or visitation issued by a court of competent jurisdiction.” (Educ. Code
10 § 51101(d).) Yet Plaintiffs seek through this litigation to force schools to violate the Education
11 Code’s requirements that schools work *with* parents, not behind their backs. Plaintiffs’ position
12 defies common sense, applicable law, and firmly established constitutional law principles.

13 Indeed, only a few months ago a federal district court in California addressing substantially
14 similar issues—i.e., whether schools may conceal information about a student’s gender identity
15 from their parents—found *in favor of parental notification*. (*Mirabelli*, 2023 U.S. Dist. LEXIS
16 163880.) While *Mirabelli* differs slightly from this case because it involves a policy *prohibiting*
17 *teachers from notifying parents* about a student’s gender identity absent explicit permission from
18 the student (essentially the inverse of the policy at issue here), the decision is still instructive.

19 In *Mirabelli*, teachers challenged a district policy mandating that teachers keep secrets from
20 parents about a student’s gender identity preferences unless the student consents, alleging the
21 policy violates their First Amendment rights. (*Id.* at *3.) Relying heavily on the expert medical
22 opinion of Dr. Erica Anderson and case law affirming parents’ constitutional rights to direct the
23 upbringing of their children, the court granted the teachers’ motion for a preliminary injunction
24 and prohibited the school from enforcing its secret-keeping policy against the teachers. (*Id.* at
25 *19–31.)

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

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

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

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

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

22 Plaintiffs allege that they are likely to prevail on the merits here because they claim Policy
23 5020.01 is discriminatory and therefore violates Article I, Section 7 of the California Constitution.
24 Yet Plaintiffs provide insufficient evidence to support this claim.

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

1 policy affirms the constitutional rights that parents already have to “direct the upbringing and
2 education of children under their control.” (*Pierce v. Soc’y of Sisters* (1925) 268U.S.510, 535.)
3 Plaintiffs do not claim that the policy discriminates because it requires schools to notify parents if
4 their child is being bullied, even though the policy treats bullied children differently than children
5 who haven’t been bullied. Plaintiffs do not cry “discrimination” because the policy requires a
6 school tell a parent if their child is suicidal, even though it treats those children differently than
7 children who are not suicidal. Equally absurd is Plaintiffs’ claim that it is “discriminatory” to
8 notify parents when their child is expressly requesting to be treated in a way that is consistent with
9 gender incongruity or gender dysphoria. Indeed, this policy would only discriminate against
10 transgender children if it allowed schools to *hide* this important health-related information from
11 parents, as children facing other health or psychological issues would benefit from parent
12 collaboration, but transgender children would not. Here, however, the Board rightly determined
13 that whether to relay critical information to parents about the health and safety of their child
14 should not depend on a child’s gender identity.

15 Because informing parents about their children’s medical information is not discriminatory as
16 a matter of law, it is not necessary for the Court to undertake a strict scrutiny analysis. But even if
17 a strict scrutiny standard did apply, the fundamental right to parent also invokes a strict scrutiny
18 analysis. Involving parents in important, health-related decisions concerning their children is an
19 overriding right that trumps a government’s right to keep secrets from parents based solely on
20 whether a child gives consent.

21 For discrimination claims, strict scrutiny only applies when a government “has adopted a
22 classification that affects two or more *similarly situated groups* in an unequal manner.” (*Woods v.*
23 *Horton* (2008) 167 Cal.App.4th 658, 670.) “The similarly situated prerequisite simply means that
24 an equal protection claim cannot succeed, and does not require further analysis, unless there is
25 some showing that the two groups are sufficiently similar with respect to the purpose of the law in
26 question” (*Id.*) For example, laws that invoke the birth process cannot be said to discriminate
27 based on gender because men and women are not similarly situated as to the birth process.

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

6 Plaintiffs' own allegations describe a population of students who are facing considerable
7 challenges that result in higher rates of depression and suicide. If any other group of students were
8 facing the same obstacles, the school would be obligated to notify parents. Additionally, as noted
9 in Policy 5020.01, in cases of suicidal intentions, the school will hold the student and keep them
10 under supervision "until the parent/guardian and/or appropriate support agent or agency can be
11 contacted and has the opportunity to intervene." This portion of the Policy is emblematic of the
12 approach the school takes with regard to student safety: *involving parents in the overall*
13 *intervention plan*. The involvement of parents in the overall health and safety of their children is a
14 longstanding concept that, until recently, was completely non-controversial. However, in this
15 case—and this case only—Plaintiffs seek to prohibit professional educators from communicating
16 with parents, instead substituting parents' contributions to the successful transition of children
17 with those of Plaintiffs. To keep parents in the dark about the health and safety of their children is
18 not only ill-advised, it could directly harm students.

19 **CONCLUSION**

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

21 Respectfully submitted,

22 Dated: January 19, 2024

LIBERTY JUSTICE CENTER

23
24 By: Emily Rae
25 Emily Rae