

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.¹ Nw. Airlines, Inc. v. Transp.

25
26 ¹ 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


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

In the instant case the Court finds that further amendment would be futile. Clearly, there are no material facts that are disputed or could be added that would allow Plaintiff to proceed on any of her six claims in the FAC. Indeed, the parties conceded at oral argument on this motion that this case presents 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

5
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7 JOHN A. MENDEZ
8 SENIOR UNITED STATES DISTRICT JUDGE
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