



State of California
Office of the Attorney General

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ATTORNEY GENERAL

September 26, 2023

SENT VIA EMAIL

To: School District Superintendents and Members of Boards of Education

RE: Guidance Regarding Forced Disclosure Policies Concerning Gender Identity

Dear School District Superintendents and Members of Boards of Education:

On September 6, 2023, the San Bernardino Superior Court issued a temporary restraining order in *The People of the State of California v. Chino Valley Unified School District* (Case No. CIV-SB-2317301). In that order, the Court enjoined and restrained the Chino Valley Unified School District (CVUSD) from adopting, implementing, enforcing, or otherwise giving effect to its Board Policy 5020.1, under which school staff were required to forcibly “out” transgender and gender nonconforming students to their parents. Specifically, Policy 5020.1—which the CVUSD Board adopted on July 20, 2023—required schools to inform parents, with minimal exceptions, whenever a student requests to use a name or pronoun different from that on their birth certificate or official records, without the student’s permission. The Policy also requires parental notification if a student requests to use facilities or participates in programs that do not align with their sex or gender on official records. The forced disclosure policy required staff members to make such disclosures without student consent, and even when the disclosure of that student’s gender identity could put them at risk of physical, emotional, or psychological abuse.

The Court’s temporary restraining order in *Chino Valley* provides, in relevant part:

The Court finds Plaintiff, the People of the State of California, have demonstrated a likelihood that it will prevail on the merits of its Complaint, and that the relative balance of harms to both Plaintiff and Defendant require the Court to issue interim relief. . . . Defendant and its agents, employees, assigns, and all persons acting in concert with it are restrained and enjoined from adopting, implementing, enforcing, or otherwise giving effect to [CVUSD] Board Policy 5020.1.

This temporary restraining order remains in full force and effect and the California Department of Justice’s legal interpretation and intent to enforce California law for the protection of children remains unchanged. A hearing on the Department of Justice’s request for a preliminary injunction is currently set for October 13, 2023.

On September 14, 2023, the United States District Court for the Southern District of California entered a preliminary injunction in a different case, *Mirabelli v. Olson* (Case No. 3:23-cv-00768-BEN-WVG). That court order addresses two teachers' challenge to a different policy (Administrative Regulation [AR] 5145.3) in a different school district (Escondido Union School District [EUSD]) on different legal grounds than those at issue in *Chino Valley*. The *Mirabelli* case does not address the legality of CVUSD Policy 5020.1's forced disclosure provisions, or similar or identical policies adopted by other school districts requiring forced disclosure of transgender or gender nonconforming students' gender identities. Instead, the *Mirabelli* case addresses the limited question of whether the two plaintiff teachers have a right, allegedly based on their sincerely-held religious beliefs, to disclose a student's transgender identity to a parent without the student's consent under the First Amendment's free exercise of religion clause. By its own plain terms, the order in *Mirabelli* only enjoins enforcement of AR 5145.3 and California Department of Education guidelines on that topic against the two named EUSD teachers and prevents any governmental employee or entity from taking adverse employment actions against those two teachers on the basis of those provisions until their claims can be resolved on the merits.

The preliminary injunction in the *Mirabelli* case thus has no effect on the Temporary Restraining Order that remains in place against CVUSD. Nor does the *Mirabelli* order have any bearing on the lawfulness of the implementation of Policy 5020.1 or similar policies, nor on the Department of Justice's enforcement of the law as outlined in its moving papers in *Chino Valley*.

With respect to forced outing policies similar to Policy 5020.1, the California Department of Justice reminds school districts, their governing boards, and their employees to bear in mind the strong protections that California's Constitution and statutes provide to transgender and gender nonconforming students, and our State's guarantees to students of the right to equal education, non-discrimination, and privacy. As the Department of Justice has explained in its briefing in *Chino Valley*, when school districts adopt forced disclosure provisions, they violate the California Constitution's guarantee of equal protection (Cal. Const., art. I, § 7); state statutes prohibiting discrimination on the basis of sex, gender, gender identity, and gender expression (Ed. Code, § 200 et seq.; Gov. Code, § 11135); and the California constitutional privacy rights of transgender and gender nonconforming students (Cal. Const., art. I, § 1). In granting its Temporary Restraining Order in *Chino Valley*, the Superior Court found that the People were likely to succeed on those claims at trial, and that the "relative balance of harms" required the Court to rule in favor of the People.

All California school districts are bound by a duty of care to protect the students they educate. By forcing disclosure of a transgender or gender nonconforming student's gender expression or gender identity—even against a student's wishes, and with no exception for situations involving a potential threat of parental harm or violence—forced disclosure policies not only violate transgender and gender nonconforming students' rights to equal protection, nondiscrimination and privacy, but they risk breaching the duty of care school districts owe to

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these and all students. (See, e.g., *Cleveland v. Taft Union High Sch. Dist.* (2022) 76 Cal.App.5th 776, 799 [citations omitted].)

These risks to student safety are not hypothetical. Data underscore the threat posed by forced disclosure policies: only 37 percent of LGBTQ+ youth identified their home as supportive of their identity; one in ten transgender individuals have experienced violence at the hands of an immediate family member; 15 percent ran away or were kicked out of their home because they were transgender; and coming out to adverse parents has been shown to increase the risks of major depressive symptoms, suicide, homelessness, and drug use.

My office remains committed to protecting the legal rights, physical safety, and mental and emotional health of children in California schools, and in protecting them from trauma, harassment, bullying, and exposure to violence and threats of violence. By singling out transgender and gender nonconforming students for different, adverse treatment that puts them at risk of harm, forced disclosure provisions violate their constitutional right to equal protection and privacy, as well as their right to statutory protection from discrimination under California law.

Sincerely,



ROB BONTA
Attorney General