



September 18, 2023

Via Electronic Mail Only

Re: Green Light for Parental Notification—Federal Court Suspends Unconstitutional Policy Forcing Public School Teachers to Conceal Gender Identity from Parents

Dear California School Board Member,

Greetings! The purpose of this memo is to follow up regarding my prior two legal memos issued to school board members across California¹ and to keep you informed about last week’s highly relevant “game-changing” federal court decision. That ruling undermines the baseless “legal” arguments advocated by California Attorney General Rob Bonta, including those embodied in his meritless lawsuit against the Chino Valley Unified School District. Do not be confused. You need to be encouraged and understand that our side is winning and will win this war!

On September 14, 2023, U.S. District Court Judge Roger Benitez, in *Mirabelli, et al. v. Olson, et al.*, confirmed my analysis about the legality of parental notification policies. Specifically, that, as applied to whether parents should to be notified about whether their child is struggling with gender dysphoria at school, well-established U.S. Constitutional civil rights supersede any and all contrary state laws and state constitutional claims asserted by Rob Bonta. The lawsuit was brought by two teachers from Rincon Middle School challenging Escondido Union School District’s (EUSD) regulation AR 5145.3 and also named State Superintendent of Public Instruction Tony Thurmond and the California Department of Education (CDE) as defendants. EUSD’s policy, allegedly based on state “law” including spurious CDE FAQ’s, coerced teachers to actively conceal important information from parents regarding their child’s expressed gender dysphoria at school, essentially forcing teachers to lie to parents. Non-compliant (read honest) teachers are deemed as discriminatory and harassing.

However, a clinical psychologist provided powerful unrebutted testimony confirming that, when a child is struggling with gender dysphoria, it is nearly always a best practice to have parents informed and actively involved and, further, that keeping parents out of the loop does harm to the parent-child relationship and the child’s health and well-being. Judge Benitez issued an [order](#)

¹ June 14, 2023 NCLP [memo](#) to California school board members in support of the Coalition for Parental Rights Model Parental Notification Policy (similar to the Chino Valley (CVUSD) policy); August 8, 2023 NCLP legal [memo](#) rebutting CA Attorney General Rob Bonta’s July 20, 2023 letter threatening CVUSD and “civil rights” investigation. I am a constitutional attorney licensed to practice before the U.S. Supreme Court with more than 28 years of legal experience, including extensive work in the area of civil rights involving public education.

enjoining EUSD's "Parental Exclusion Policy" and denying the defendants' motion to dismiss, concluding:

"Parental involvement is essential to the healthy maturation of schoolchildren ... The school's policy is a trifecta of harm: it harms the child who needs parental guidance and possibly mental health intervention to determine if the incongruence is organic or whether it is the result of bullying, peer pressure, or a fleeting impulse. It harms the parents by depriving them of the long-recognized Fourteenth Amendment right to care, guide, and make health care decisions for their children. And finally, it harms plaintiffs who are compelled to violate the parent's rights by forcing plaintiffs to conceal information they feel is critical for the welfare of their students –violating plaintiffs' religious beliefs."

So, what does this ruling mean for California school districts considering adopting or in the process of adopting the model parental notification policy?

First, it confirms that your highest fiduciary duty is to comply with the legal mandates of the U.S. Constitution, not state law or flawed interpretations thereof. U.S. Constitutional protections include parents' rights to direct the care, education and raising of their children, which not only protects families, but their children who are struggling with gender dysphoria. Also included are the plaintiff teachers' First Amendment religious free exercise right to live according to their religious beliefs, specifically their belief that parents have the God-given right to be notified about their child's health, safety and welfare.

Second, it means that Attorney General Rob Bonta's specious claims that minor student "privacy rights" or other California laws somehow supersede parental rights to have accurate information about their child. This fatally flawed argument will not survive judicial scrutiny.

Third, it means that the Coalition for Parental Right's model parental notification policy is constitutionally compliant and truly represents "best practices" for school districts when children are experiencing gender dysphoria or gender incongruence on campus. We fully expect that the U.S. Supreme Court majority will take the same view as Judge Benitez.

While this is admittedly not a final ruling on the merits by the U.S. Supreme Court, I can assure you, as a constitutional attorney, that Judge Benitez's legal analysis in the U.S. District Escondido case is entirely consistent with the both text of the U.S. Constitution and applicable U.S. Supreme Court precedent. The very opposite is true regarding Bonta's very weak and deeply flawed state court lawsuit, *People of the State of California v. Chino Valley Unified School District*, which is little more than a desperate intimidation tactic and a vain attempt to slow the steady and certain advancement of parental rights here in the Golden State. Before issuing a temporary restraining [order](#), Judge Garza did not even read CVUSD's legal briefs nor were 14th Amendment parental rights raised in oral arguments, yet Garza temporarily paused CVUSD's policy out of "an abundance of caution." CVUSD now has new counsel, and the preliminary injunction hearing is October 13. It is our informed legal opinion that Garza's flawed, incomplete and knee-jerk legal analysis trampling parental rights and teacher's rights, based only on state law, will not prevail here, but that Judge Benítez's reasoned analysis, based on federal law (the U.S. Constitution), will be the clear winner.

Indeed, under overreaching pressure from Sacramento, in the past three months, more than seven (7) bold and courageous school districts in the California have adopted a parental notification policy—three (3) have done so even *after* the state court TRO against the Chino policy. You may be concerned that Rob Bonta might sue your district if you do the right thing here and decide to honor parental rights, teachers’ rights and student health and safety. Bonta might do so, although there is increasing strength in our growing numbers, and Bonta is not above the U.S. Constitution, which is the highest law in the land.

Rather, your greatest jeopardy and risk actually lie in doing nothing. Indeed, the likelihood that you will be sued by harmed parents, harmed students and harmed teachers if you refuse to honor these rights safeguarded by the U.S. Constitution is virtually certain and will ultimately cost your district a lot more money than anything paper-tiger A.G. Bonta can legitimately do to your district. In fact, the Spreckels Union School District in California² just paid \$100,000 to a single mother after she sued the district for socially transitioning her daughter at school without her knowledge or consent.

In conclusion, I urge you to do the right thing and adopt a model parental notification policy in your district as soon as is possible. Please act now to honor the constitutional right of parents and teachers, as well as the health and safety of your students. Rest assured, that you are on the right side of the law and the right side of history. You can find many helpful resources at the [Coalition for Parental Rights](#) website.

Sincerely,



Dean R. Broyles, Esq.
President & Chief Counsel
The National Center for Law & Policy

² **Salinas Mom Wins Settlement in Transgender Case**—Jessica Konen filed a federal civil rights lawsuit against the Spreckels Union School District (SUSD) in June 2022, asserting her fundamental 14th Amendment right to raise her daughter. Konen complained the Buena Vista Middle School socially transitioned her 11-year-old daughter Alicia to a boy without notifying her and obtaining her consent. Alicia had been acting distressed at school and two teachers named in the complaint told her the reason was she didn’t know who she “truly was in-side.” That’s when the school allowed Alicia to use the boys’ restroom and male pronouns. When Konen discovered this, she filed a lawsuit. Eventually her daughter returned to identifying as a girl. Without admitting fault, SUSD settled with Konen for \$100,000. With more than 5.8 million public school students in California, this case is just the tip of the iceberg. Similar lawsuits have been filed or will be soon be initiated all across the state.