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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AURORA REGINO,  
  
Plaintiff,  
  
v.  
  
SUPERINTENDENT KELLY STALEY,  
in her official capacity, et  
al.,  
  
Defendants.

No. 2:23-cv-00032-JAM-DMC

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

Chico Unified School District (the "District") Superintendent Kelly Staley ("Defendant") has filed a motion to dismiss Aurora Regino's ("Plaintiff") first amended complaint ("FAC"). See Mot. to Dismiss ("Mot."), ECF No. 50; FAC, ECF No. 42. Plaintiff has brought the following causes of action under 42 U.S.C. § 1983 against Defendant regarding District Regulation AR 5145.3 (the "Regulation"): (1) facial and as-applied substantive due process; (2) facial and as-applied procedural due process; and (3) facial and as-applied First Amendment familial associations. See FAC. Plaintiff alleges that the Regulation results in the District "socially transitioning" students expressing a transgender identity without notifying and obtaining the informed consent of parents, in

1 violation of her constitutional rights. FAC ¶¶ 95-96. Plaintiff  
2 opposes the motion to dismiss. See Opp'n, ECF No. 52. Defendant  
3 replied. See Reply, ECF No. 54.

4 For the reasons set forth below, the Court GRANTS  
5 Defendant's motion.

6 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

7 In her FAC, Plaintiff alleges that District Regulation  
8 AR 5145.3 (the "Regulation") (1) permits school personnel to  
9 socially transition students expressing a transgender identity by  
10 referring to them by their preferred name and pronouns; and  
11 (2) prohibits school personnel from informing a student's parents  
12 of this change unless the student expressly authorizes them to do  
13 so; there is an exception where disclosure is either (1) required  
14 by law or (2) the District has compelling evidence that  
15 disclosure is necessary to preserve the student's health. FAC  
16 ¶ 52. During the 2021-22 school year, Plaintiff's eldest child,  
17 A.S., then a student at Sierra View Elementary School, expressed  
18 feelings of gender dysphoria to her school counselor, Mandi  
19 Robinson, specifically that she identified as a boy. Id. ¶¶ 55-  
20 60. A.S. also informed Robertson that she did not want Plaintiff  
21 to be informed about her transgender identity on the belief that  
22 Plaintiff would be upset. Id. ¶ 64. After a couple of  
23 subsequent counseling sessions, Plaintiff alleges that A.S.'s  
24 counselor began socially transitioning A.S. by informing her  
25 teachers that she was to be called by her new name and referred  
26 to by male pronouns. Id. ¶¶ 64-66. School personnel did not  
27 disclose these developments to Plaintiff; Plaintiff further  
28 alleges that Robinson actively discouraged A.S. from informing

1 Plaintiff and instead advised her to disclose her new identity to  
2 other family members before informing Plaintiff. Id. ¶¶ 69-71.  
3 Robinson also did not suggest that A.S. discuss her gender  
4 dysphoria with a medical professional. Id. ¶ 71.

5 On April 8, 2022, A.S. informed her grandmother of her new  
6 gender identity. Id. ¶ 72. A.S.'s grandmother then informed  
7 Plaintiff the same day. Id. Plaintiff spent the following  
8 months in contact with school district personnel to express her  
9 concerns about the Regulation and advocated for the school  
10 district to change it. Id. ¶¶ 78-87. Plaintiff alleges that  
11 district personnel dismissed her concerns and claimed that state  
12 law mandated the Regulation. Id. A.S. currently does not  
13 express feelings of gender dysphoria, identifies as a girl again,  
14 and is currently in counseling for depression and anxiety. Id.  
15 ¶ 94. Plaintiff further alleges that her younger daughter, C.S.,  
16 is now exhibiting behaviors that cause Plaintiff to believe that  
17 C.S. is likely to express a transgender identity in the future.  
18 Id. ¶ 94.

19 On January 6, 2023, Plaintiff filed her complaint against  
20 Defendant alleging four causes of action under 42 U.S.C. § 1983:  
21 two facial challenges to the Regulation under substantive and  
22 procedural due process; and two as-applied challenges to the  
23 Policy under substantive and procedural due process. See Compl.,  
24 ECF No. 1. Plaintiff subsequently filed a motion for preliminary  
25 injunction ("MPI") seeking to enjoin Defendant and all district  
26 employees from: (1) socially transitioning current students  
27 without obtaining informed consent from the students' parents or  
28 guardians; (2) not obtaining informed consent from the parents or

1 guardians of all current students who have previously been  
2 socially transitioned or are currently being socially  
3 transitioned; (3) socially transitioning Plaintiff's children  
4 without her informed consent; and (4) not obtaining Plaintiff's  
5 informed consent if her daughters have been socially transitioned  
6 in the past or are still being socially transitioned. See MPI,  
7 ECF No. 18. The Court denied the MPI. Order, ECF No. 37.  
8 Plaintiff next filed her FAC and Defendant filed the instant  
9 motion to dismiss the FAC in its entirety. See FAC, Mot.

10 II. EVIDENTIARY ISSUES

11 A. Judicial Notice

12 Defendants request the Court take judicial notice of four  
13 exhibits. See Request for Judicial Notice, ECF No. 51. Exhibit  
14 A is the District's Administrative Regulation 5145.3; Exhibit B  
15 is the definition of "social transition" as provided by the World  
16 Professional Association for Transgender Health Standards of Care  
17 for the Health of Transgender and Gender Diverse People, Version  
18 8 ("WPATH SOC 8"); Exhibit C is the New Hampshire Superior  
19 Court's order in Jane Doe v. Manchester School District, Case No.  
20 216-2022CV-00117 (N.H. Superior Court, Hillsborough County,  
21 Northern District, Sept. 5, 2022); Exhibit D is the California  
22 Department of Education's ("CDE") publication: "Frequently Asked  
23 Questions: School Success and Opportunity Act (Assembly Bill  
24 1266)." Id. at 2. Exhibits A and D constitute government  
25 records and are, therefore, proper subjects for judicial notice.  
26 Anderson v. Holder, 673 F.3d 1089, 1094 n. 1 (9th Cir. 2012);  
27 Daniels-Hall v. National Educ. Ass'n., 629 F.3d 992, 998 (9th  
28 Cir. 2010). Exhibit C constitutes a state court proceeding,

1 which is a proper subject for judicial notice. Trigueros v.  
2 Adams, 658 F.3d 983, 987 (9th Cir. 2011).

3 Plaintiff opposes judicial notice of Exhibit C, specifically  
4 the definition of "transition," arguing that it is too broad and  
5 inapplicable to the instant case, which concerns "social  
6 transitioning." Opp'n, ECF No. 53 at 2-3. Plaintiff further  
7 contends that inclusion of the entire WPATH Guidelines should not  
8 be permitted because the exhibit is voluminous and is not relied  
9 upon in the FAC. Id. at 2-4. The Court concurs and finds that  
10 Exhibit C is not a proper subject for judicial notice. However,  
11 the Court takes judicial notice that Exhibit C contains a  
12 definition of "social transition."

### 13 III. OPINION

#### 14 A. Legal Standard

15 In considering a motion to dismiss for failure to state a  
16 claim upon which relief can be granted under FRCP 12(b)(6), the  
17 Court must accept the allegations in the complaint as true and  
18 draw all reasonable inferences in favor of the Plaintiff. Moss  
19 v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009) (citing  
20 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). The complaint must  
21 possess more than "a formulaic recitation of the elements of a  
22 cause of action;" it must contain non-conclusory, factual  
23 allegations sufficient "to raise a right to relief above the  
24 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S.  
25 544, 554 (2007). The Court may dismiss a complaint as a matter  
26 of law for "(1) lack of a cognizable legal theory or  
27 (2) insufficient facts under a cognizable legal claim."  
28 SmileCare Dental Grp. v. Delta Dental Plan of California, Inc.,

1 88 F.3d 780, 783 (9th Cir. 1996).

2 B. Analysis

3 1. Count One: § 1983 Substantive Due Process-Facial  
4 Challenge

5 Defendant argues that Plaintiff's facial challenge to the  
6 Regulation under substantive due process must be dismissed on  
7 several grounds: (1) Plaintiff has not alleged the deprivation of  
8 a federally recognized constitutional right nor conduct that  
9 would "shock the conscience" of the Court; (2) Plaintiff cannot  
10 establish that there is no set of circumstances in which the  
11 Regulation would be valid; and (3) in the absence of a  
12 constitutional violation, the Regulation satisfies rational basis  
13 review. Mot. at 11-12, 14-17. Defendant contends that the  
14 parental right to make decisions regarding the care, custody, and  
15 control of one's children does not extend to the circumstances of  
16 the instant case. Id. at 11. Defendant refers to Nguon v. Wolf,  
17 where a federal district court found that students have a legally  
18 protected privacy interest under the California constitution with  
19 respect to information about their sexual orientation. 517 F.  
20 Supp. 2d 1177, 1196 (C.D. Cal. 2007); id. at 12. Defendant also  
21 cites a recent Maryland district court's holding that parents do  
22 not have a right to be informed of their child's transgender  
23 identity by schools. John & Jane Parents 1 v. Montgomery Cnty.  
24 Bd. of Educ., 622 F. Supp. 3d 118, 130 (D. Md. 2022). Defendant  
25 claims that there is no federal right to notice and consent to  
26 treatment for parents when their minor children voluntarily seek  
27 medical and psychological care, and that Plaintiff cannot  
28 establish that the conduct at issue in the instant case "shocks

1 the conscience;" the Regulation simply requires that District  
2 staff respect the gender identity and privacy wishes of students.  
3 Mot. at 14-16. Furthermore, Defendant argues that there are  
4 circumstances where disclosure can lead to harm to students, so  
5 the District has a legitimate state interest in protecting  
6 students' privacy and creating a "zone of protection" from  
7 potential domestic violence. Id. at 16-17.

8 Plaintiff responds that her substantive parental rights  
9 extend to the circumstances of the instant case and that she is  
10 not required to provide a careful description of her right to  
11 support her substantive causes of action. Opp'n, ECF No. 52 at  
12 3. Nevertheless, Plaintiff claims that the Regulation violates  
13 her substantive due process rights to (1) make medical decisions  
14 for her children and (2) make important decisions in the lives of  
15 her children that go to the heart of parental decision making.  
16 Id. at 3-4. Plaintiff argues that social transitioning is a  
17 significant form of psychological treatment, referring to the  
18 Ninth Circuit's opinion in Edmo v. Corizon, Inc., where the Court  
19 acknowledged the WPATH Standards of Care's identification of  
20 social transitioning as a form of treatment for those suffering  
21 from gender dysphoria. 935 F.3d 757, 770 (9th Cir. 2019); Opp'n  
22 at 4. Plaintiff claims that social transitioning can have grave  
23 consequences for children, including a higher likelihood that  
24 children will seek other gender-affirming care and a lower  
25 likelihood that a child will return to their original gender  
26 identity. Id. Plaintiff argues that children are unable to  
27 provide informed consent to such serious psychological treatment,  
28 so parental consent is required, comparing the instant case to

1 Mann v. Cnty. of San Diego, where the Ninth Circuit held that  
2 parental consent was required for physically invasive medical  
3 examinations of minors. 907 F.3d 1154, 1162 (9th Cir. 2018);  
4 Opp'n at 4. Plaintiff then likens the instant case to other  
5 parental decisions such as (1) child visitation; (2) whether to  
6 send a child to private school; (3) the academic subjects that  
7 children may be taught; and (4) curfew. Id. at 4-5. Plaintiff  
8 also refers to a Kansas district court holding in Ricard v. USD  
9 475 Geary Cnty., KS Sch. Bd., which stated that parents must be  
10 included in any decision regarding what names and pronouns their  
11 children are referred to in school to support her claim that the  
12 Regulation will result in children suffering from gender  
13 dysphoria alone without parental guidance. No. 522CV04015HLTGE, B,  
14 2022 WL 1471372, at \*8 (D. Kan. May 9, 2022); Opp'n at 5.

15 Having carefully and thoroughly considered the arguments  
16 raised by the parties in their briefs and the oral argument on  
17 this motion held on June 27, 2023, the Court finds that Plaintiff  
18 has failed to allege sufficient facts to support her facial  
19 substantive due process claim. To establish a substantive due  
20 process claim under § 1983, a plaintiff must allege that (1) a  
21 federal constitutional right was violated and (2) the alleged  
22 violation was committed by a person acting under the color of  
23 state law such that it shocks the conscience. Long v. Cnty. of  
24 Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006), Brittain v.  
25 Hansen, 451 F.3d 982, 991 (9th Cir. 2006). This Court has held  
26 that the threshold requirement for such substantive or procedural  
27 due process claims is "plaintiff's showing of a liberty or  
28 property interest protected by the Constitution." Culinary



1 Studios, Inc. v. Newsom, 517 F. Supp. 3d 1042, 1067 (E.D. Cal.  
2 2021) (citing Wedges/Ledges of California, Inc. v. City of  
3 Phoenix, Ariz., 24 F.3d 56, 62 (9th Cir. 1994)). The Supreme  
4 Court requires a “careful description of the asserted liberty  
5 interest” that has been violated. Washington v. Glucksberg, 521  
6 U.S. 702, 720 (1997). The Court has also cautioned against the  
7 expansion of substantive due process rights, “lest the liberty  
8 protected by the Due Process Clause be subtly transformed into  
9 the policy preferences of” the courts. Id. Although the “law  
10 does not require a case directly on point for a right to be  
11 clearly established, existing precedent must have placed the  
12 statutory or constitutional question beyond debate.” David v.  
13 Kaulukukui, 38 F.4th 792, 800 (9th Cir. 2022).

14 Despite Plaintiff’s claims to the contrary, she is  
15 advocating for an expansion of her parental substantive due  
16 process rights that is not supported by precedent. Plaintiff has  
17 failed to provide any controlling authority that would permit  
18 this Court to find that the scope of her substantive parental  
19 rights covers the instant case’s circumstances. None of the  
20 cases cited by Plaintiff opine on whether the state has an  
21 affirmative duty to inform parents of their child’s transgender  
22 identity nor whether the state must obtain parental consent  
23 before referring to a transgender child by their preferred name  
24 and pronouns. Even Plaintiff’s reliance on Ricard is misguided  
25 as its holding was made in the context of a religious free  
26 exercise claim where the plaintiff teacher argued that  
27 withholding a student’s transgender status from their parents  
28 violated plaintiff’s religious beliefs; substantive parental

1 rights were not at issue before the Ricard court. Also, while  
2 Plaintiff alleges that the Regulation permits social  
3 transitioning at school and this constitutes medical treatment,  
4 this allegation is conclusory and, thus, insufficient to raise  
5 Plaintiff's right to relief under substantive due process above  
6 the speculative level.

7 The Court further notes that the sections of the Regulation  
8 at issue in the instant case are not proactive, but reactive;  
9 District staff are not directed to force students to adopt  
10 transgender identities or keep their identities secret from their  
11 parents. Instead, District staff are directed to affirm a  
12 student's expressed identity and pronouns and disclose that  
13 information only to those the student wishes, with an exception  
14 for the student's health. On the Regulation's face, it is  
15 undisputable that the decision to openly express a transgender  
16 identity through the use of a different name and pronouns is made  
17 by the student, not the District; and Plaintiff has failed to  
18 demonstrate that the Court has the authority under substantive  
19 due process to direct the District's response to such a decision  
20 on the grounds that her parental rights apply. Federal courts  
21 are "courts of limited jurisdiction that have not been vested  
22 with open-ended lawmaking powers," so in the absence of an  
23 established constitutional right, the legislature is best suited  
24 to address Plaintiff's concerns.<sup>1</sup> Nw. Airlines, Inc. v. Transp.

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25  
26 <sup>1</sup> The California legislature is currently considering a bill that  
27 would require school employees to notify a student's parent or  
28 guardian when the school becomes aware that the student is  
expressing a transgender identity. See Cal. Assemb. B. 1314  
(2023-2024 Reg. Sess.).

1 Workers Union of Am., AFL-CIO, 451 U.S. 77, 95 (1981).

2 As Defendant notes, Plaintiff's FAC and opposition to this  
3 motion to dismiss is filled with policy arguments challenging the  
4 wisdom of the Regulation. While reasonable minds may certainly  
5 differ as to whether Plaintiff's policy preferences are  
6 advisable, this Court is not the venue for this political debate.  
7 Reply, ECF No. 54 at 2. The issue before this Court is not  
8 whether it is a good idea for school districts to notify parents  
9 of a minor's gender identity and receive consent before using  
10 alternative names and pronouns, but whether the United States  
11 Constitution mandates such parental authority. This Court holds  
12 that it does not.

13 In the absence of the establishment of a federal  
14 constitutional right, the Regulation is subject to rational basis  
15 review, so the Regulation need only bear some rational  
16 relationship to a legitimate state interest. Witt v. Dep't of  
17 Air Force, 527 F.3d 806, 817 (9th Cir. 2008). The Court finds  
18 that the Defendant has demonstrated a legitimate state interest  
19 in creating a zone of protection for transgender students and  
20 those questioning their gender identity from adverse hostile  
21 reactions, including, but not limited to, domestic abuse and  
22 bullying; this is in line with the Regulation's general purpose  
23 to combat discrimination and harassment against students.  
24 Plaintiff's facial substantive due process challenge thus fails  
25 as a matter of law and is dismissed.

26 2. Count Two: § 1983 Substantive Due Process-As-  
27 Applied Challenge

28 Defendant argues that Plaintiff's as-applied substantive due

1 process claim must be dismissed because Plaintiff has failed to  
2 satisfy the underlying constitutional standard, namely that  
3 (1) Plaintiff had a federal constitutional right that was  
4 violated; and (2) the alleged violation was committed by a person  
5 acting under the color of state law such that it shocks the  
6 conscience. Mot. at 17. Defendant also argues that instruction  
7 regarding sexual identity does not infringe upon parental rights  
8 because it falls under a school's curriculum. Id. Defendant  
9 further notes that A.S.'s feelings of gender dysphoria, desire to  
10 use a different name and pronouns, and decision to not disclose  
11 her transgender identity to Plaintiff were prompted by A.S., not  
12 school personnel. Id. at 17-19. With respect to disclosure to  
13 Plaintiff, Defendant contends that Robertson's suggestion that  
14 A.S. disclose her gender identity to other family members first  
15 was in line with the Regulation's guidelines and that Robertson  
16 did not expressly forbid A.S. from disclosing this information to  
17 Plaintiff. Id. at 19.

18 Plaintiff does not directly contest Defendant's arguments in  
19 her opposition brief and the Court finds that Plaintiff has  
20 failed to allege sufficient facts to support her as-applied  
21 challenge. As Defendant notes, the underlying constitutional  
22 standard for an as-applied challenge is the same as a facial  
23 challenge. Legal Aid Servs. of Or. v. Legal Servs. Corp., 608  
24 F.3d 1084, 1096 (9th Cir. 2010). Thus, Plaintiff must establish  
25 the requisite elements for a substantive due process claim,  
26 namely that: (1) a federal constitutional right was violated and  
27 (2) the alleged violation was committed by a person acting under  
28 the color of state law such that it shocks the conscience. Long,

1 442 F.3d at 1185, Brittain, 451 F.3d at 991. Plaintiff has  
2 failed to establish these elements. Consistent with the Court's  
3 ruling in favor of Defendant on count one, the Court finds that  
4 Plaintiff's as-applied substantive due process challenge fails as  
5 a matter of law and is dismissed.

6 3. Count Three: § 1983 Procedural Due Process-Facial  
7 Challenge

8 Defendant argues that Plaintiff's facial procedural due  
9 process claim must be dismissed because Plaintiff has failed to  
10 establish that she has been deprived of a protected interest in  
11 property or liberty. Mot. at 20. Defendant further contends  
12 that, even if there was a constitutional violation, Plaintiff has  
13 failed to put forth any allegations to suggest that the District  
14 enacted the Regulation in a manner prohibited by law. Id. at 20-  
15 21.

16 Plaintiff responds that (1) the Regulation violates her  
17 fundamental parental rights and (2) in the alternative, her  
18 parental rights are closely related enough to fundamental rights  
19 that they should trigger procedural due process protections.  
20 Opp'n at 13-14. With respect to process, Plaintiff claims that  
21 the Regulation's adjudicatory framework is procedurally deficient  
22 because it does not allow for a thorough investigation into the  
23 relevant facts of one's case, notice, and an opportunity to be  
24 heard. Opp'n at 14, FAC ¶ 120.

25 To establish a procedural due process violation under  
26 § 1983, a plaintiff must allege: "(1) a deprivation of a  
27 constitutionally protected liberty or property interest and (2) a  
28 denial of adequate procedural protections." Culinary Studios,

1 Inc., 517 F. Supp. 3d at 1067 (citing Tutor-Saliba Corp., 452  
2 F.3d at 1061). This Court has held that the threshold  
3 requirement for such a claim is “plaintiff’s showing of a liberty  
4 or property interest protected by the Constitution.” Id. (citing  
5 Wedges/Ledges of California, Inc., 24 F.3d at 62). Although the  
6 “law does not require a case directly on point for a right to be  
7 clearly established, existing precedent must have placed the  
8 statutory or constitutional question beyond debate.” Kaulukukui,  
9 38 F.4th at 800. Consistent with the Court’s rulings in favor of  
10 Defendant on counts one and two, the Court finds that Plaintiff  
11 has failed to allege sufficient facts to establish that her  
12 fundamental parental rights extend to the circumstances of the  
13 instant case such that she was entitled to procedural due process  
14 protections; thus, Plaintiff has not sufficiently alleged that  
15 she has been deprived of a constitutionally protected liberty or  
16 property interest and her claim must be dismissed.

17 4. Count Four: § 1983 Procedural Due Process-As-  
18 Applied Challenge

19 Given the Court’s ruling on Plaintiff’s facial challenge,  
20 the Court finds that Plaintiff has failed to allege facts  
21 sufficient to support her as-applied procedural due process  
22 challenge. The underlying constitutional standard for an as-  
23 applied challenge is the same as a facial challenge. Legal Aid  
24 Servs. of Or., 608 F.3d at 1096 (9th Cir. 2010). Because  
25 Plaintiff has failed to allege sufficient facts to establish that  
26 she was deprived of a constitutionally protected liberty or  
27 property interest in the instant case, her claim must be  
28 dismissed.

1           5.    Count Five: § 1983 First Amendment-Facial  
2                            Challenge

3           Defendant seeks dismissal of Plaintiff's facial challenge  
4 alleging a violation of her intimate family relationship with her  
5 daughter because the right has not been recognized in the context  
6 of the instant case. Mot. at 21-22. Defendant argues that the  
7 parent-child intimate human relationship has only been recognized  
8 in two instances: (1) the right of a parent and child to  
9 physically live or congregate together; and (2) where the parent  
10 or child suffers retaliation from the state because of the  
11 other's conduct. Hameetman v. City of Chicago, 776 F.2d 636 (7th  
12 Cir. 1985), Agostino v. Simpson, 2012 U.S. Dist. LEXIS 207375,  
13 \*26-27 (S.D.N.Y. Mar. 29, 2012); Mot. at 21. Defendant claims  
14 that the FAC does not allege that the District either physically  
15 separated Plaintiff from A.S. or took any actions that could  
16 constitute retaliation against Plaintiff or A.S. for their  
17 individual conduct; the District simply abided by A.S.'s request  
18 to keep her gender identity a secret from Plaintiff in accordance  
19 with the Regulation. Id. at 22. Thus, Defendant contends that  
20 there was no constitutional violation. Id.

21           Plaintiff responds that the Regulation infringes on her  
22 right to family integrity and association, which prohibits  
23 unwarranted state interference into family relationships. Opp'n  
24 at 5. Plaintiff claims that Western parental relationships are  
25 deeply shaped by whether a child identifies as a boy or girl; the  
26 Regulation's alleged facilitation of social transitioning without  
27 parental consent fundamentally alters the "emotional bonds" of  
28 that relationship. Id. at 5-6; Ovando v. City of Los Angeles, 92

1 F. Supp. 2d 1011, 1021 (C.D. Cal. 2000); Doe v. Dickenson, 615 F.  
2 Supp. 2d 1002, 1014 (D. Ariz. 2009). Plaintiff claims that the  
3 Regulation drives a wedge into the parent-child relationship and  
4 denies Plaintiff the "opportunity to counter influences" on her  
5 children with which she disagrees. Arnold v. Bd. of Educ. of  
6 Escambia Cnty., 880 F.2d 305, 313 (11th Cir. 1989). Plaintiff  
7 argues that as a matter of constitutional law she has the right  
8 to decide whether the District socially transitions her children,  
9 or, in the alternative, she has the right to be provided notice  
10 before social transitioning occurs. The Court disagrees.

11 Plaintiff has failed to allege facts sufficient to support  
12 her facial First Amendment challenge. This Court has held that a  
13 familial association claim can be brought under either the First  
14 or the Fourteenth Amendment and that the standard of proof is the  
15 same. Kaur v. City of Lodi, 263 F. Supp. 3d 947, 973 (E.D. Cal.  
16 2017). To establish a familial association claim, Plaintiff must  
17 show that (1) her liberty interest in having her relationship  
18 with A.S. be free from unwarranted state interference was  
19 violated; and (2) that the violation was committed through  
20 official conduct that "shocks the conscience." Est. of Osuna v.  
21 Cnty. of Stanislaus, 392 F. Supp. 3d 1162, 1176 (E.D. Cal. 2019).  
22 The Ninth Circuit has also held that recovery for a violation of  
23 the right to familial association is generally contingent on the  
24 existence of an underlying constitutional violation. Schwarz v.  
25 Lassen Cnty. ex rel. Lassen Cnty. Jail, 628 F. App'x 527, 528  
26 (9th Cir. 2016). However, Plaintiff has again failed to allege a  
27 cognizable constitutional violation. Although the "law does not  
28 require a case directly on point for a right to be clearly



1 established, existing precedent must have placed the statutory or  
2 constitutional question beyond debate.” Kaulukukui, 38 F.4th at  
3 800. Plaintiff has cited to no controlling authority that  
4 suggests that a policy that forbids disclosure of a student’s  
5 gender identity absent their consent constitutes unwarranted  
6 interference in the parent-child relationship. The cases cited  
7 by Plaintiff to support her claim bear no resemblance to the  
8 instant case. The Regulation does not involve: (1) wrongful  
9 imprisonment of a parent, Ovando, 92 F. Supp. 2d at 1019; (2) the  
10 molestation of a child by a school resource officer, Dickenson,  
11 616 F. Supp. 2d at 1013-14; (3) reputational damage to a parent  
12 labelled as a child abuser, Bohn v. Dakota Cnty., 772 F.2d 1433,  
13 1436 n.4 (8th Cir. 1985); (4) law enforcement officers giving a  
14 family false and defamatory information about a parent, Patel v.  
15 Searles, 305 F.3d 130, 136-37 (2d Cir. 2002); (5) school  
16 officials coercing students into receiving abortions and not  
17 informing their parents, Arnold, 880 F.2d at 312-14; or  
18 (6) school officials compelling student athletes to take  
19 pregnancy tests, Gruenke v. Seip, 225 F.3d 290, 304-07 (3d Cir.  
20 2000).

21 The Regulation only governs the conduct of District staff  
22 with respect to how students wish to be addressed. Nothing in  
23 the Regulation prohibits or discourages students and their  
24 parents from associating with each other. To the contrary, in  
25 the context of the instant case, the Regulation refrains from  
26 interfering with the established parent-child relationship by  
27 allowing students to disclose their gender identity to their  
28 parents on their own terms. Consistent with the Court’s rulings

1 in favor of Defendant on counts one through four, the Court finds  
2 that Plaintiff has failed to establish that her right to familial  
3 association free from unwarranted state interference extends to  
4 the circumstances of the instant case or that Plaintiff has  
5 suffered an underlying constitutional violation. In the absence  
6 of the non-conclusory, factual allegations necessary to sustain  
7 this claim, Plaintiff's claim must be dismissed.

8 6. Count Six: § 1983 First Amendment-As-Applied  
9 Challenge

10 Given the Court's ruling on Plaintiff's facial challenge,  
11 the Court finds that Plaintiff has failed to allege facts  
12 sufficient to support her as-applied familial association  
13 challenge. The underlying constitutional standard for an as-  
14 applied challenge is the same as a facial challenge. Legal Aid  
15 Servs. of Or., 608 F.3d at 1096 (9th Cir. 2010). Because  
16 Plaintiff has failed to establish that she suffered a  
17 constitutional violation in the instant case, her as applied  
18 claim must be dismissed. The Court further notes Plaintiff's  
19 concession that her alleged constitutional violation occurred  
20 upon A.S.'s initiative, not the District's. Specifically, (1) the  
21 District's decision to not disclose A.S.'s gender identity to  
22 Plaintiff was at the request of A.S. and (2) A.S. affirmatively  
23 provided a name and pronouns that she preferred to be referenced  
24 by at school. FAC ¶¶ 64.

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## IV. ORDER


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2 For the reasons set forth above, the Court GRANTS  
3 Defendant's motion to dismiss. In determining whether to grant  
4 leave to amend, courts consider several factors: (1) undue delay,  
5 (2) bad faith or dilatory motive; (3) repeated failure to cure  
6 deficiencies by amendments previously permitted; (4) prejudice to  
7 the opposing party; and (5) futility of amendment. Foman v.  
8 Davis, 371 U.S. 178, 182 (1962); United States v. Corinthian  
9 Colleges, 655 F.3d 984, 995 (9th Cir. 2011). Futility of  
10 amendment can, by itself, justify denial of leave to amend.  
11 Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995). To the  
12 extent that the pleadings can be cured by the allegation of  
13 additional facts, a plaintiff should be afforded leave to amend.  
14 Samano v. LVNV Funding, LLC, No. 1:21-CV-01692-SKO, 2022 WL  
15 2318161, at \*2 (E.D. Cal. June 28, 2022) (citing Cook, Perkiss and  
16 Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247  
17 (9th Cir. 1990)). Dismissal of a complaint without leave to  
18 amend is proper only if it is absolutely clear that the  
19 deficiencies of the complaint could not be cured by amendment,  
20 such that the underlying facts cannot create a proper subject of  
21 relief. Id. at \*4, Breier v. N. Cal. Bowling Proprietors' Ass'n,  
22 316 F.2d 787, 790 (9th Cir. 1963).

23 In the instant case the Court finds that further amendment  
24 would be futile. Clearly, there are no material facts that are  
25 disputed or could be added that would allow Plaintiff to proceed  
26 on any of her six claims in the FAC. Indeed, the parties  
27 conceded at oral argument on this motion that this case presents  
28 purely legal issues that can be resolved at this stage of the

1 proceedings. Accordingly, all of Plaintiff's claims are  
2 DISMISSED WITH PREJUDICE.

3 IT IS SO ORDERED.

4 Dated: July 10, 2023

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7 JOHN A. MENDEZ  
8 SENIOR UNITED STATES DISTRICT JUDGE  
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