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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH MIRABELLI, an  
individual, et al.,  
  
Plaintiffs,  
  
v.  
  
MARK OLSON, in his official capacity as  
President of the EUSD Board of  
Education, et al.,  
  
Defendants.

Case No.: 3:23-cv-0768-BEN (VET)

**ORDER DENYING DEFENDANTS’  
MOTIONS TO DISMISS**

**[ECF Nos. 146, 147, 149, 150, 156, 157]**

Plaintiffs are teachers in the Escondido Union School District (“EUSD”) and parents of students in other California school districts.<sup>1</sup> In their recently filed Second Amended Complaint (“Complaint”) the Plaintiffs bring claims against members of the California State Board of Education and the California Superintendent of Public

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<sup>1</sup> Plaintiffs John and Jane Doe and John and Jane Poe are parents of school-age students. Plaintiffs Elizabeth Mirabelli, Lori Ann West, Jane Boe, and Jane Roe are teachers in EUSD. EUSD is a California public school district with approximately 16,000 students in kindergarten through eighth grades.

1 Instruction, members of the EUSD Board of Education and administrative staff  
2 (collectively, “EUSD Defendants”), as well as the Attorney General of California. The  
3 Plaintiffs contend that a state policy promulgated by the California Department of  
4 Education and adopted by local school districts violate their rights under the First and  
5 Fourteenth Amendments to the United States Constitution and they seek relief under 42  
6 U.S.C. § 1983. The gravamen of the state policy is that public school teachers are not to  
7 reveal to parents a student’s announced change of gender identity in order to maintain the  
8 student’s privacy, except where the student consents to disclosure.

9       The local school district Defendants say that the state forced it to adopt the policy.  
10 The Defendant State Superintendent of Public Instruction has issued at least one  
11 threatening letters to a school district demanding the policy be followed.<sup>2</sup> The Defendant  
12 Department of Education has filed suit against a school district in Rocklin, California to  
13 enforce the policy. Complaint at ¶3, ¶320; *see Cal. Dep’t of Educ. v. Rocklin Unified*  
14 *Sch. Dist.*, No. S-CV-0052605 (Cal. Super. Ct., Placer Cnty., Apr. 10, 2024). The  
15 Defendant Attorney General has sued a school district in Chino Valley, California  
16 contending the school district’s parental notice approach violates the state’s policy. *Id.*,  
17 ¶320-21; Exhibit 38 at 375.

18       Here, the State Defendants say the Plaintiffs lack standing because there is no harm  
19 to parents or teachers because the policy is just a suggestion. Because it is just a  
20 suggestion, the Plaintiffs have not been injured, and because there is no injury, the  
21 Plaintiffs lack Article III standing to bring suit, according to the State Defendants.  
22 Alternatively, the State Defendants argue that even if Plaintiffs do have Article III  
23 standing, parents lose much of their federal constitutional rights at the schoolhouse door  
24 and whatever parental rights remain are subordinate to the child’s newly state-created  
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27 <sup>2</sup> See Letter from Tony Thurmond, Superintendent of Public Instruction, California  
28 Department of Education, to Roger Stock, Superintendent Rocklin Unified School  
District (dated Mar. 27, 2024), Dkt. 112, at 37-39.

1 right to privacy and the child’s right to be free from gender discrimination. All  
2 Defendants move to dismiss.<sup>3</sup> The motions to dismiss are denied.

### 3 **I. BACKGROUND**

4 A serious health condition of a child is a matter over which parents have a federal  
5 constitutional right and duty to decide how to treat, or whether to treat at all, at any given  
6 time. Parents’ rights to make decisions concerning the care, custody, control, and  
7 medical care of their children is one of the oldest of the fundamental liberty interests that  
8 Americans enjoy. However, under California state policy and EUSD policy, if a school  
9 student expresses words or actions during class that are visible signs that the child is  
10 dealing with gender incongruity or possibly gender dysphoria<sup>4</sup>, teachers are ordered not  
11 to inform the parents.

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14 <sup>3</sup> The State Defendants also move to dismiss some of the claims under Rule 12(c).  
15 However, their arguments are undifferentiated and are better considered on a motion for  
16 summary judgment. *See* Rule 12(d).

17 <sup>4</sup> Gender dysphoria is a clinically diagnosed incongruence between one’s gender identity  
18 and assigned gender. Put differently, “[g]ender dysphoria is the diagnostic term for the  
19 distress a person may feel in response to believing their gender identity does not match  
20 their sex.” *K.C. v. Individual Members of Med. Licensing Bd. of Indiana*, 121 F.4th 604,  
21 610 (7th Cir. 2024) (quoting Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of*  
22 *Mental Disorders*, 511 (5th ed. text revision 2022) (Untreated gender incongruity may  
23 progress into adverse social-emotional health consequences, including, but not limited to,  
24 gender dysphoria, depression, or suicidal ideation.). There are different psychological  
25 and medical treatments for children experiencing gender incongruity. According to  
26 DSM-5, the criteria for Gender Dysphoria is:

- 27 A marked incongruence between one’s experienced/expressed gender and natal  
28 gender of at least 6 months in duration, as *manifested by at least two of the following*:
- 29 A. A marked incongruence between one’s experienced/expressed gender and primary  
30 and/or secondary sex characteristics (or in young adolescents, the anticipated secondary  
31 sex characteristics)
  - 32 B. A strong desire to be rid of one’s primary and/or secondary sex characteristics  
33 because of a marked incongruence with one’s experienced/expressed gender (or in young  
34 adolescents, a desire to prevent the development of the anticipated secondary sex  
35 characteristics)

1 All Plaintiffs allege that the State Department of Education has promulgated a new  
2 policy that local school districts must adopt. EUSD adopted the policy. The policy  
3 requires: (1) teachers to recognize and utilize a student’s newly expressed gender  
4 identification, and (2) teachers to not disclose to a parent a student’s newly expressed  
5 gender identification.<sup>5</sup> The EUSD policy is known as AR 5145.3. The EUSD policy is  
6 based on guidance from the State Department of Education’s official internet web page.<sup>6</sup>  
7 A teacher who knowingly fails to comply is considered to have engaged in discriminatory  
8 harassment and is subject to adverse employment action.

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11 C. A strong desire for the primary and/or secondary sex characteristics of the other  
12 gender

13 D. A strong desire to be of the other gender (or some alternative gender different from  
14 one’s designated gender)

15 E. A strong desire to be treated as the other gender (or some alternative gender different  
16 from one’s designated gender)

17 F. A strong conviction that one has the typical feelings and reactions of the other  
18 gender (or some alternative gender different from one’s designated gender)

19 The condition is associated with clinically significant distress or impairment in social,  
20 occupational, or other important areas of functioning.

21 <sup>5</sup> The California Education Code recognizes parents’ rights to be informed and involved  
22 in their student’s schooling – rights that are consistent with parents’ federal constitutional  
23 rights but in tension with the new policy restrictions. For example, California Education  
24 Code §51101(a) and (b) recognizes that parents play an integral part in the successful  
25 education of a child in the public schools and specifies a variety of ways in which parents  
26 have a right to information about their child including sitting in on classes and  
27 communicating with teachers.

28 <sup>6</sup> EUSD has other formal policies that are consistent with existing law but are in tension  
with the new policy. For example, BP 0100(7) states that, “Parents/guardians have a  
right and an obligation to be engaged in their child’s education and to be involved in the  
intellectual, physical, emotional, and social development and well-being of their child.”  
Complaint, Exh. 15(7). And BP 4119.21(9) states that, “Being dishonest with students,  
parents/guardians, staff, or members of the public, including . . . falsifying information in  
. . . school records” is inappropriate employee conduct. Complaint Exh. 14(9). Both  
policies are consistent with federal constitutional rights but appear to be at odds with AR  
5145.3.

1 The Plaintiff parents allege that they have been harmed by the State Department of  
2 Education policy imposed on local school districts. The Plaintiff parents allege that they  
3 have children who expressed gender incongruence while attending public schools. Each  
4 of the Plaintiff parents allege that they asked questions about their child and  
5 schoolteachers and administrators intentionally deceived them and did not disclose the  
6 truth about their child’s gender incongruence. The Plaintiff parents allege that they are  
7 likely to be deceived in the future by public school teachers and administrators due to the  
8 State Department of Education non-disclosure policy.

9 The Plaintiff teachers maintain sincere religious beliefs that communications with  
10 a parent about a student should be accurate; communications should not be calculated to  
11 deceive or mislead a student’s parent. The teachers also maintain that parents enjoy a  
12 federal constitutional right to make decisions about the healthcare and upbringing of their  
13 children. The teachers allege they hold a well-founded fear of adverse employment  
14 action if they were to violate the EUSD gender identification confidentiality policy by  
15 communicating accurately to a student’s parents her own observations or concerns about  
16 a student’s gender incongruence.

## 17 **II. LEGAL STANDARDS**

18 Rule 12 of the Federal Rules of Civil Procedure governs motions to dismiss. Some  
19 Defendants contend that Plaintiffs have failed to state a claim for relief. Rule 12(b)(6)  
20 permits dismissal for failure to state a claim upon which relief can be granted. Dismissal  
21 under Rule 12(b)(6) may occur where the complaint lacks a cognizable legal theory or  
22 sufficient facts to support a cognizable, plausible claim. In contrast, a complaint may  
23 survive a motion to dismiss if, taking all well pled factual allegations as true, it contains  
24 enough facts to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556  
25 U.S. 662, 678 (2009).

26 Some Defendants claim that Plaintiffs lack Article III standing to bring their  
27 claims. A party may move to dismiss an action for lack of subject matter jurisdiction  
28 pursuant to Rule 12(b)(1). Because Article III standing is a necessary component of

1 subject matter jurisdiction, “[w]hen a plaintiff lacks standing, dismissal under Rule  
2 12(b)(1) is appropriate.” *Doe & Roe v. Teachers Council, Inc.*, No. 3:23-cv-1747-AN,  
3 2024 WL 4794293, at \*2 (D. Or. Nov. 14, 2024) (citations omitted). To have standing, a  
4 plaintiff must have an injury-in-fact that is fairly traceable to the challenged action of the  
5 defendant.<sup>7</sup>

6 Article III of the Constitution limits the jurisdiction of  
7 federal courts to “Cases” and “Controversies.”

8 . . .

9 A proper case or controversy exists only when at least  
10 one plaintiff “establishes that she has standing to sue.” She  
11 must show that she has suffered, or will suffer, an injury that is  
12 “concrete, particularized, and actual or imminent; fairly  
13 traceable to the challenged action; and redressable by a  
14 favorable ruling.” These requirements help ensure that the  
15 plaintiff has “such a personal stake in the outcome of the  
16 controversy as to warrant her invocation of federal-court  
17 jurisdiction.”

18 *Murthy v. Missouri*, 603 U.S. 43, 56–57 (2024) (citations omitted). “The second and  
19 third standing requirements—causation and redressability—are often ‘flip sides of the  
20 same coin.’ If a defendant’s action causes an injury, enjoining the action or awarding  
21 damages for the action will typically redress that injury. So the two key questions in  
22 most standing disputes are injury in fact and causation.” *Food & Drug Admin. v. All. for*  
23 *Hippocratic Med.*, 602 U.S. 367, 380–81 (2024) (citations omitted). “Government  
24 regulations that require or forbid some action by the plaintiff almost invariably satisfy

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25 <sup>7</sup> That a suit may be a class action does little to the question of standing. Named  
26 plaintiffs who purport to represent a class must allege that they personally have been  
27 injured. Injury that has been suffered only by unidentified members of the class to which  
28 they belong may be insufficient to satisfy Article III standing. *Martinez v. Newsom*, 46  
F.4th 965, 970-72 (9th Cir. 2022); *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40  
n.20 (1976); *Warth v. Seldin*, 422 U.S. 490, 502 (1975).

1 both the injury in fact and causation requirements. So in those cases, standing is usually  
2 easy to establish.” *Id.* at 382 (citations omitted).

3 At the pleading stage, a plaintiff must allege facts demonstrating each element of  
4 Article III standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). But a plaintiff  
5 need not satisfy the *Iqbal/Twombly* plausibility standard. An Article III standing inquiry  
6 does not touch directly on the merits of the case.

7 *Twombly* and *Iqbal* are ill-suited to application in the  
8 constitutional standing context because in determining whether  
9 plaintiff states a claim under 12(b)(6), the court necessarily  
10 assesses the merits of plaintiff's case. But the threshold  
11 question of whether plaintiff has standing (and the court has  
12 jurisdiction) is distinct from the merits of his claim. Rather,  
“the jurisdictional question of standing precedes, and does not  
require, analysis of the merits.”

13 *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011) (quoting *Equity Lifestyle*  
14 *Props., Inc. v. Cnty. of San Luis Obispo*, 548 F.3d 1184, 1189 n.10 (9th Cir.2008));  
15 *Catholic League for Religious and Civil Rights v. City & Cnty. of San Francisco*, 624  
16 F.3d 1043, 1049 (9th Cir.2010) (*en banc*) (“Standing is emphatically not a doctrine for  
17 shutting the courthouse door to those whose causes we do not like. Nor can standing  
18 analysis, which prevents a claim from being adjudicated for lack of jurisdiction, be used  
19 to disguise merits analysis, which determines whether a claim is one for which relief can  
20 be granted if factually true.”).

### 21 **III. DISCUSSION**

22 During the COVID-19 pandemic it is alleged that EUSD adopted Administrative  
23 Regulation 5145.3. AR 5145.3 gives definition to what EUSD defines as discriminatory  
24 harassment. AR 5145.3 is not sui generis. According to the allegations of the Complaint,  
25 it is the progeny of a statewide policy promulgated by the California Department of  
26 Education. Details of the policy and how it is intended to work in parent-teacher  
27 communications were described in greater detail in earlier orders of this Court and are not  
28 vigorously contested at this point in the proceedings. Thus, it is briefly described next.

1 Plaintiffs contend that local school district policies like EUSD’s AR 5415.3 are  
2 required by California law as explained and communicated through the California  
3 Department of Education’s publication titled *Frequently Asked Questions* about the  
4 School Success and Opportunity Act (Assembly Bill 1266) (“FAQs”). Complaint ¶ 308-  
5 15. Page 5 of the FAQs provides an answer to the question: “May a student’s gender  
6 identity be shared with the student’s parents, other students, or members of the public?”  
7 It says,

8 A transgender or gender nonconforming student may not  
9 express their gender identity openly in all contexts, including at  
10 home. Revealing a student’s gender identity or expression to  
11 others may compromise the student’s safety. Thus, preserving  
12 a student’s privacy is of the utmost importance. The right of  
13 transgender students to keep their transgender status private is  
14 grounded in California’s antidiscrimination laws as well as  
15 federal and state laws. Disclosing that a student is transgender  
without the student’s permission may violate California’s  
antidiscrimination law by increasing the student’s vulnerability  
to harassment and may violate the student’s right to privacy.

16 FAQs page 7 explains that if a student chooses to be addressed by a new name or  
17 pronoun all school district personnel are required to use said chosen new name/pronoun.  
18 The student’s age is not a factor. “[C]hildren as early as age two are expressing a  
19 different gender identity.”

20 Per the policies of the State Department of Education and EUSD, once a student  
21 expresses a desire to be publicly called by a new gender incongruent name or pronoun,  
22 school faculty and staff are to refer to that student by the incongruent name. From that  
23 point forward, the student may go through each school day with the faculty and staff  
24 addressing the student according to the changed moniker.

25 However, under the antidiscrimination policy, a teacher is not permitted to inform  
26 the parents of this name change without the student’s consent. FAQs page 6 instructs,  
27 “schools must consult with a transgender student to determine who can or will be  
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1 informed of the student’s transgender status, if anyone, including the student’s family.  
2 With rare exceptions, schools are required to respect the limitations that a student places  
3 on the disclosure of their transgender status, including not sharing that information with  
4 the student’s parents.”

5 **IV. MOTIONS TO DISMISS<sup>8</sup>**

6 **A. Article III Standing**

7 **1. Superintendent of Public Instruction Tony Thurmond**

8 Defendant Superintendent of Public Instruction Tony Thurmond argues that the  
9 Plaintiffs lack Article III standing.

10 **a. Parents**

11 Defendant Thurmond begins by contending that the parents have no standing  
12 because they have not alleged an injury-in-fact. But the Poes have alleged a substantial  
13 injury. The Poes allege that their daughter entered seventh grade at a public school in  
14 Fresno. Complaint ¶117. It is alleged that while at school, the child began self-  
15 identifying as a male and adopted a new male name and pronouns for the teachers to use.  
16 *Id.* The child became president of her school’s LGBTQ club. *Id.* However, it is alleged  
17 that the Poes were unaware of their child’s gender nonconformity at school. *Id.* When  
18 their child entered eighth grade, the Poes attended a back-to-school night and met with  
19 their child’s teachers. *Id.* at ¶118. The Poes allege that none of the teachers said  
20 anything about their child presenting as a different gender at school, wanting to use a  
21 different name or pronoun, or that their child was president of the school LGBTQ club.  
22 *Id.* It is alleged that the teachers referred to the Poes’ child by her legal name and her  
23 birth gender biological pronouns, not the new name and pronouns being used in school.  
24 *Id.* It is alleged that only after their child attempted suicide did a physician tell the Poes  
25 that their daughter was identifying as a boy. *Id.* at ¶119. When the Poes contacted the  
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27 <sup>8</sup> For purposes of a motion to dismiss, facts pled in a complaint are assumed to be true.  
28 *Mazarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

1 school to ask if their child was being called by a different name, it is alleged that the  
2 school said, “no.” *Id.* at ¶121. The Poes allege that the school’s answer was not truthful  
3 because teachers’ written letters and emails revealed otherwise. *Id.* Upon moving their  
4 child to a new (public charter) school, the Poes inquired whether their child was  
5 presenting as a male. It is alleged that a school administrator responded by informing the  
6 Poes that the school was not permitted to disclose their child’s gender identity at school  
7 due to the State Department of Education’s FAQs guidance and quoted from the FAQs.  
8 *Id.* at ¶125. The Poes allege they have other school age children but are afraid to place  
9 the children in the public schools because of their experience of teachers and  
10 administrators withholding information about gender expression. *Id.* at ¶126-27. It is  
11 alleged that the Poes cannot afford to place their children in private schools.

12 Like the Poe parents, the Doe parents have a child who attends public schools. The  
13 Does allege that their child has repeatedly transitioned to and desisted from a transgender  
14 identity. Complaint at ¶128-29. The Does allege that their child’s public school “has  
15 repeatedly directly lied to them and refused to answer their questions,” citing to the State  
16 Department of Education’s FAQ guidance on gender identity. *Id.* at ¶129, ¶146-48.

17 These allegations sufficiently describe facts that the Poes and the Does have  
18 suffered an actual injury that is concrete and particularized, fairly traceable to the  
19 Department of Education FAQs on gender identity, and that is redressable by a favorable  
20 ruling. *Murthy*, 603 U.S. at 56–57. This suffices to demonstrate the parents’ Article III  
21 standing.<sup>9</sup>

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26 <sup>9</sup> The Plaintiff Parents may also enjoy standing under the “juridical link” doctrine. *See*  
27 *Martinez v. Newsom*, 46 F.4th 965, 970-72 (9th Cir. 2022) (describing the juridical link  
28 exception to cases where plaintiffs sue “officials of a single state and its subordinate units  
of government” who apply a “common rule”).

1                                   **b. New Plaintiff Teachers’ Standing**

2           Defendant Thurmond contends that the newly added Plaintiff teachers have no  
3 standing because they have not alleged an injury-in-fact. More specifically, he contends  
4 that their alleged injuries are too speculative. However, teachers Boe and Roe have had  
5 transgender students in their classes in past years. Complaint at ¶¶112-13. The new  
6 plaintiff teachers allege that in the future they are likely to have middle school students  
7 who express gender incongruity in the classroom and announce non-conforming names  
8 and pronouns by which they wish to be called. The likelihood Boe or Roe being assigned  
9 future students to which the new policies apply is plausibly high. When that occurs,  
10 teachers Boe and Roe will be faced with the Department of Education FAQs policy as  
11 adopted by EUSD. That policy, it is alleged, will require Boe or Roe to deceive and  
12 mislead any parents who ask them about whether their child has expressed gender  
13 incongruity. That, in turn, it is alleged will violate their sincerely held religious beliefs  
14 or expose them to adverse employment actions.<sup>10</sup> *Id.*

15           These allegations sufficiently articulate that new teacher Plaintiffs Boe and Roe are  
16 likely to suffer an actual injury that is concrete and particularized, fairly traceable to the  
17 Department of Education FAQs and EUSD’s policy on gender identity, that is redressable  
18 by a favorable ruling. *Murthy*, 603 U.S. at 56–57. This suffices for Article III standing.  
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23 <sup>10</sup> Should a teacher fail to abide by state law their teaching credential could be revoked.  
24 *Steinmetz v. California State Board of Education*, 44 Cal.2d 816 (1955) (state board has  
25 authority to call teacher before it to answer questions or revoke certificate); *Atwater*  
26 *Elementary Sch. Dist. v. California Dep’t of Gen. Servs.*, 41 Cal. 4th 227, 236, (2007)  
27 (Kennard, J., dissenting) (“The Legislature has established two separate but interrelated  
28 systems for addressing misconduct by a credentialed teacher. The first grants school  
boards the authority to suspend or dismiss a teacher. (Ed. Code, § 44932 *et seq.*) The  
second authorizes the Commission to admonish a teacher, to publicly reprove a teacher,  
or to suspend or revoke a teacher's credential. (*Id.*, § 44242.5 *et seq.*)”).

1                                   **c. Teachers Mirabelli’s and West’s Standing**

2           Lastly, Defendant Thurmond contends that the teachers Mirabelli and West no  
3 longer have standing because they are not currently teaching. But Mirabelli and West  
4 have allegedly suffered past injuries as teachers due to the policies and allege that they  
5 intend to teach in the future where the same policies will likely impose similar injuries.  
6 Thus, teachers Mirabelli and West enjoy Article III standing because they have alleged  
7 the suffering of an actual injury that is concrete and particularized and is likely to reoccur  
8 and that is fairly traceable to the Department of Education FAQs and EUSD’s policies on  
9 gender identity. The alleged injury and is redressable by a favorable ruling. Moreover,  
10 because other teacher Plaintiffs (Boe and Roe) have standing, the suit by teachers  
11 Mirabelli and West may also proceed. *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023)  
12 (“If at least one plaintiff has standing, the suit may proceed.”) (citing *Rumsfeld v. Forum*  
13 *for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 52, n. 2 (2006)).

14                                   **d. The FAQs**

15           The Superintendent also objects that there is no formal policy – that the  
16 Department of Education has merely published a suggested way to comply with  
17 discrimination law. That is a merits argument that is better left for later proceedings,  
18 rather than an Iqbal/Twombly or Article III standing argument. *Maya*, 658 F.3d at 1068.

19                                   **2. Members of the California Board of Education**

20           The Defendant Members of the California Board of Education make arguments  
21 similar to those of the State Superintendent of Public Instruction, Tony Thurmond.  
22 However, the Board of Education Members also distance themselves from responsibility  
23 for the Department of Education’s FAQs and their enforcement. For example, the  
24 Defendant Members argue that it is a policy-making body while the Superintendent of  
25 Public Instruction is responsible for the administration and implementation of policies.  
26 The Members offer that they are not responsible for the content of the California  
27 Department of Education’s website. As a result, they argue that they are entitled to be  
28 dismissed. But the separation between the State Defendants is indistinct.

1           “The California State Board of Education (‘SBE’) drafts and oversees the policies  
2 implemented by the California Department of Education (‘CDE’). The SBE is  
3 responsible for approving and overseeing statewide curriculum content, creating the  
4 curriculum framework for kindergarten through twelfth grade, and adopting instructional  
5 materials for kindergarten through eighth grade.” *Cal. Parents for the Equalization of*  
6 *Educ. Materials v. Torlakson*, 267 F. Supp. 3d 1218, 1222 (N.D. Cal. 2017). As  
7 California courts describe it, “[t]he Legislature . . . delegated certain powers to the Board  
8 and Superintendent. Pursuant to section 33030, ‘the board shall determine all questions  
9 of policy within its powers.’ The Board is authorized to ‘adopt rules and regulations not  
10 inconsistent with the laws of this state (a) for its own government, (b) for the government  
11 of its appointees and employees,’ and the government of the various schools which  
12 receive state funds. (§ 33031.)” *State Bd. of Educ. v. Honig*, 13 Cal. App. 4th 720, 753  
13 (1993). *Honig* explains that at the same time, “[t]he Legislature delegated to the  
14 Superintendent the power to ‘execute, under direction of the State Board of Education,  
15 the policies which have been decided upon by the board and shall direct, under general  
16 rules and regulations adopted by the State Board of Education, the work of all appointees  
17 and employees of the board.’ (§ 33111.)” *Id.*<sup>11</sup> Put another way, “the Board is  
18 authorized under section 33031 to adopt rules and regulations ... for its own government  
19 and for the government of its appointees ....’ The Superintendent must execute policies  
20 decided by the Board.” *Honig*, 13 Cal. App. 4th at 758.

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24 <sup>11</sup> “[S]ection 33301 describes how the appointed Board and elected Superintendent  
25 should divide responsibilities for administration of the Department: ‘The Department of  
26 Education shall be administered through: (a) The State Board of Education which shall be  
27 the governing and policy determining body of the department; (b) The Director of  
28 Education [Superintendent] in whom all executive and administrative functions of the  
department are vested and who is the executive officer of the State Board of Education.”  
*Id.*

1           Consequently, while the Members of the Board of Education disclaim  
2 responsibility for the policies promulgated by the Department of Education, state law  
3 gives the Members of the Board authority to decide policies to be implemented by the  
4 Department of Education and adopted by school districts throughout the state, under  
5 Education Code §33031. It is under the direction of the State Board of Education that the  
6 Superintendent has the power to execute the policies which have been decided upon by  
7 the Board, under Education Code §33111. *Id.* At the pleading stage, the Complaint is  
8 sufficient to demonstrate that the injuries are fairly traceable to the Defendant Members  
9 of the Board of Education and that therefore the Plaintiffs enjoy Article III standing.

### 10                           **3. *The Attorney General***

11           The Attorney General of California also seeks dismissal contending the Plaintiffs  
12 lack standing. In his present motion the Attorney General maintains his disavowal of  
13 enforcement against EUSD. He argues that the EUSD teacher Plaintiffs lack a threat of  
14 actual injury as a result. His disavowal sufficed previously when EUSD teachers were  
15 the sole Plaintiffs. *See* Order, Dkt. 114 (filed May 10, 2024). However, there are now  
16 parent Plaintiffs who are suffering, or are likely to suffer, injury in other school districts  
17 for which the Attorney General has not disavowed enforcement. Although the Attorney  
18 General contends that as a matter of law school non-disclosure to parents “will not  
19 tangibly interfere” with their constitutionally grounded parental rights to care for their  
20 children, this Court disagrees.

21           “In a pre-enforcement challenge, a litigant ‘satisfies the injury-in-fact requirement  
22 by alleging ‘an intention to engage in a course of conduct arguably affected with a  
23 constitutional interest, but proscribed by a statute, and there exists a credible threat of  
24 prosecution thereunder.’” *Matsumoto v. Labrador*, 2024 WL 4927266, at \*4 (9th Cir.  
25 Dec. 2, 2024) (citation omitted). The Attorney General contends that there is no threat of  
26 prosecution. The State gender non-disclosure policies are fairly new. “In challenging a  
27 new law whose history of enforcement is negligible or nonexistent, either a ‘general  
28 warning of enforcement’ or a ‘failure to disavow enforcement’ is sufficient to establish a

1 credible threat of prosecution in pre-enforcement challenges on First Amendment  
2 grounds.” *Id.* At the hearing, the Attorney General did not disavow enforcement against  
3 any other school districts. In fact, the Attorney General has not sat silent. The Attorney  
4 General has actually taken past enforcement action against the Chino Valley Unified  
5 School District (*see People v. Chino Valley Unified School District*, Superior Court of  
6 San Bernardino Case No. CIV SB 2317301 (filed Aug 28, 2023)). The Chino Valley  
7 action underscores the alleged threat of enforcement by the Attorney General. In  
8 response, the Attorney General insists that enforcement turns on a school district’s  
9 approach to disclosure. “Mandatory disclosure is the dividing line,” says the Attorney  
10 General. In other words, a school district that adopts a policy of mandatory disclosure to  
11 parents when a student displays gender incongruity or dysphoria faces a threat of  
12 enforcement. He implies that a school district that requires something less than  
13 mandatory disclosure will not be prosecuted. This distinction draws too fine a line  
14 between the credible threat of enforcement and non-enforcement to undercut the parent  
15 Plaintiff’s standing.

16 According to the Complaint, the Plaintiff Parents have suffered actual injuries, and  
17 are likely to suffer future injuries traceable to the State Defendants’ policies requiring  
18 non-disclosure and an injunction against the Attorney General’s enforcement of those  
19 policies against any California school district will accord relief. Therefore, the Attorney  
20 General’s motion to dismiss based on standing is denied.<sup>12</sup>

#### 21 ***4. Escondido Union School District Defendants***

22 The EUSD Defendants also move to dismiss contending the new teacher Plaintiffs  
23 lack standing because the application of AR 5145.3 to teachers Boe and Roe is too  
24 speculative. EUSD argues that neither teacher has a transgender student assigned to their  
25

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26  
27 <sup>12</sup> The Attorney General does not move to dismiss any particular claim for relief  
28 under Rule 12(b)(6).

1 class right now. However, the Complaint alleges that Boe and Roe are currently teaching  
2 at EUSD. The Complaint plausibly alleges that AR 5145.3 will require their non-  
3 disclosure to parents of any student they observe experiencing gender dysphoria or  
4 gender non-conformity. It is plausible that whether assigned to their classes, or observed  
5 at other times during the school environment, Boe or Roe may observe students and  
6 parents may ask questions of Boe or Roe. Even more likely, it is sufficiently alleged that  
7 Boe or Roe will be assigned students who prefer names or dress that suggests gender  
8 dysphoria or incongruence and Boe or Roe will have to participate in parent-teacher  
9 meetings. This is sufficient for purposes of establishing Article III standing against  
10 EUSD.

### 11 **B. Failure to State a Claim**

12 In the new Complaint, Plaintiffs advance eight claims for relief. The teachers  
13 assert two claims under the First Amendment's Freedom of Speech Clause and one claim  
14 under the Free Exercise of Religion Clause (Claims 1, 2, and 3). West individually  
15 advances two claims under Title VII of the Civil Rights Act of 1964 (Claims 4 and 5).  
16 The parents assert a single claim for violation of their substantive due process rights  
17 under the Fourteenth Amendment (Claim 7) and two claims for violations of their rights  
18 under the First Amendment's Free Exercise of Religion Clause (Claims 6 and 8).

19 The teachers' claims are similar to those asserted in prior versions of the  
20 Complaint and this Court adopts its prior reasoning and rulings concerning these claims.  
21 The parents' claims expand the reach of the case beyond EUSD to the State Defendants  
22 who are adopting and implementing policies animating EUSD's problematic AR 5145.3.  
23 The parents' claims have not been addressed before and there is no binding case authority  
24 on point. Teacher West's Title VII claims are garden variety employment claims.

#### 25 **1. *Superintendent of Public Instruction Tony Thurmond and the*** 26 ***Members of the State Board of Education***

27 The Superintendent of Public Instruction Tony Thurmond and the Members of the  
28 State Board of Education make similar arguments. Both argue that the teachers fail to



1 state claims for relief under the First Amendment Free Speech Clause and the First  
2 Amendment’s Free Exercise Clause. As to the parents, they fail to state claims for relief  
3 under the Free Exercise Clause or the Substantive Due Process Clause.

4 As to the first assertion, the State Defendants argue that the teacher Plaintiffs “are  
5 not entitled to First Amendment free speech clause protection in this circumstance.” *See*  
6 *e.g.*, Superintendent’s Motion to Dismiss, Dkt. 150 at 9. That is an overstatement. The  
7 State Defendants’ strongest authority may be *Johnson v. Poway Unified School District*,  
8 658 F.3d 954 (9th Cir. 2011). Yet, while *Johnson* stands for the proposition that a  
9 teacher’s curricular speech is government hired speech, to say that teachers lose their free  
10 speech rights at the schoolhouse door carries *Johnson* too far. Here, the teacher Plaintiffs  
11 do not complain about curricular speech. Instead, they allege that the state and EUSD  
12 non-disclosure policies place a pre-speech gag on them by prohibiting disclosure of a  
13 child’s evident gender incongruity including truthful answers to questions asked by  
14 parents about their child’s gender identity. Complaint at ¶351. According to the  
15 Complaint, the policies compel teachers to deceive parents and by such deception  
16 interfere both with their own free speech rights and with parents’ federal constitutional  
17 rights to raise their children. *Id.* at ¶356.

18 While the government may hire teachers to deliver prescribed curricular speech, it  
19 may not compel its employees to do so in a way that intentionally abridges parental  
20 constitutional rights or in a manner that is unlawful. The teacher Plaintiffs allege that the  
21 state and EUSD policies compel them to abridge parental constitutional rights and to do  
22 so in a manner that is intentionally deceptive and unlawful. These allegations fairly state  
23 a plausible claim for relief that the policies infringe on the teachers’ own constitutional  
24 rights under the First Amendment Free Speech Clause.

25 The arguments by the State Defendants against both the teachers’ claims, and later  
26 the parents’ claims, rely on legal suppositions which this Court rejects. For example, in  
27 arguing that the teachers fail to state a claim, the State Defendants contend that “parents  
28 do not have a constitutional right to be informed of their child’s transgender identity.”

1 Superintendent’s Motion to Dismiss, Dkt. 150 at 10; Board’s Motion to Dismiss, Dkt.  
2 149, at 12. Likewise, in arguing that the parents fail to state a substantive due process  
3 claim, the State Defendants assert that parents do not enjoy a fundamental right to be  
4 informed about their student. Specifically, the State Defendants assert, that parents “do  
5 not have a fundamental right to be informed of their students’ gender identity at school,  
6 and accommodating a student’s social transition at school is not medical care triggering  
7 any right to parental involvement.” *Id.* at 21; 23.

8 This cramped definition of parental rights is conclusory and requires the  
9 suspension of disbelief. Constitutional rights of parents to bring up a child and decide  
10 how to handle health care issues are some of America’s oldest foundational rights. “The  
11 liberty interest at issue in this case—the interest of parents in the care, custody, and  
12 control of their children—is perhaps the oldest of the fundamental liberty interests  
13 recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This is  
14 especially true with regard to issues of health.

15 “Surely, [a parent’s right] includes a ‘high duty’ to recognize symptoms of illness  
16 and to seek and follow medical advice.” *Parham v. J. R.*, 442 U.S. 584, 602 (1979). A  
17 child’s gender incongruity is a matter of health. Matters of a child’s health are matters  
18 over which parents have the highest right and duty of care. Parental rights over matters  
19 of health continue to be preeminent even where the government may worry about a  
20 general possibility of abuse or parental non-acceptance due to their child’s exhibition of  
21 gender incongruity. The Supreme Court took this approach in *Parham*,

22 Appellees argue that the constitutional rights of the child  
23 are of such magnitude and the likelihood of parental abuse is so  
24 great that the parents’ traditional interests in and responsibility  
25 for the upbringing of their child must be subordinated at least to  
26 the extent of providing a formal adversary hearing prior to a  
27 voluntary commitment.

28 Our jurisprudence historically has reflected Western  
civilization concepts of the family as a unit with broad parental  
authority over minor children. Our cases have consistently  
followed that course; our constitutional system long ago

1 rejected any notion that a child is “the mere creature of the  
2 State” and, on the contrary, asserted that parents generally  
3 “have the right, coupled with the high duty, to recognize and  
prepare [their children] for additional obligations.”

4 . . . .  
5 The law’s concept of the family rests on a presumption  
6 that parents possess what a child lacks in maturity, experience,  
7 and capacity for judgment required for making life’s difficult  
8 decisions. More important, historically it has recognized that  
natural bonds of affection lead parents to act in the best  
interests of their children.

9 . . . .  
10 Simply because the decision of a parent is not agreeable  
11 to a child or because it involves risks does not automatically  
12 transfer the power to make that decision from the parents to  
13 some agency or officer of the state. . . . Most children, even in  
adolescence, simply are not able to make sound judgments  
concerning many decisions, including their need for medical  
care or treatment. Parents can and must make those judgments.

14 442 U.S. at 602-603 (citations omitted). And although the State Defendants  
15 disagree<sup>13</sup>, it easily follows that parents *do* have a constitutional right to be accurately  
16 informed by public school teachers about their student’s gender incongruity that could  
17 progress to gender dysphoria, depression, or suicidal ideation, because it is a matter of  
18 health. *Cf. John & Jane Parents I v. Montgomery Cnty. Bd. of Educ.*, 78 F.4th 622, 636  
19 (4th Cir. 2023) (Niemeyer, C.J., dissenting) (“The issue of whether and how grade school  
20 and high school students choose to pursue gender transition is a family matter, not one to  
21 be addressed initially and exclusively by public schools without the knowledge and  
22 consent of parents. Yet, the Montgomery County Board of Education . . . preempts the  
23 issue to the exclusion of parents with the adoption of its “Guidelines for Student Gender  
24 Identity,” which invite all students in the Montgomery County public schools to engage  
25

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26  
27 <sup>13</sup> The State Defendants do agree that parents have specific rights with respect to  
28 directing their child’s medical care. Superintendent’s Mot. to Dism., at 11; Board Mot. to  
Dism., at 13.

1 in gender transition plans with school Principals without the knowledge and consent of  
2 their parents. This policy implicates the heartland of parental protection under the  
3 substantive Due Process Clause of the Fourteenth Amendment.). Even *Regino v. Staley*,  
4 upon which the State Defendants rely, acknowledges that the parents’ constitutional  
5 claim is substantial. *Regino v. Staley*, 2023 WL 4464845 at \*4 (E.D. Cal. 2023)  
6 (“Plaintiff has raised serious questions that go to the merits of her case, namely what the  
7 bounds of the parental right are to direct the upbringing of one’s children as they pertain  
8 to a child’s gender identity and expression in school.”).

9 The Defendants’ policies do little to protect a parent’s interests in their child’s  
10 health. On the contrary, when on occasion these interests collide, the Defendants’  
11 policies promote the ascendancy of a child’s rights over the child’s parents. The  
12 Supreme Court’s precedents point the other way toward “permit[ting] the parents to  
13 retain a substantial, if not the dominant, role” in a health care decision. *Id.* at 604. For  
14 example, the Supreme Court points out that “[t]he fact that a child may balk at  
15 hospitalization or complain about a parental refusal to provide cosmetic surgery does not  
16 diminish the parent’s authority to decide what is best for the child.” *Id.*

17 There are no controlling decisions for this Court to follow in this case. This case  
18 presents the question of whether the constitutional rights of parents may be subordinated  
19 by a state’s imposition of policies that elevate a child’s state created and unprecedented  
20 rights above or beyond the rights of their parents. At least as far as decisions on  
21 healthcare in school settings are concerned, the long-recognized federal constitutional  
22 rights of parents must preponderate and a claim that school policies trench on parents’  
23 rights states a plausible claim for relief. Because this is a lynchpin argument for the State  
24 Defendants, an argument with which the Court disagrees, the State Defendants’ motion to  
25 dismiss the parent Plaintiffs’ claim for violation their substantive due process rights  
26 (Claim 7) is also denied.

27 The State Defendants also argue for dismissal of the teachers’ and the parents’  
28 First Amendment Free Exercise Clause claims (Claims 2 and 3; Claims 6 and 8). The

1 gravamen of the defense argument is that neither the teachers nor the parents are  
2 suffering, or will suffer, a substantial burden on their exercise of religion.<sup>14</sup> However, the  
3 contentions set out in the Complaint allege the burdens placed by the policies on the  
4 Plaintiffs are substantial.

5 The teachers allege that they risk adverse employment consequences up to and  
6 including termination. *See e.g.*, Complaint, Exhibits 33-36. They plausibly allege that  
7 having to choose between violating their sincerely held religious beliefs by deceiving  
8 parents and facing substantial adverse employment consequences is a substantial burden  
9 on their free exercise rights. The parents allege that allowing California schools to  
10 socially transition their children to a new gender without their knowledge, or  
11 involvement, or be forced to withdraw their children from a public school, is a substantial  
12 burden on their free exercise of religion. Complaint ¶¶443-44. The parents allege that the  
13 policies must undergo strict scrutiny but that the state has no compelling interest in  
14 requiring school staff to deceive parents about their children’s incongruent gender  
15 expression. *Id.* at ¶¶453-57. In short, both the teachers and the parents have adequately  
16 stated claims upon which relief can be granted in asserting that the non-disclosure  
17 policies substantially burden their First Amendment right to the free exercise of religion.

18 The State Defendants also argue that their policies do not force the parents to act  
19 contrary to their religious beliefs. According to the Complaint, the policies force parents  
20 to accede to a school’s plan to neither acknowledge nor disclose information about their  
21 child’s gender dysphoria. By concealing a child’s gender health issues from the parents,  
22 parents are precluded from exercising their religious obligations to raise and care for their  
23 child at a time when it may be highly significant, because they are kept uninformed of the  
24 need for their child’s religious guidance. “Families entrust public schools with the  
25 education of their children, but condition their trust on the understanding that the  
26

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27  
28 <sup>14</sup> Superintendent’s Mot. to Dism., at 15; Board Mot. to Dism., at 17.

1 classroom will not purposely be used to advance religious views that may conflict with  
2 the private beliefs of the student and his or her family. Students in such institutions are  
3 impressionable and their attendance is involuntary.” *Edwards v. Aguillard*, 482 U.S. 578,  
4 584 (1987). For parents who are not rich and have limited financial resources to choose  
5 private schooling or homeschooling for their child, there remains only public school  
6 placement for satisfying the state truancy law obligation of school attendance.

7 Whether the teachers and parents can prove their allegations may remain for  
8 summary judgment or trial but they have adequately stated plausible free exercise claims.  
9 Therefore, the State Defendants’ motions to dismiss Claims 2 and 3 (teachers) and  
10 Claims 6 and 8 (parents) are denied.

## 11 2. *EUSD*

12 EUSD moves to dismiss the teachers’ claims. EUSD argues that the teachers fail  
13 to state free speech or free exercise claims. EUSD separately argues that West has not  
14 stated Title VII claims. EUSD’s arguments concerning the teacher’s First Amendment  
15 claims largely parallel the arguments of the State Defendants and fare no better. EUSD  
16 makes similar arguments that the teachers fail to state a claim for violations of their right  
17 to free speech. EUSD argues (as it did before) that only curricular speech is at issue and  
18 that it may control the curriculum. But as discussed above, the allegations in the  
19 Complaint go beyond garden-variety curricular speech. Teachers do not completely  
20 forfeit their First Amendment rights in exchange for public school employment. To the  
21 extent that teachers allege (as they do here) that EUSD has hired their speech to speak  
22 falsely or deceptively to parents of students, the teachers make out a plausible claim for  
23 relief under the First Amendment’s Free Speech Clause. Likewise, to the extent teachers  
24 allege (as they do here) that EUSD’s curriculum includes what the teachers sincerely  
25 believe to be lies and deceptions for communications with school parents and that such  
26 prevarications are religiously or morally offensive, the teachers make out a plausible  
27 claim for relief under the First Amendment’s Free Exercise Clause. EUSD contends that  
28 it is not a lie to not answer a question. That the teachers sincerely held religious beliefs

1 to the contrary cannot be simply dismissed. It is the allegations of the Complaint that  
2 dictate the claim for relief. Here, Plaintiffs sufficiently allege plausible free exercise  
3 claims. EUSD makes additional arguments for dismissal, but they are in the nature of  
4 summary judgment or trial arguments going to the merits and are not suitable for  
5 consideration on a motion to dismiss. Therefore, EUSD’ motion to dismiss the teachers’  
6 First Amendment claims (Claims 1, 2, and 3) are denied.

7 EUSD also argues for dismissal of West’s Title VII claims. West asserts a  
8 religious discrimination claim based on a failure to accommodate (Claim 4) and a  
9 retaliation claim (Claim 5). Concerning the failure to accommodate claim, EUSD argues  
10 facts to prove that it has engaged in sufficient efforts to accommodate West. For  
11 example, it says “EUSD initiated good food [sic] efforts to accommodate West’s  
12 religious beliefs through meetings. . . .” EUSD Mem. of Points and Auth., Dkt. 157, at  
13 10. And EUSD says, “During this process, EUSD came to an agreement with Mirabelli  
14 and West. . . .” *Id.* EUSD may be able to prevail on its defenses at summary judgment or  
15 trial, but its arguments here are premature. After all, “[a]n employer who fails to provide  
16 an accommodation has a defense only if the hardship [on the employer] is ‘undue,’ and a  
17 hardship that is attributable to employee animosity to a particular religion, to religion in  
18 general, or to the very notion of accommodating religious practice cannot be considered  
19 ‘undue.’” *Groff v. DeJoy*, 600 U.S. 447, 472 (2023).

20 Similarly, for the retaliation claim, EUSD remonstrates that West’s allegations  
21 have “no supporting factual basis,” and then goes on to describe what it sees as favorable  
22 facts. EUSD Mem. of Points and Auth., Dkt. 157, at 11. EUSD also argues that West is  
23 required to allege the “when and what” of actions that her principal should have protected  
24 West from. But the Complaint sufficiently gives notice of the types of retaliation that  
25 West alleges EUSD was aware and alleges EUSD took no action. “To establish a prima  
26 facie claim for retaliation under Title VII, the plaintiff must demonstrate that: (1) she  
27 engaged in a protected activity; (2) she was subjected to an adverse employment action,  
28 and (3) a causal link exists between the protected activity and the adverse action.” *Perez*

1 *v. McDonough*, No. 23-CV-06713-JST, 2024 WL 4844383, at \*7 (N.D. Cal. Nov. 20,  
2 2024) (citing *Manatt v. Bank of Am., NA*, 339 F.3d 792, 800 (9th Cir. 2003)). West  
3 satisfies this standard. The Complaint alleges EUSD placed her on administrative leave  
4 and did not permit her to teach. This suffices to state a claim. *Dahlia v. Rodriguez*, 735  
5 F.3d 1060, 1078 (9th Cir. 2013) (“The district court dismissed Dahlia’s suit on the  
6 alternative ground that placement on administrative leave is not an adverse employment  
7 action. We disagree. We conclude that, under some circumstances, placement on  
8 administrative leave can constitute an adverse employment action.”). The Complaint also  
9 alleges instances of co-worker hostility to West’s religious stance. This also suffices to  
10 state a claim as Title VII protects an employee from religious hostility by co-workers of  
11 whom the employer is aware. *Groff*, 600 U.S. at 472. Ultimately, West has succeeded in  
12 stating claims for relief under Title VII (Claims 4 and 5). EUSD’s motion to dismiss the  
13 West claims is denied.

### 14 **C. Indispensable Parties**

15 The State Defendants also argue that the Complaint should be dismissed because  
16 the Plaintiffs have not named other indispensable parties as defendants. Specifically, it is  
17 argued that the local school districts of the Poe and Doe children must be named as  
18 defendants. The Court disagrees. California local school districts are ultimately state  
19 agents under state control. *Sato v. Orange Cnty. Dep’t of Educ.*, 861 F.3d 923, 933 (9th  
20 Cir. 2017) (“We therefore find that the passage of AB 97 did not disturb our longstanding  
21 precedent that California law treats public schooling as a statewide or central  
22 governmental function. . . . that the state itself has decided to give its local agents more  
23 autonomy does not change the fact that the school districts remain state agents under state  
24 control.”) (citations omitted); *Butt v. State of California*, 4 Cal. 4th 668, 681 (1992)  
25 (“Management and control of the public schools is a matter of state, not local, care and  
26 supervision. . . . Local districts are the State’s agents for local operation of the common  
27 school system and the State’s ultimate responsibility for public education cannot be  
28 delegated to any other entity.”) (citations omitted). Consequently, the State Defendants



1 are able to protect a local district’s interests and complete relief can be afforded among  
2 the existing parties. Thus, other local school districts need not be joined as defendants  
3 under Federal Rule of Civil Procedure 19. *Cf. Everett H v. Dry Creek Joint Elementary*  
4 *Sch. Dist.*, No. 2:13-CV-00889-MCE-DB, 2016 WL 5661775, at \*7 (E.D. Cal. Sept. 30,  
5 2016) (“The CDE’s [indispensable party] argument ignores the fact that the CDE has an  
6 independent obligation to ensure compliance with the IDEA.”).

## 7 **VI. CONCLUSION**

8 It is still true that a request to change one’s own name and pronouns may be the  
9 first visible sign that a child or adolescent may be dealing with issues that could lead to  
10 gender dysphoria or related health issues. Yet, for teachers, communicating to a parent  
11 the social transition of a school student to a new gender — by using preferred pronouns  
12 or incongruent dress — is not generally permitted under EUSD’s and the State  
13 Defendants’ policies. The Supreme Court has long recognized that parents hold a federal  
14 constitutional Due Process right to direct the health care and education of their children.  
15 The Defendants stand on unprecedented and more recently created state law child rights  
16 to privacy and to be free from gender discrimination. These rights may compete when it  
17 comes to information about a child’s expressed gender incongruence in a public school.  
18 Parents have a right to know about their child gender expression at school. And a child  
19 has a right to keep gender expressions private and to be protected from discrimination.

20 The Supreme Court and the Ninth Circuit have clearly and unambiguously  
21 declared parents’ rights as they relate to their children. *Parham*, 442 U.S. at 602-604;  
22 *Mann v. County of San Diego*, 907 F.3d 1154, 1156 (9th Cir. 2018) (“We have long  
23 recognized the potential conflict between the state’s interest in protecting children from  
24 abusive or neglectful conditions and the right of the families it seeks to protect to be free  
25 of unconstitutional intrusion into the family unit, *which can have its own potentially*  
26 *devastating and long lasting effects.*”) (emphasis added). There are no controlling  
27 decisions that would compel this Court to limit or infringe parental rights,  
28 notwithstanding the State’s laudable goals of protecting children. This Court concludes

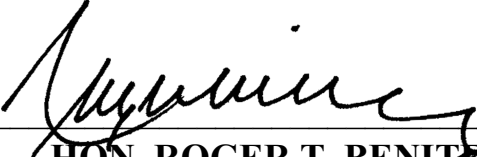
1 that, in a collision of rights as between parents and child, the long-recognized federal  
2 constitutional rights of parents must eclipse the state rights of the child. Therefore, the  
3 Court finds that the Plaintiffs have stated plausible claims upon which relief can be  
4 granted and the motions to dismiss are denied.

5 **THEREFORE, IT IS ORDERED THAT:**

6 All Plaintiffs enjoy Article III standing. The motion to dismiss of the  
7 Superintendent of Public Instruction (Dkt. 150) is denied. The motion to dismiss of the  
8 members of the Board of Education (Dkt. 149) is denied. The Attorney General's motion  
9 to dismiss (Dkt. 156) is denied. The motion to dismiss of the EUSD Defendants (Dkt.  
10 157) is denied.

11 **IT IS SO ORDERED.**

12 Dated: January 7, 2025

  
\_\_\_\_\_  
13 **HON. ROGER T. BENITEZ**  
14 United States District Judge