

No. 23-16031

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AURORA REGINO,
Plaintiff - Appellant,

v.

KELLY STALEY, Superintendent,
Defendant-Appellee,
and

CAITLIN DALBY, REBECCA KONKIN, TOM LANDO,
EILEEN ROBINSON, MATT TENNIS,
Defendants.

On Appeal from the United States District Court
for the Eastern District of California
Honorable John A. Mendez, No. 2:23-cv-00032-JAM-DMC

MOTION FOR LEAVE TO FILE NONPARTY BRIEF

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1. Pursuant to Federal Rules of Appellate Procedure 29(a)(3), Dr. Stephanie Budge, Dr. Mollie McQuillan, Dr. Stephen Russell, Dr. Kristina Olson, Dr. Sabra Katz-Wise, Dr. Russell Toomey, and Dr. Katherine Kuvalanka hereby move for an order granting them leave to file a non-party brief in this action as Amici Curiae.

2. Dr. Stephanie Budge, Dr. Mollie McQuillan, Dr. Stephen Russell, Dr. Kristina Olson, Dr. Sabra Katz-Wise, Dr. Russell Toomey, and Dr. Katherine Kuvalanka join as amici because of their collective understanding that requiring school personnel automatically to disclose information related to a student's sexual orientation, gender identity, gender exploration, or gender expression to the student's parents or guardians—regardless of a student's individual circumstances or potential vulnerability to harm—would undermine the critical role schools play in the healthy social, emotional, and academic development of students. Amici have extensive experience studying the effects of home and school environments on the development and wellbeing of young people, including LGBTQ+ young people. Drawing from that research, amici urge this Court to affirm the district court's dismissal of Plaintiff-Appellant's Complaint.

3. **Dr. Stephanie Budge** is a licensed psychologist and an Associate Professor in the Department of Counseling Psychology and the Director of the Advancing Health Equity and Diversity program in the Collaborative Center for

Health Equity at the University of Wisconsin-Madison. Her clinical work and research focus on improving medical and psychotherapy treatments (and access to care) for Two Spirit, trans, and nonbinary (2STNB) youth and adults. She is also the founder of the Trans CARE Collaborative at UW-Madison. Dr. Budge is currently an Associate Editor of Psychology of Sexual Orientation and Gender Diversity. She is also on the editorial board of the International Journal of Transgender Health and LGBTQ+ Family: An Interdisciplinary Journal.

4. **Dr. Mollie McQuillan** is an Assistant Professor in the Department of Educational Leadership and Policy Analysis at the University of Wisconsin - Madison. Dr. McQuillan received her PhD in Human Development and Social Policy from Northwestern University. Her research examines the intersection of educational policy, leadership, school climates, and health of LGBTQ+ and other gender-expansive people in PK-12 schools. Prior to her graduate studies at Northwestern, Mollie spent 12 years working with adolescents, including seven as a public-school teacher.

5. **Dr. Stephen Russell** is the Priscilla Pond Flawn Regents Professor in Child Development at the University of Texas at Austin, as well as the Amy Johnson McLaughlin Director of the School of Human Ecology. His research focuses on adolescent development, with an emphasis on adolescent sexuality, LGBT youth, and parent-adolescent relationships. He currently chairs the Board of Directors of the

Sexuality Information and Education Council of the United States (SIECUS) and was previously an elected board member of the National Council on Family Relations (2005-2008) and Past-President of the Society for Research on Adolescence.

6. **Dr. Kristina Olson** is a Professor of Psychology at Princeton University and the Director of the Human Diversity Lab. She received her B.A. in Psychology and African and African-American Studies from Washington University in 2003 and her Ph.D. from Harvard University in 2008. Before joining the faculty of Princeton, she was a professor at Yale University and then the University of Washington. She studies early social cognitive development and directs the TransYouth Project, a large-scale, national longitudinal study following more than 300 transgender youth. In 2018, Dr. Olson was awarded a MacArthur Genius Grant for her work in advancing the scientific understanding of gender and shedding light on the social and cognitive development of transgender and gender- nonconforming youth. She was also the recipient of the 2018 Alan T Waterman Award from the National Science Foundation, their highest award for a scientist under the age of 40, given to one scientist across all areas of science and engineering per year. Dr. Olson also received the 2016 Janet Taylor Spence Award for Transformational Early Career Contributions from the Association for Psychological Science, and was awarded the 2015 Davida Teller Distinguished Faculty Mentor Award. Her research is funded by the National Science Foundation and the National Institutes of Health.

7. **Dr. Sabra Katz-Wise** is an Associate Professor in Adolescent/Young Adult Medicine at Boston Children's Hospital, in Pediatrics at Harvard Medical School, and in Social and Behavioral Sciences at the Harvard T. H. Chan School of Public Health. She also co-directs the Harvard SOGIE (Sexual Orientation Gender Identity and Expression) Health Equity Research Collaborative and she is a Senior Faculty Advisor for the Boston Children's Hospital Office of Health Equity and Inclusion. Dr. Katz-Wise's research investigates sexual orientation and gender identity development, sexual fluidity, health inequities related to sexual orientation and gender identity in adolescents and young adults, and psychosocial functioning in families with transgender and nonbinary youth. Her work has been funded by numerous grants from the National Institutes of Health and the Boston Children's Hospital Aerosmith Endowment Fund.

8. **Dr. Russell Toomey** is University Distinguished Scholar and Professor of Human Development and Family Science at the University of Arizona. He conducts research on the processes by which sexual and gender minority youth thrive and are resilient despite discrimination, systemic barriers, and other challenges they encounter in society. His research identifies both the individual-level mechanisms (e.g., coping, activism) and systems-level policies (e.g., inclusive school policies) that reduce the impacts of discrimination and contribute to optimal health, well-being, and educational outcomes. At the University of Arizona, he teaches

undergraduate and graduate courses on adolescent development, human sexuality, professional development, and advanced graduate-level applied statistics. He serves on the Board of Directors for the Society for Research on Adolescence, the Governing Council of the Society for Research in Child Development, and the Editorial Board for the *Journal of Youth and Adolescence*.

9. **Dr. Katherine Kuvalanka** is a Professor in the Department of Family Science and Social Work at Miami University in Ohio. Her research has focused broadly on sexuality and gender socialization within families, and more specifically on families with lesbian, gay, bisexual, transgender, and queer (LGBTQ) family members, and most recently on custody cases involving families with transgender children. She is the principal investigator of the Trans*Kids Project, a longitudinal study of 50 families with transgender and gender-diverse (TGD) children, which began more than a decade ago.

10. Plaintiff-Appellant seeks to permanently enjoin a school policy that protects the confidentiality of students who request that the school use a different name or pronoun when referring to them at school. Amici are well-positioned to aid this Court in the instant case by providing insights into the importance of such policies in fostering a welcoming and inclusive school environment, and promoting student success. The brief of amici will discuss the limited situations where law and public policy protect the confidentiality of student communications with school

personnel and the applicability of those circumstances to students who would be affected if the Chico Unified School District policies regarding student confidentiality were enjoined.

11. Attached to this motion as Exhibit A is the proposed non-party brief of Dr. Toomey, et al. Pursuant to Federal Appellate Rule 29(a)(2), this brief has been filed with the consent of all parties.

CONCLUSION

For the reasons stated above, the proposed amici respectfully request that the Court grant their motion for permission to file a non-party brief in this case, and that the Court accept the proposed non-party brief that accompanies this motion.

Dated: January 9, 2024.

Respectfully submitted,

/s/ Amy Whelan

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CERTIFICATION OF SERVICE

I certify that on January 9, 2024, I caused a true and accurate copy of the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit through the CM/ECF system.

I further certify that the participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Amy Whelan
Attorney for Amici Curiae

Exhibit A

No. 23-16031

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**BRIEF OF PROFESSORS OF PSYCHOLOGY &
HUMAN DEVELOPMENT AS AMICI CURIAE
IN SUPPORT OF DEFENDANT-APPELLEE**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

Rule 29(A)(4)(E) STATEMENT3

INTEREST OF AMICI CURIAE2

ARGUMENT.....3

 I. STATE LAW AND RESEARCH-BASED PUBLIC
 POLICY DEMONSTRATE THAT NOT
 AUTOMATICALLY DISCLOSING CONFIDENTIAL
 INFORMATION TO A STUDENT’S PARENT IN
 LIMITED CIRCUMSTANCES TO PROTECT
 STUDENT SAFETY AND WELLBEING IS A
 COMPELLING GOVERNMENTAL INTEREST.....5

 II. REQUIRING SCHOOL PERSONNEL TO
 AUTOMATICALLY DISCLOSE A STUDENT’S
 REQUEST TO USE A DIFFERENT NAME OR
 PRONOUN WHILE IN SCHOOL TO THEIR PARENT
 CAN UNDERMINE A SCHOOL DISTRICT’S
 COMPELLING INTEREST IN THE STUDENT’S
 SAFETY AND WELLBEING.....12

 III. MAJOR EDUCATIONAL PROFESSIONAL
 ASSOCIATIONS CAUTION AGAINST
 MANDATORY DISCLOSURE OF GENDER
 IDENTITY IN SCHOOLS.....18

 IV. SCHOOL SUPPORT OF A TRANSGENDER
 STUDENT’S SOCIAL TRANSITION DOES NOT
 CONSTITUTE MEDICAL TREATMENT.20

CONCLUSION23

TABLE OF AUTHORITIES

<u>Statutes</u>	<u>Page</u>
105 Ill. Comp. Stat. Ann. 10/5	6
Cal. Educ. Code § 49602	8
Cal. Educ. Code § 72621	6
Conn. Gen. Stat. Ann. § 10-154a	6
Md. Code Ann., Educ. § 7-412	6, 8
N.D. Cent. Code Ann. § 31-01-06.1	6
N.J. Stat. Ann. § 18A:40A-7.1	7
N.Y. Educ. Law § 3038.....	7
Wisc. Stat. Ann. § 118.126	9
Wisc. Stat. Ann. § 118.126(1).....	7
<u>Other Authorities</u>	
Alida Bouris & Brandon Hill, <i>Exploring the mother-adolescent relationship as a promotive resource for sexual and gender minority youth</i> , 73 J. of Soc. Issues 618 (2017)	17
Am. Acad. of Pediatrics, <i>Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents</i> (Hagan et al., eds., 3d ed. 2008)	10
Am. Acad. of Pediatrics, Comm. on Adolescence, <i>The Adolescent Right to Confidential Care When Considering Abortion</i> , 97 Pediatrics 746 (1996)	11
Am. Coll. of Obstetricians & Gynecologists, <i>ACOG Committee Opinion 803: Confidentiality in adolescent care</i> (2020)	10
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Am. Sch. Counselors Ass’n, <i>The School Counselor and Transgender and Nonbinary Youth</i> (2022)	19

Amanda M. Pollitt, et al., <i>Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth</i> , 53 <i>Youth & Society</i> 320 (2019)	16
American Counseling Association, <i>Promoting LGBTQ students' well-being in schools</i>	19
Caitlyn Ryan, et al., <i>Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults</i> , 123 <i>Pediatrics</i> 346 (2009)	13
Caitlyn Ryan, et al., <i>Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment</i> , 67 <i>J. of Homosexuality</i> 159 (2018).....	13
California Department of Education, <i>Frequently Asked Questions: School Success and Opportunity Act (AB 1266)</i> (September 16, 2021).....	5
Carol A. Ford et al., <i>Foregone Health Care Among Adolescents</i> , 282 <i>JAMA</i> 2227 (1999)	7
Carol Ford, et al., <i>Confidential health care for adolescents: position paper of the Society for Adolescent Medicine</i> , 35 <i>J. of Adolescent Health</i> 160 (2004).....	10
D.C. Pub. Schs., <i>Transgender & Gender Nonconforming Policy Guidance</i> (Jun. 2015)	4
Durham Pub. Schs., <i>LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Allied/Asexual+) and Gender Supports Policy</i> (Dec. 2022).....	4
Human Rts. Campaign & Gender Spectrum, <i>Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey</i> 10 (2014)	14
Jack L. Turban, et al., <i>Timing of Social Transition for Transgender and Gender Diverse Youth, K-12 harassment, and Adult Mental Health Outcomes</i> , 69 <i>J. of Adolescent Health</i> , 991-998 (2021)	22
Jenifer K. McGuire, et al., <i>School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses</i> , 39 <i>J. Youth Adolescence</i> 1175 (2010).....	15

Joseph G. Kosciw, et al., <i>2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools</i> 16 (2021)	13, 14, 15, 16
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Kristie L. Seelman, et al., <i>School engagement among LGBTQ high school students: The roles of safe adults and gay-straight alliance characteristics</i> , 57 Children and Youth Services Review 19 (2015).....	16
L. Durwood, et al., <i>Social Support and Internalizing Psychopathology in Transgender Youth</i> , 50 J. of Youth and Adolescence 841-854 (2021).....	17
Laura E. Durso & Gary J. Gates, <i>Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless</i> (2012)	13
Laurie S. Zabin & Samuel D. Clark, Jr., <i>Institutional Factors Affecting Teenagers' Choice and Reasons for Delay in Attending a Family Planning Clinic</i> , 15 Fam. Plan. Persp. 25 (1983).....	7
Lily Durwood, et al., <i>A Study of Parent-Reported Internalizing Symptoms in Transgender Youths Before and After Childhood Social Transitions</i> , Clinical Psychological Science.....	22
Lisa Simons, et al., <i>Parental support and mental health among transgender adolescents</i> , 53 J. of Adolescent Health 791 (2013).....	18
M. Johns, et al., <i>Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017</i> , 68 MMWR 67 (2019)	14
Mavis Sanders & Steven Sheldon, <i>Principals Matter: A Guide to School, Family, and Community Partnerships</i> (2009)	6

Melissa Prober, <i>Please Don't Tell My Parents: The Validity of School Policies Mandating Parental Notification of a Student's Pregnancy</i> , 71 Brook. L. Rev. 557 (2005)	7
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N.J. Dep't of Educ., <i>Transgender Student Guidance for School Districts</i>	4
Nat'l Cmte. for Citizens in Educ., <i>A New Generation of Evidence: The Family is Critical to Student Achievement</i> (Henderson & Berla, Eds., 1994).....	6
National Association of School Psychologists, <i>Position Statement: Safe and Supportive Schools for Transgender and Gender Diverse Students</i> (2022)	20
National Education Center, <i>Legal Guidance on Transgender Students' Rights</i>	19
New York State Department of Education, <i>Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices</i>	3
New York State Department of Education, <i>Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices</i>	3
Rhonda Williams & Joseph Wehrman, <i>Collaboration and Confidentiality: Not a Paradox but an Understanding Between Principals and School Counselors</i> , 94 NAASP Bull. 107, 110 (2010)	7
Russell Toomey, et al., <i>Heteronormativity, school climates, and perceived safety for gender nonconforming peers</i> , 35 J. of Adolescence 187 (2012).....	15

Sabra Katz-Wise, et al., <i>Family functioning and mental health of transgender and gender nonconforming youth in the Trans Teen and Family Narratives project</i> , 55 J. of Sex Research 582 (2018).....	17
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Stephen Russell, et al., <i>Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth</i> , 63 J. of Adolescent Health 503 (2018).....	16
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Tiffany Jones, <i>Evidence Affirming School Supports for Australian Transgender and Gender Diverse Students</i> , 14 Sexual Health 412 (2017).....	14
Tina Cheng, et al., <i>Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students</i> , 269 JAMA 1404 (1993).8	
Zabin et al., <i>To Whom Do Inner-City Minors Talk About Their Pregnancies? Adolescents' Communications with Parents and Parent Surrogates</i> , 23 Fam. Plan. Persp. 148, 151 (1992).....	10

RULE 29(A)(4)(E) STATEMENT

No party's counsel authored any portion of this brief, in whole or in part. No person or entity other than amici and amici's counsel has or is expected to contribute money intended to fund the preparation or submission of this brief.

INTEREST OF AMICI CURIAE¹

Dr. Stephanie Budge, Dr. Mollie McQuillan, Dr. Stephen Russell, Dr. Kristina Olson, Dr. Sabra Katz-Wise, Dr. Russell Toomey, and Dr. Katherine Kuvalanka join as amici because of their collective understanding that requiring school personnel to automatically disclose information related to a student's sexual orientation, gender identity, gender exploration, or gender expression to the student's parents or guardians—regardless of a student's individual circumstances or potential vulnerability to harm—would contradict best practices regarding the disclosure of potentially sensitive personal information and undermine the school's ability to create a school environment that supports student development and success. Amici are professors of sexuality, human development, and family science with extensive experience studying the effects of home and school environments on the development and wellbeing of young people, including LGBTQ+ young people. Their research shows that when transgender and nonbinary students are supported at school, including through the use of the names and pronouns the child uses, they experience significant improvements in academic achievement and a marked decrease in symptoms of depression. Drawing from that research, amici urge this Court to affirm the district court's dismissal of Plaintiff-Appellant's Complaint.

¹ Pursuant to FRAP 29(a)(2), this brief is filed with the consent of all parties.

ARGUMENT

School administrators, counselors, and teachers work every day to meet the myriad needs of students and foster an environment that supports each student's academic, social, and emotional growth. Because of the care and support they show students, students often look to school personnel as a resource to help them address issues such as substance misuse, problems with peers, unplanned pregnancy, and problems with family members. School personnel are entrusted to rely on their expertise and professional judgment to provide that guidance; in fact, numerous states protect those conversations from disclosure to encourage students to seek the confidences of school personnel.

Consistent with their legal obligations under federal and state laws and evidence-based best practices, state education agencies and school districts around the country have adopted policies to ensure that transgender students—like all other students—feel safe at school to learn and grow. *See, e.g.,* New York State Department of Education, Creating a Safe, Supportive, and Affirming School Environment for Transgender and Gender Expansive Students: 2023 Legal Update and Best Practices, *available at* <https://www.nysed.gov/sites/default/files/programs/student-support-services/creating-a-safe-supportive-and-affirming-school-environment-for-transgender-and-gender-expansive-students.pdf> (last visited January 2, 2024);

Durham Pub. Schs., LGBTQIA+ (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Allied/Asexual+) and Gender Supports Policy (Dec. 2022), *available at*, <https://go.boarddocs.com/nc/dpsnc/Board.nsf/goto?open&id=CLXMFD58A27C> (last visited January 2, 2024); D.C. Pub. Schs., Transgender & Gender Nonconforming Policy Guidance (Jun. 2015), *available at*, <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCPS%20Transgender%20Gender%20Non%20Conforming%20Policy%20Guidance.pdf> (last visited January 2, 2024); N.J. Dep't of Educ., *Transgender Student Guidance for School Districts*, *available at* <https://www.nj.gov/education/safety/sandp/climate/docs/Guidance.pdf> (last visited January 2, 2024). Those policies also help guide school personnel in exercising their professional judgment to address the needs of transgender students, including around the disclosure of a student's transgender status. The disclosure of that sensitive information can have a significant effect on the social and emotional wellbeing of a transgender student and, as such, needs to be approached with care. The guidelines at issue in this appeal do precisely that. The guidelines appropriately protect sensitive and confidential information and ensure that school personnel assess the supports a student may need, including supports for building family acceptance. In so doing, the District's policies also reflect the guidelines established by the California Department of Education, which are designed to reduce stigmatization

and support healthy communication between educators, students, and parents. California Department of Education, *Frequently Asked Questions: School Success and Opportunity Act (AB 1266)* (September 16, 2021), <https://www.cde.ca.gov/re/di/eo/faqs.asp> (last visited January 2, 2024).

The district court correctly concluded that the Chico Unified School District (the “District”) policies do not infringe on Plaintiff-Appellant’s constitutional rights. The guidelines adopted by Defendants-Appellees are consistent with California law, California Department of Education guidelines, and evidence-based best practices regarding the disclosure of confidential student information and the health and wellbeing of transgender students, significantly furthering the District’s educational mission. The lower court therefore correctly held that Plaintiff-Appellant has failed to state any claim for relief and that further amendment of her Complaint would be futile. This Court should affirm the district court’s dismissal of Plaintiff-Appellant’s Complaint with prejudice.

I. State law and research-based public policy demonstrate that not automatically disclosing confidential information to a student’s parent in limited circumstances to protect student safety and wellbeing is a compelling governmental interest.

Administrators and school personnel strive to build an environment that is welcoming and inclusive of all students so that students can thrive socially, emotionally, and academically. Because of that common interest, school personnel and parents are natural collaborators. Schools strive to maintain open lines of

communication with a student's parents and to encourage open communication between students and parents. Doing so is important for many reasons, including that it may provide school personnel with an opportunity to share information and resources that will help parents support their child in navigating difficult circumstances. Unsurprisingly, research demonstrates the benefits of such partnerships. *See generally*, Mavis Sanders & Steven Sheldon, *Principals Matter: A Guide to School, Family, and Community Partnerships* (2009); Nat'l Cmte. For Citizens in Educ., *A New Generation of Evidence: The Family is Critical to Student Achievement* (Henderson & Berla, Eds., 1994).

Maintaining open communication with parents is the ideal method for supporting student development and growth; however, as numerous state laws have long recognized, there are limited circumstances where schools must—consistent with their obligations to protect students—respect students' confidentiality when failing to do so may deter them from seeking support or put them at risk of harm. *See, e.g.*, Cal. Educ. Code § 72621 (protecting information provided to school-based mental health providers as confidential and not subject to disclosure to parents); 105 Ill. Comp. Stat. Ann. 10/5 (same); N.D. Cent. Code Ann. § 31-01-06.1 (same); Md. Code Ann., Educ. § 7-412 (designating information provided by students to school mental health professionals regarding substance abuse as confidential and not subject to disclosure absent consent of the student); Conn. Gen. Stat. Ann. § 10-154a

(same); N.J. Stat. Ann. § 18A:40A-7.1 (same); N.Y. Educ. Law § 3038; Wisc. Stat. Ann. § 118.126(1) (same).

Importantly, research has documented that for many students, being able to confide in school personnel is critical to students' willingness to seek adult support. School employees are a likely source for that support because of their proximity to students and because a student's outreach to them generally does not require obtaining parental permission or assistance, like a therapist visit would. Laurie S. Zabin & Samuel D. Clark, Jr., *Institutional Factors Affecting Teenagers' Choice and Reasons for Delay in Attending a Family Planning Clinic*, 15 Fam. Plan. Persp. 25 (1983). Research repeatedly shows that without confidentiality protections, many young people would rather forgo seeking help than risk their parents finding out. Melissa Prober, *Please Don't Tell My Parents: The Validity of School Policies Mandating Parental Notification of a Student's Pregnancy*, 71 Brook. L. Rev. 557, 575 n.108 (2005) (breaching student confidentiality can have a chilling effect, causing students to forgo seeking other health-related services from the school); *see also* Carol A. Ford et al., *Foregone Health Care Among Adolescents*, 282 JAMA 2227 (1999); Rhonda Williams & Joseph Wehrman, *Collaboration and Confidentiality: Not a Paradox but an Understanding Between Principals and School Counselors*, 94 NAASP Bull. 107, 110 (2010) ("99% of participants identified confidentiality as essential (53%) or important (46%) in their decision to

seek help from a school counselor”); Tina Cheng, et al., *Confidentiality in health care: a survey of knowledge, perceptions, and attitudes among high school students*, 269 JAMA 1404 (1993). When students do reach out in this way, state laws and research-based best practices prohibit automatic disclosure of sensitive information to a student’s parent or guardian, opting instead for a flexible and individualized assessment of the student and situation that focuses on family support. Guided by the best interests of the students, those policies—including the guidelines at issue here—safeguard the ability of students to obtain support from trusted adults in navigating difficult—if not, crisis—situations.

As noted above, many states have enacted confidentiality provisions related to students in school. The most common examples are statutes and policies governing the confidentiality of reports of substance abuse and access to reproductive healthcare, including pregnancy-related services. For example, California law permits disclosure of student records only in limited circumstances, including where disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil or others within the school community. Cal. Educ. Code § 49602. Maryland law has long recognized a privileged relationship between school personnel and students “who seek[] information to overcome any form of drug abuse.” Md. Code Ann., Educ. § 7-412(a). Those communications are safeguarded from disclosure without exception. *Id.* at § 7-412(b). Other states permit

disclosure only in very limited circumstances, including written consent for the disclosure from the student or if the disclosure is required to prevent “serious and imminent danger to the health, safety or life of any person and [n]o more information than is required to alleviate the serious and imminent danger may be disclosed.” *See* Wisc. Stat. Ann. § 118.126(1)(a)–(c). In contrast, policies that mandate automatic disclosure of sensitive information to parents, such as random drug testing of students, can undermine the school environment by sowing distrust between school personnel and students. They can also encourage students to engage in more dangerous behavior to evade detection—for example, by using drugs that are not typically tested for, even though those drugs have higher morbidity and mortality rates. *See* Sharon Levy & Miriam Schnizer, *AAP Technical Report: Adolescent Drug Testing Policies in Schools*, 135 *Pediatrics* e1107 (2015). As a result, the American Academy of Pediatrics does not support school-based drug testing programs. *Id.*

Likewise, research-based best practices regarding the confidentiality of a student’s pregnancy strongly support confidentiality and respect for the student’s decision regarding if, and when, to disclose that information to their parent or guardian. Those best practices have been adopted by many major associations of professionals working with young people in the United States. *See, e.g.,* Am. Sch. Counselors Ass’n, *The School Counselor and Confidentiality* (2018), available at,

<https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Confidentiality> (last visited January 2, 2024); Am. Coll. of Obstetricians & Gynecologists, *ACOG Committee Opinion 803: Confidentiality in adolescent care* (2020), available at, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/04/confidentiality-in-adolescent-health-care> (last visited January 2, 2024); Am. Med. Ass’n, *Opinion 5.055 Confidential care for minors*, 16 AMA J. of Ethics 901 (2014); Am. Acad. of Pediatrics, *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents* (Hagan et al., eds., 3d ed. 2008); Carol Ford, et al., *Confidential health care for adolescents: position paper of the Society for Adolescent Medicine*, 35 J. of Adolescent Health 160 (2004).

In practice, this confidentiality is most often time limited: long enough to support the student in coping with the immediate situation while providing the student the tools and support they need to disclose this information to their parent or guardian. For example, one study found that around ninety percent of students who become pregnant eventually disclose that information to at least one parent. Laurie Zabin et al., *To Whom Do Inner-City Minors Talk About Their Pregnancies? Adolescents’ Communications with Parents and Parent Surrogates*, 23 Fam. Plan. Persp. 148, 151 (1992). At the same time, there is no evidence that forcing school personnel to disclose confidential information is correlated with positive familial

communication or outcomes. Am. Acad. of Pediatrics, Comm. on Adolescence, *The Adolescent Right to Confidential Care When Considering Abortion*, 97 Pediatrics 746 (1996). In fact, research strongly indicates the opposite is true: minors whose parents found out about the minor's pregnancy from a third party were two to four times more likely to face adverse consequences. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 Fam. Plan. Persp. 196 (1992).

Longstanding public policy in states across the country and well-established evidence-based best practices demonstrate that, in limited circumstances, there are significant benefits to protecting student confidentiality, including fostering a supportive school environment that promotes student development and success, protecting students from harm, and maximizing the likelihood that students will share sensitive information with parents while avoiding the negative consequences that often result from compelled third-party disclosures. Protecting student confidentiality provides school personnel with the flexibility to work with students and support them to disclose private information to their parents. It may also help parents make more informed parenting decisions by learning from the expertise and experience of school personnel who have worked with numerous students facing these similar difficult circumstances. Mandating disclosure, however, may put students at risk of serious harms by deterring them from seeking any adult support

and undermining their relationship with their parents.

II. Requiring school personnel to automatically disclose a student's request to use a different name or pronoun to their parent can undermine a school district's compelling interest in the student's safety and wellbeing.

For many of the same reasons that schools are required to maintain student confidentiality in the context of pregnancy and substance abuse (which principally are issues some older students may face), it is critical that schools also safeguard the confidentiality of students of any age who disclose that they are, or may be, transgender to a teacher or other school staff. Just as some families may have a difficult time dealing with a young person's pregnancy or substance abuse, which requires sensitivity and caution on the part of school staff to whom students disclose confidential information about these issues, families may have a difficult time dealing with a young person who is or may be transgender. Unfortunately, transgender young people experience high levels of family rejection. Approximately one third of transgender youth are rejected by family after disclosing their transgender status. Sabra Katz-Wise, et al., *LGBT Youth and Family Acceptance*, 63 *Pediatric Clinics of N. Am.* 1011 (2016). The fear of rejection causes another third of transgender young people to keep that information from their families. *Id.*

The negative effects of family rejection are serious and well-documented. In the short-term, family rejection can result in verbal or physical abuse, homelessness, and attempts to change the child's sexual orientation or gender identity. Caitlyn

Ryan, et al., *Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 J. of Homosexuality 159 (2018); Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless* (2012), available at, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-July-2012.pdf> (last visited January 2, 2024). Family rejection also has significant long-term effects. LGBT youth who experience high levels of family rejection were over eight times more likely to have attempted suicide as compared to twice as likely among families who were moderately rejecting (*i.e.* responded to their child's gender identity with both supportive and rejecting behaviors). Caitlyn Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 Pediatrics 346 (2009). Those who had a highly rejecting family were also six times more likely to experience severe depression. *Id.*

Transgender young people also face challenges at school, which for many is not a safe place. Joseph G. Kosciw, et al., *2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 16 (2021) (finding over forty percent of LGBTQ students did not feel safe at school); *see also* Michelle M. Johns, et al., *Transgender Identity and*

*Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017, 68 MMWR 67 (2019), available at, <http://dx.doi.org/10.15585/mmwr.mm6803a3> (last visited January 2, 2024); Human Rts. Campaign & Gender Spectrum, *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign's Youth Survey* 10 (2014). More than forty percent of students surveyed for the National School Climate Survey reported hearing anti-transgender epithets or remarks either frequently or often, and more than half reported the same about negative remarks regarding gender-nonconformity. Kosciw, *2019 National School Climate Survey* at 22. Transgender students are often the targets of multiple forms of bullying and harassment, such as verbal harassment, relational aggression, and physical assault. Research has shown that without the support of teaching staff, transgender students were more likely to be the targets of bullying and other discriminatory behavior. Tiffany Jones, *Evidence Affirming School Supports for Australian Transgender and Gender Diverse Students*, 14 *Sexual Health* 412 (2017).*

In contrast, research has shown that transgender youth benefit greatly from supportive school environments. For example, transgender students in schools or districts with policies that addressed the specific needs of transgender students were less likely to hear negative remarks about transgender people, less likely to miss

school because they felt unsafe or uncomfortable, and reported experiencing less bullying and harassment. Kosciw, *2019 National School Climate Survey* at 69–79. Those students also reported feeling a greater sense of belonging to the school community, which is correlated with improvements in academic motivation and achievement. *Id.* Students who reported being taught curriculum that was inclusive of LGBTQ people, or that had support from school personnel, also felt safer in school, had higher grades, and higher educational aspirations. *Id.* See also Jenifer K. McGuire, et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 J. Youth Adolescence 1175 (2010) (finding trust in school personnel to be an important factor for academic success among transgender students); Katharine B. Parodi, et al., *Associations between school-related factors and mental health among transgender and gender diverse youth*, 90 J. of School Psychol. 135 (2022) (a greater sense of connectiveness to one's school is associated with lower rates of anxiety and depression among transgender students); Russell Toomey, et al., *Heteronormativity, school climates, and perceived safety for gender nonconforming peers*, 35 J. of Adolescence 187 (2012) (finding that schools with LGBTQ-inclusive curriculum and presence of student groups for LGBTQ students and allies were perceived by students to be safer); Kristie L. Seelman, et al., *School engagement among LGBTQ high school students: The roles of safe adults and gay–straight alliance*

characteristics, 57 *Children and Youth Services Review* 19 (2015) (associating the number of “safe adults” in whom transgender students can confide with greater connectiveness with their school, higher GPA, and a decrease in absences due to fear); Mollie McQuillan, et al., *Examining School Supports and Barriers to Improving the Health, Safety, and Academic Achievement of MMSD LGBTQ+ Students*, Madison, WI: Madison Education Partnership 26 (2021) (finding that schools with LGBTQ+-inclusivity training for staff had significantly fewer disciplinary problems than schools without such training programs).

The benefits of a positive and supportive school environment are not just academic. Being bullied and harassed less frequently at school is associated with better self-esteem and lower levels of depression. Kosciw, *2019 National School Climate Survey*, at 52–53. Even something as simple as referring to a transgender student by their chosen name and correct pronouns significantly decreases symptoms of severe depression. Stephen Russell, et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. of Adolescent Health* 503 (2018); Amanda M. Pollitt, et al., *Predictors and Mental Health Benefits of Chosen Name Use Among Transgender Youth*, 53 *Youth & Society* 320 (2019) (finding that the use of chosen names at school predicted fewer depressive symptoms and greater self-esteem);

L. Durwood, et al., *Social Support and Internalizing Psychopathology in Transgender Youth*, 50 J. of Youth and Adolescence 841-854 (2021) (concluding that greater school support of students' gender identities and other LGBTQ-supportive policies is associated with less anxiety and depression in transgender children). Policies that safeguard the confidentiality of a student's transgender identity or gender exploration and promote family involvement, like the guidelines adopted by the District, help foster a welcoming learning environment in schools throughout the District.

Supportive policies also provide schools an opportunity to facilitate positive communication between students and their parents. This includes being a resource for building family acceptance and support, which is a strong protective factor as a child moves into adolescence and adulthood. *See, e.g.,* Stephanie Budge, et al., *A grounded theory study of the development of trans youths' awareness of coping with gender identity*, 27 J. of Child Family Studies 3048 (2018); Sabra Katz-Wise, et al., *Family functioning and mental health of transgender and gender nonconforming youth in the Trans Teen and Family Narratives project*, 55 J. of Sex Research 582 (2018); Alida Bouris & Brandon Hill, *Exploring the mother-adolescent relationship as a promotive resource for sexual and gender minority youth*, 73 J. of Soc. Issues 618 (2017); L. Durwood, et al., *Social Support and Internalizing Psychopathology in Transgender Youth*, 50 J. of Youth and Adolescence 841-854 (2021); Lisa

Simons, et al., *Parental support and mental health among transgender adolescents*, 53 J. of Adolescent Health 791 (2013).

In sum, the guidelines adopted by Defendants-Appellees are consistent with laws and policies addressing other sensitive issues, such as disclosures relating to substance abuse and pregnancy. The guidelines further compelling governmental interests in promoting student wellbeing and protecting students from potentially serious harms. And they are firmly grounded in research and evidence-based best practices, including evidence that compelled disclosure of sensitive information is likely to undermine rather than support students' relationships with their parents.

III. Major educational professional associations caution against mandatory disclosure of gender identity in schools.

Major educational professional associations support policies like the District's in order to protect the health and wellbeing of students and families. These associations have emphasized the need to support transgender and nonbinary students, to ensure that they have equal educational opportunities, and to avoid policies that single out these students by requiring automatic forced disclosure any time a student shares confidential information about their gender identity with a teacher or other school staff. For example, guidelines published by the National Education Association (NEA) highlight the importance of respecting a student's confidentiality and note that school personnel should not automatically disclose a student's gender identity to others—including other students, teachers, parents or

guardians—unless the student has agreed to such disclosure. National Education Center, *Legal Guidance on Transgender Students’ Rights*, available at: https://www.nea.org/sites/default/files/2020-07/2018_Legal%20Guidance_Transgender%20Student%20Rights.pdf (last visited January 2, 2024).

Educational professional organizations also caution that policies mandating disclosure of such confidential information may violate state or federal privacy protections. The American School Counselor Association has stated that schools should employ “a student-centered approach that includes ongoing student and parent/guardian engagement (as appropriate) and school personnel with a legitimate educational interest per the Family Education Rights and Privacy Act (FERPA).” Am. Sch. Counselors Ass’n, *The School Counselor and Transgender and Nonbinary Youth* (2022), available at, <https://www.schoolcounselor.org/Standards-Positions/Position-Statements/ASCA-Position-Statements/The-School-Counselor-and-Transgender-Gender-noncon> (last visited January 2, 2024). The guidance makes clear that “school officials should work collaboratively [with parents/guardians], directed by students’ comfort about what and with whom to share their confidential information.” *Id.*; see also American Counseling Association, *Promoting LGBTQ students’ well-being in schools*, available at: <https://ct.counseling.org/2018/10/promoting-lgbtq-students-well-being-in-schools/>

(last visited January 2, 2024) (counselors should discuss students’ feelings about informing parents of their sexual or gender identity prior to disclosing this information).

The National Association of School Psychologists (NASP) has similarly cautioned that disclosure of a student’s gender identity could lead to potential harm, despite any beneficent intent, and may violate privacy laws. National Association of School Psychologists, *Position Statement: Safe and Supportive Schools for Transgender and Gender Diverse Students* (2022). In keeping with best practices, NASP urges school psychologists to “respect the right of persons to choose for themselves whether to . . . shar[e] their sexual orientation or gender identity.” *Id.*

IV. School support of a transgender student’s social transition does not constitute medical treatment.

“Social transition” is the process by which a person adopts the name, pronouns, and gender expression that aligns with their gender identity. This process is highly individualized. While some individuals socially transition in all areas of their lives, others will only socially transition in specific environments (e.g., only at school, in certain friend groups, or at home). *See* The World Prof. Assn. for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, Version 8*, at S76, (2022), available at <https://www.wpath.org/publications/soc> (“[S]ocial transition may best occur in all

or in specific contexts/settings only (e.g., school, home)'). Social transition does not involve any medical interventions, such as puberty blocking medication or hormone medication.

Plaintiff-Appellant erroneously contends that simply by respecting a student's gender identity, schools in the District are engaging in "psychological treatment" without parents' knowledge or consent. Op. Br. at 6. That claim has no basis in either medical science or common sense. Plainly, merely acknowledging and supporting a student's identity does not constitute medical care. While social transition may be part of a medically prescribed treatment for gender dysphoria for some transgender youth, it need not be, just as eating nutritious meals may be part of a medically prescribed treatment program for some young people but need not be. Living consistently with one's gender identity is beneficial for all people, whether they are transgender or not, and doing so is not generally understood to be, or properly characterized as, medical treatment unless it is part of a medically prescribed treatment plan and, even in that context, the conduct of teachers or other third parties in respecting the person's identity would not be considered medical treatment.

To the contrary, there are many contexts in which teachers and school staff may have to provide a child with assistance related to a medical issue or disability. Staff might need to provide a wheelchair accessible desk to a student with a mobility disability, for instance, or may need to move a student closer to a whiteboard to

accommodate a vision impairment. These actions undoubtedly support these students, but they do not constitute medical care. Similarly, teachers or school staff might support a student's mental well-being by allowing a student to eat lunch in the library or by providing extra time for a test. Again, while these actions are supportive, they do not constitute mental health care, nor do they convert school staff into mental health care providers.

Plaintiff-Appellant also erroneously claims that these supportive policies are inherently dangerous to transgender students. In fact, the opposite is true. Research has demonstrated the immense mental health benefits of social transition for transgender youth, as well as the harmful mental health effects of an unaccepting school environment. *See, e.g.,* Jack L. Turban, et al., *Timing of Social Transition for Transgender and Gender Diverse Youth, K-12 harassment, and Adult Mental Health Outcomes*, 69 J. of Adolescent Health, 991-998 (2021); Lily Durwood, et al., *A Study of Parent-Reported Internalizing Symptoms in Transgender Youths Before and After Childhood Social Transitions*, Clinical Psychological Science, available at <https://doi.org/10.1177/21677026231208086> (last visited January 8, 2024). In environments where transgender students are not supported, they face significantly higher risks of violence and suicidality as compared to other students. *See, e.g.,* Michele M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High*

School Students—19 States and Large Urban School Districts, 2017, 68 Morbidity and Mortality Wkly. Rep. 67–71 (Jan. 25, 2019), *available at* <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6803a3-H.pdf>.

Nondiscrimination policies ensure that schools will provide transgender students with all the support they need to participate fully in classes, extracurricular activities, and social events. In fostering a confidential and nonjudgmental environment, school staff provide transgender students the resources they need to thrive. Through these supportive actions, school staff are furthering the successful educational development and wellbeing of their transgender students, not providing medical care.

CONCLUSION

The district court correctly concluded Plaintiff-Appellant failed to allege a violation of her constitutional rights. Amici respectfully urge this Court to affirm the dismissal Plaintiff-Appellant's Complaint.

Dated: January 9, 2024

Respectfully submitted,

/s/ Amy Whelan

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(4) and 29(a)(5) because it contains 4,691 words, as determined by the word-count function of Microsoft Word, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the type-face requirements and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: January 9, 2024

/s/ Amy Whelan
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I certify that on January 9, 2024, I caused a true and accurate copy of the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit through the CM/ECF system.

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/s/ Amy Whelan
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