APPENDIX

TABLE OF CONTENTS

App. 1

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 23-1534

PARENTS PROTECTING OUR CHILDREN, UA,

Plaintiff-Appellant,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN, *et al*.,

Defendants-Appellees.

Argued: Sept. 26, 2023

Decided: Mar. 7, 2024

Before Wood, Scudder, and St. Eve, *Circuit Judges*.

OPINION

SCUDDER, *Circuit Judge*. Before us is an appeal brought by Parents Protecting Our Children, an association of parents that sued the Eau Claire Area School District in Wisconsin federal court to enjoin the enforcement of the District's Administrative Guidance for Gender Identity Support. The Administrative Guidance, as its name implies, provides direction and resources to schools encountering students with questions about their gender identity. Parents Protecting alleged that the policy offends the U.S. Constitution's Due Process and Free Exercise Clauses by interfering with its members' exclusive right to make decisions with and on behalf of their children.

The district court dismissed the complaint for lack of subject matter jurisdiction, explaining that Parents Protecting leveled a broad pre-enforcement facial attack on the Administrative Guidance without identifying any instance of the School District applying the policy in a way concerning or detrimental to parental rights.

We affirm. Parents Protecting is clear that their members harbor genuine concerns about possible applications of the School District's policy. Unless that policy operates to impose an injury or to create an imminent risk of injury, however—a worry that may never come to pass—the association's concerns do not establish standing to sue and thus do not create a Case or Controversy. The district court had no choice but to dismiss the challenge for lack of Article III subject matter jurisdiction.

I

A

In 2021 the Eau Claire Area School District promulgated the Administrative Guidance for Gender Identity Support. The Administrative Guidance aims to "foster inclusive and welcoming environments that are free from discrimination, harassment, and bullying regardless of sex, sexual orientation, gender identity or gender expression." To this end, the document provides "guidelines" for schools to follow "to address the needs of transgender, nonbinary, and/or gender non-conforming students." The Administrative Guidance explains that it is intended to be a "resource" because no amount of general direction could "anticipate every possible situation that may occur" when it comes to matters of gender identity within a school environment.

The process envisioned by the Administrative Guidance recognizes that either students or parents may contact school officials with questions, concerns, or requests bearing on matters of student gender identity. By its terms, the Guidance acknowledges the delicacy and sensitivity of these matters, including the possibility that some students might "not [be] 'open' at home for reasons that may include safety concerns or lack of acceptance." For that reason, "[s]chool personnel should speak with the student first before discussing a student's gender non-conformity or transgender status with the student's parent/guardian."

In 2022 the School District prepared a template Gender Support Plan. The Gender Support Plan is a document for schools to complete in connection with implementing the Administrative Guidance for a particular student. It records the shared understanding between the student and the School District of a student's gender identity and parental involvement in the process. The Support Plan explains that "[s]chool staff, family, and the student should work together to complete th[e] document."

Like the Administrative Guidance, the Support Plan recognizes that circumstances may arise where "parents are not involved in creating this plan," in which case the Plan directs school officials that "it shall be made clear to the student that this plan is a student record and will be released to parents when they request it." This disclosure commitment gives effect to the School District's acknowledgment that a support plan "is not a privileged document between the student and the school district."

B

Parents Protecting Our Children is an unincorporated association of parents whose children attend schools within the Eau Claire Area School District. In September 2022 the association brought this lawsuit seeking declaratory and injunctive relief on claims alleging that both the Administrative Guidance and Gender Support Plan violate its members' rights as parents under the Due Process Clause of the Fourteenth Amendment and the Free Exercise Clause of the First Amendment. The complaint also alleged claims under Wisconsin law.

To its credit, Parents Protecting is candid on two fronts important to our resolution of its appeal. The organization acknowledges that it brought this lawsuit not in response to an experience any member parent had with the School District's implementation of the Administrative Guidance, but instead as a facial pre-enforcement challenge to invalidate the entirety of the new policy. Parents Protecting is equally clear that what motivates its lawsuit are sincerely held, religiously-rooted concerns and uncertainties about how the School District may implement the Guidance or craft a Gender Support Plan.

Parents Protecting worries that the Administrative Guidance encourages the School District to leave parents in the dark if their children wish to explore their gender identity or begin to socially transition to a different gender at school. The association also fears that the School District will implement the Guidance and related support plans in ways that effectively displace parental rights by making major life decisions for their children. In these ways, the organization sees the District's

Administrative Guidance as sowing so much secrecy and mistrust between parents and their children as to offend principles of substantive due process and religious free exercise.

The district court concluded that the association failed to allege any injury or risk of injury sufficient to establish standing under Article III's Case or Controversy requirement. Neither the Administrative Guidance nor the template Support Plan, the district court determined, mandated the exclusion of parents or guardians from discussions or decisions regarding a student's gender expression at school. From there the district court emphasized that the complaint lacked any allegation that any member's child had questioned their gender identity or otherwise sought guidance or support under the School District's policy, leaving the association unable to plead any withholding of information from parents. In its final analysis, the district court viewed the alleged harm as dependent on a "chain of possibilities" too speculative to establish Article III standing.

Parents Protecting now appeals.

II

A

Federal courts are courts of limited jurisdiction. No matter how important a legal question or how sincere a worry, we must ensure the presence of a Case or Controversy. This requirement anchors itself in principles of separation of powers and federalism. In limiting the authority of federal courts, the Constitution empowers other branches and actors (and by extension, the people). In some instances, that means Congress and the President (at the national

level), and in others, states and municipalities (at the local level).

Standing doctrine implements Article III's Case or Controversy requirement. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). It does so by requiring the party invoking the jurisdiction of a federal court (most often the plaintiff) to allege that it has suffered "an invasion of a legally protected interest which is ... concrete and particularized ... and ... actual or imminent, not conjectural or hypothetical." *Id.* at 560 (internal citations and quotation marks omitted). The injury must be traceable to the defendant's actions and capable of being redressed through a favorable judicial decision. *See id.* at 560–61.

The law recognizes that an anticipated future injury may be sufficiently imminent to establish standing. See *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). But the alleged future injury must also be concrete: conjecture about speculative or possible harm is inadequate. See *id.* at 410.

All agree that Parents Protecting may bring a lawsuit like this one in an associational capacity and thus on behalf of its members upon satisfying three requirements. Associational standing, the Supreme Court has explained, requires factual allegations showing that (1) at least one of the association's members would otherwise have standing to sue in their own right; (2) the interests sought to be protected by the lawsuit are germane to the association's purpose; and (3) neither the claims asserted nor the relief sought requires the participation of individual members in the lawsuit.

See Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

B

Parents Protecting never clears the threshold. The association invites us to look beyond the language of the Administrative Guidance to risks that the association envisions and worries may accompany its implementation. To provide but a few examples, the association casts its concerns along these lines:

- "[I]f a child wants to keep their gender transition at school secret from their parents, the District will happily oblige, effectively treating school like Las Vegas—what happens at school stays at school."

- "The existence of the Policy alone directly harms those relationships by communicating to minor students that secrets from their parents—including an entire double life at school—are not only acceptable, but will be facilitated by the District upon request."

- "[T]he District's Policy transfers [member's] decision-making authority over whether a gender-identity transition is in their child's best interests from them to school staff and/or minor students themselves, and the loss of their parental authority over this decision is a present injury, because it prevents them from saying no to a transition."

No doubt Parents Protecting's allegations punch with conviction and concern. But nowhere does the complaint allege that even one of the association's members—any particular parent—has experienced an actual or imminent injury attributable to the

Administrative Guidance or a Support Plan. Nor, for that matter, do we see an indication that any of Parents Protecting's members asked the School District about how it plans to implement the Guidance. All we have before us is a policy on paper without concrete facts about its implementation.

The district court was right to see Parents Protecting's pleading shortcoming as analogous to the one that guided the Supreme Court's reasoning in *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). The Court in *Clapper* considered a challenge to the Foreign Intelligence Surveillance Act brought by lawyers concerned that the federal government's electronic-surveillance activities would intercept privileged and confidential communications with their foreign clients. See *id.* at 401. But the lawyers' complaint contained no allegations that any such interceptions had occurred or were likely to occur in the near future. See *id.* at 411. And it was that precise gap that led the Court to hold that the plaintiffs lacked standing, as they failed to allege facts showing that their "threatened injury" was "certainly impending." *Id.* at 410. To the contrary, the alleged harm "relie[d] on a highly attenuated chain of possibilities." *Id.*

The same deficiency requires us to affirm the dismissal of Parents Protecting's complaint. Applying *Clapper*'s reasoning here reveals that Parents Protecting's expressions of worry and concern do not suffice to show that any parent has experienced actual injury or faces any imminent harm attributable to the Administrative Guidance or a Gender Support Plan. Maybe that day will come for a member parent. Maybe not. All we can say with certainty today is that

Parents Protecting's allegations fall short of establishing a Case or Controversy.

III

Everyone reading this opinion will recognize the sensitivity, delicacy, and difficulty of the subject matter addressed by the Administrative Guidance. Many will take the next step of looking forward and asking hard "what-if" questions. Today's decision affords the Eau Claire School District the opportunity to devise responses in each individual circumstance as it arises—informed by balanced, inclusive, and respectful dialogue. Will those answers always come easy and satisfy everyone? Hardly. Life often deals challenging, frustrating, and messy hands. Allowing solutions to be sought—or perhaps at times impasses to be reached—student by student and circumstance by circumstance most respects the role and position of the Eau Claire School District and the interests of all involved in and affected by implementation of the Administrative Guidance.

If resort to the federal courthouse proves necessary in a particular instance, so be it. But this lawsuit came as the ink was still drying on Eau Claire's Administrative Guidance. Parents Protecting seeks to pull a federal court into a range of complex and often emotional challenges on matters of gender identity, where the right policy recipe is not yet clear and the best answers are sure to come in time—through the experiences of schools, students, and families. On these levels, the federal judiciary has no input to provide—no policy perspective to offer and no implementation tips to suggest. Our role is limited to awaiting concrete disputes between adverse parties, and to resolving those disputes under established

rules of procedure and familiar methods of legal reasoning. But sweeping pre-enforcement facial invalidation of law is highly disfavored. See *United States v. Salerno*, 481 U.S. 739, 745 (1987). And that is especially so where, as here, the relief sought implicates a local policy and weighty principles of federalism. See *Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983).

This limited role—mandated by Article III's Case or Controversy requirement—imposes an obligation of restraint (indeed, judicial humility) in a circumstance like this. In the absence of an actual or imminent injury sustained by Parents Protecting or one of its members, we have no choice but to stay on the sidelines.

With these final observations, we AFFIRM.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 22-cv-508

PARENTS PROTECTING OUR CHILDREN, UA,

Plaintiff,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN; TIM NORDIN; LORI BICA; MARQUELL JOHNSON; PHIL LYONS; JOSHUA CLEMENTS; STEPHANIE FARRAR; ERICA ZERR; and MICHAEL JOHNSON,

Defendants.

Filed: Feb. 21, 2023

OPINION AND ORDER

Plaintiff Parents Protecting Our Children is an unincorporated association (UA) of parents whose children attend schools within defendant Eau Claire Area School District in Wisconsin. The remaining defendants are school officials who are being sued in their official capacities. Plaintiff alleges that defendants' internal guidance on the treatment of transgender, non-binary, and gender-nonconforming students violates the following constitutional and statutory rights of its members: (1) the care, custody, and control of their children under the due process clause of the Fourteenth Amendment and the Wisconsin Constitution; (2) the free exercise of

religion under the First Amendment and the Wisconsin Constitution; and (3) the right to obtain information and opt out of specified public school activities under the Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h. Plaintiff seeks to enjoin defendants from relying on, using, implementing, or enforcing the guidance.

Before the court is defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of standing and under Rule 12(b)(6) for failure to state a claim. Dkt. 11. The court also has received a motion for leave to file an amicus curiae brief submitted by the Eau Claire Area LGBTQI+ Community in support of defendants. Dkt. 10.

For the reasons stated below, I am granting defendants' motion to dismiss this case for lack of standing. I am denying the motion for leave to file an amicus curiae brief because the amicus brief does not help resolve the question of standing.

FACTUAL ALLEGATIONS

When considering a motion to dismiss for lack of standing or for failure to state a claim, the court accepts as true all material allegations of the complaint, drawing all reasonable inferences therefrom in plaintiff's favor unless standing is challenged as a factual matter. *Bria Health Services, LLC v. Eagleson*, 950 F.3d 378, 381-82 (7th Cir. 2020). Defendants do not challenge this court's reliance on the facts in the complaint for the purpose of deciding their motion, although they reserve the right to contest plaintiff's allegations in the future. Def. Br. in Support, dkt. 12, at 2, n.2. This is what plaintiff alleges:

I. The Parties

Plaintiff Parents Protecting Our Children, UA, is a group of parents who have created an unincorporated nonprofit association in accordance with Wis. Stat. § 184.01. The unidentified members of the association reside in the Eau Claire Area School District (ECASD) and have children who attend ECASD schools. Plaintiff names ECASD as a defendant, along with District Superintendent Michael Johnson and these members of the Eau Claire Area Board of Education: Tim Nordin, president; Lori Bica, vice president; Marquell Johnson, clerk/governance officer; Phil Lyons, treasurer; and members Joshua Clements, Stephanie Farrar, and Erica Zerr.

II. Gender Identity Support Guidance, Plan, and Training

ECASD has adopted a district-wide internal policy titled "Administrative Guidance for Gender Identity Support" (the Guidance), which initiates a process under which a school and its staff create a "Gender Support Plan" with a student. Attached to plaintiff's complaint is a complete copy of the guidance, a blank and fillable copy of a gender support plan, and a copy of a facilitator guide for staff training on "safe spaces." Dkt. 1-3 to 1-5. Here is a summary of the relevant portions of these documents:

A. The Guidance

The first two and a half pages of the Guidance state the following purpose and process:

> I. Purpose:
>
> The purpose of this Guidance is: 1) to foster inclusive and welcoming environments that are

free from discrimination, harassment, and bullying regardless of sex, sexual orientation, gender identity or gender expression; and 2) to facilitate compliance with district policy.

For the purpose of this Guidance, a transgender individual is an individual that asserts a gender identity or gender expression at school or work that is different from the gender assigned at birth. …

This Guidance is intended to be a resource that is compliant with district policies, local, state, and federal laws. They are not intended to anticipate every possible situation that may occur.

II. The Process:

The following guidelines should be used to address the needs of transgender, nonbinary, and/or gender non-conforming students:

a. A transgender, non-binary, and/or gender-nonconforming student is encouraged to contact a staff member at the school to address any concerns, needs, or requests. This staff member will notify and work with the principal/designee. Parents/guardians of transgender, non-binary, and/or gender non-conforming students may also initiate contact with a staff member at school.

b. When appropriate or necessary, the principal or designee will schedule a meeting to discuss the student's needs and to develop a specific Student Gender

Support Plan when appropriate to address these needs. Documentation shall include date, time, location, names, and titles of participants, as well as the following information. The plan shall address, as appropriate:

1. The name and pronouns desired by the student (generally speaking, school staff and educators should inquire which terms a student may prefer and avoid terms that make the individual uncomfortable; a good general guideline is to employ those terms which the individual uses to describe themselves

2. Restroom and locker room use

3. Participation in athletics and extracurricular activities

4. Student transition plans, if any. Each individualtransitions differently (if they choose to transition at all), and transition can include social, medical, surgical, and/or legal processes

5. Other needs or requests of the student

6. Determination of a support plan coordinator when appropriate

* * *

Administrators and staff should respect the right of an individual to be addressed by a name and pronoun that corresponds to their gender identity. *A court-ordered name or gender*

> *change is not required, and the student need not change their official records*.

Dkt. 1-3 at 1-2 (emphasis in original).

The Guidance also discusses media and communication, official records and legal name changes, sports and extracurricular activities, dress codes, student trips and overnight accommodations, and training and professional development. Although the Guidance states that "[m]andatory permanent student records will include the legal/birth name and legal/birth gender," it provides that "to the extent that the district is not legally required to use a student's legal/birth name and gender on other school records or documents, the school will use the name and gender preferred by the student." Dkt. 1-3 at 3. "For example, Student ID cards are not legal documents, and therefore, may reflect the student's preferred name." *Id*.

With respect to parents and guardians, the Guidance states that

> Some transgender, non-binary, and/or gender-nonconforming students are not "open" at home for reasons that may include safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian.

Dkt. 1-3 at 2.

As plaintiff points out, the Guidance does not contain a requirement to notify a student's parents or guardian that the student is or will be using a new name or gender identity, except to the extent that

"ECASD will only make name changes in Skyward[1] after the completion of a Gender Support Plan and with parent/guardian permission." *Id*. at 4. However, there are no provisions mandating secrecy apart from a general provision in the media and communication section, which states that:

> Protecting the privacy of transgender, non-binary, and/or gender non-conforming students and employees must be a top priority for the spokesperson and all staff. All student and personnel information shall be kept strictly confidential as required by District policy and local, state, or federal privacy laws.

Id. at 3.

B. Gender Support Plan

The gender support plan (the Plan) makes the following statements in a separate text box at the top of the first page:

> The purpose of this document is to create shared understanding about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, family, and the student should work together to complete this document.
>
> If parents are not involved in creating this plan, and student states they do not want parents to know, it shall be made clear to the student that this plan is a student record and will be released to their parents when they request it.

---

[1] "Skyward" is a software program used by ECASD to manage student records and similar information.

> This is a not a privileged document between the student and the school district.

Dkt. 1-4 at 1.

The form contains spaces for district staff to record a new name, pronouns, and gender for a child; select which intimate facilities (restroom, locker room, and overnight lodging on field trips) the child will use; and identify who should be told about the child's newly acquired gender identity (asking about district staff, building staff, and friends and classmates but not parents or guardians). *Id.* at 2. The Plan specifically asks if parents/guardians are aware of "their child's gender status" and "student's requests at school" with yes/no check boxes. The Plan identifies two actions to take if the "yes" box is checked with respect to parent knowledge: walking the parents through the Skyward name process and student ID card change and identifying preferred name, pronouns, and intimate facilities. The form does not identify any actions to take if a "no" box is checked. *Id.* There are also sections for planning for use of facilities, extracurricular activities, and supporting the student and any siblings. *Id.* at 3-4.

C. Staff Training

Plaintiff alleges that ECASD has conducted training sessions for its teachers on the Guidance for which it prepared a "Facilitator Guide" for "Session 3: Safe Spaces." With respect to slide 56, titled "Talk amongst yourselves!," the guide directs the facilitator to guide a discussion and reminds facilitators that

> [P]arents are not entitled to know their kids' identities. That knowledge must be earned. Teachers are often straddling this complex

> situation. In ECASD, our priority is supporting the student.

Dkt. 1-5 at 2.

The guide also discusses slide 57, titled "Religion":

> Since Slide 56 will most likely focus on parents' religious objections to LGBTQIA+ people, it's important to take a moment and reaffirm that religion is not the problem (after all, there are millions of queer people of various faith traditions); rather, it's the weaponization of religion against queer people.

Id. at 3.

In addition, an online training session titled "Safe Spaces Part Two" states:

> We understand and acknowledge that teachers are often put in terrible positions caught between parents and their students. But much like we wouldn't act as stand-ins for abuse in other circumstances, we cannot let parents' rejection of their children guide teachers' reactions and actions and advocacy for our students.
>
> * * *
>
> We handle religious objections too often with kid gloves … . [If the parents' have a] faith-based rejection of their student's queer identity [then the school staff] must not act as stand-ins for oppressive ideas/behaviors/attitudes, even and especially if that oppression is coming from parents.

Dkt. 1, ¶¶ 38-39.

Plaintiff alleges that teachers understand the Guidance and training as a mandate to interfere with the parent–child relationship, pointing to a flyer posted by one teacher at North High School in ECASD, which states: "If your parents aren't accepting of your identity, I'm your mom now." Dkt. 1, ¶ 48.

OPINION

Defendants challenge the complaint under Rule 12(b)(1) for lack of standing, and under Rule 12(b)(6) for failure to state a claim. Because the court agrees that plaintiff lacks standing, this opinion will address only the first challenge under Rule 12(b)(1).

I. Legal Standard Regarding Standing

A complaint must plausibly allege standing to survive a Rule 12(b)(1) challenge. *Larkin v. Fin. Sys. of Green Bay, Inc.*, 982 F.3d 1060, 1064 (7th Cir. 2020) ("At the pleading stage, the standing inquiry asks whether the complaint 'clearly . . . allege[s] facts demonstrating each element in the doctrinal test.'") (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016)); *Silha v. ACT, Inc.*, 807 F.3d 169, 173-74 (7th Cir. 2015); *Scruggs v. Nielsen*, 2019 WL 1382159, at *1 (N.D. Ill. Mar. 27, 2019). An organization like plaintiff has associational standing to sue on behalf of its members if: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 639 (7th Cir. 2017); *United African Org. v. Biden*,

2022 WL 3212370, at *5 (N.D. Ill. Aug. 9, 2022). Defendants argue that plaintiff cannot establish the first element because the plaintiff's individual parent members do not have standing in their own right.

To establish Article III standing, a litigant "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo*, 578 U.S. at 338 (internal citations omitted); see also *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 667 (7th Cir. 2021) (citing same). Disputed in the instant case is the injury-in-fact element, which requires "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)); *see also Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019) ("Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions."). To be concrete, the injury "must be de facto; that is, it must actually exist." *Spokeo*, 578 U.S. at 340 (internal quotation omitted). "For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560 n.1).

With respect to standing to seek injunctive relief, the Supreme Court has held that a "plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983) (internal citations omitted); *see also Beley v. City of Chicago*, 2013 WL

3270668, at *3 (N.D. Ill. June 27, 2013) (Citing same for proposition that "[t]o establish standing for injunctive relief or a declaratory judgment, a party must show a real and immediate threat of injury.").

II. Injury in Fact

Plaintiff alleges that ECASD is providing "psychosocial medical/psychological care through transgender social transition" for which it is intentionally not obtaining parental consent. Dkt. 1 at ¶¶ 64-65. Plaintiff also alleges that the non-public nature of the policy and "secrecy with which schools are to operate" means there is no way for its parent members to determine if their child has been "targeted by the school." Dkt. 1, ¶ 75. In support of its allegations, plaintiff points out that the Guidance and Plan documents do not contain any minimum age limit or a requirement to notify the student's parents that the child is or will be using a new name or gender identity, opposite-sex intimate facilities, or opposite-sex overnight lodging during school activities.

According to plaintiff, defendants' Guidance "mandates" that schools and teachers hide critical information regarding a child's health from the child's parents and take action specifically designed to alter the child's mental and physical well-being, including: (1) allowing and requiring district staff to change a child's name, pronouns, and intimate facility use without the parents' knowledge or consent; (2) requiring a school and its staff to hold secret meetings with children to develop a gender support plan; and (3) requiring school officials, teachers, and administrators to continue using the child's given name and pronouns when interacting with the child's parents as to not alert parents to the changes the

school has made. Complaint, dkt. 1, at 2, ¶2. However, contrary to plaintiff's interpretation, a fair reading of the Guidance and Plan documents shows that they do not mandate the exclusion of parents and guardians. *See John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, __ F. Supp. 3d __, 2022 WL 3544256, at *6-7 (D. Md. Aug. 18, 2022) (finding same in Rule 12(b)(6) review of similar guidelines related to student gender identity); *id*. at 7 ("My review of the Guidelines reveals that the Plaintiff Parents' argument is based on a selective reading that distorts the Guidelines into a calculated prohibition against the disclosure of a child's gender identity that aims to sow distrust among MCPS students and their families.").

Actually, defendants encourage family involvement in developing a gender support plan: "The purpose of this document is to create shared understanding about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, family, and the student should work together to complete this document." Dkt. 1-4 at 1. True, the Guidance anticipates that some students may chose not to tell their parents about their gender nonconformity or transgender status, and it instructs school personnel to "[s]peak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian," dkt. 1-3. That being so, the Guidance does not instruct staff to keep the information secret and it makes clear that the student's name will not be changed in the district's system without parent/guardian permission. Further, the Plan document clearly notes that the Plan will not be kept confidential from the student's parents if they ask for it. *Id*.

More critical to the standing analysis, however, is that plaintiff does not allege (1) that any of its members' children are transgender or gender nonconforming, (2) that the district has applied the gender identity support Guidance or Plan with respect to its members' children or any other children, or (3) that any parent or guardian has been denied information related to their child's identity. Defendants argue that plaintiff's general distress about the gender identity policy does not demonstrate an actual injury because plaintiff's fear that the policy might be applied to one of its members' children in the future is too speculative to confer standing. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) ("[W]e have repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in fact,' and that '[a]llegations of possible future injury' are not sufficient.").

In an initial cursory argument, plaintiff contends that Clapper does not apply because defendants' Guidance is currently harming its members by providing "an experimental and controversial form of psychological/psychosocial medical treatment" without parental notice or consent. Dkt. 15 at 7. However, the complaint does not include allegations supporting an inference that any actual harm is occurring now. Thus, the crux of the parties' dispute is whether the possible application of the policy to plaintiff's members and their children is sufficiently imminent and harmful to confer standing. *See Parents Defending Educ. v. Linn-Mar Cmty. Sch. Dist.*, 2022 WL 4356109, at *9 (N.D. Iowa Sept. 20, 2022) ("In the absence of enforcement on a facial challenge, courts

evaluate whether injury was caused through a chilling effect or through a credible threat of enforcement.").

As plaintiff points out, "*Clapper* does not … foreclose any use whatsoever of future injuries to support Article III standing." *Remijas v. Neiman Marcus Grp., LLC*, 794 F.3d 688, 693 (7th Cir. 2015). The Court has explained that

> Our cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about. In some instances, we have found standing based on a "substantial risk" that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm.

Clapper, 568 U.S. at 414 n.5 (internal citations omitted). *See also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) ("An allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk' that the harm will occur."); *TransUnion LLC v. Ramirez*, ___ U.S. ___, 141 S. Ct. 2190, 2210 (2021) ("[A] person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial.").

Nonetheless, "[i]n *Clapper*, the Court decided that human rights organizations did not have standing to challenge the Foreign Intelligence Surveillance Act (FISA) because they could not show that their communications with suspected terrorists were intercepted by the government" but instead relied only on their suspicions that "such interceptions might have occurred." *Remijas*, 794 F.3d at 693. The

Court went on to note that "to the extent that the 'substantial risk' standard is relevant and is distinct from the 'clearly impending' requirement, respondents fall short of even that standard, in light of the attenuated chain of inferences necessary to find harm here… Plaintiffs cannot rely on speculation about 'the unfettered choices made by independent actors not before the court.'" *Clapper*, 568 U.S. at 414 n.5.

Plaintiff argues that the potential harm in this case is not as attenuated as that in *Clapper*. Instead, plaintiff contends that this case is more analogous to *Remijas*, 794 F.3d at 690 and 693, in which all plaintiffs had their identity stolen through a hack that targeted defendant but only some plaintiffs suffered fraudulent charges. The court in *Remijas* held that plaintiffs had shown a substantial risk of harm from the data breach because it was plausible to infer that the purpose of the hack was to make fraudulent charges or to assume stolen identities with respect to all of the affected plaintiffs. *Id*. at 693. The court of appeals explained that "[u]nlike in *Clapper*, where respondents' claim that they would suffer future harm rested on a chain of events that was both 'highly attenuated' and 'highly speculative,' the risk that Plaintiffs' personal data will be misused by the hackers who breached Adobe's network is immediate and very real." *Id*. (quoting *In re Adobe Sys., Inc. Privacy Litig.*, 66 F. Supp. 3d 1197, 1214 (N.D. Cal. 2014) (involving similar data breach case)).

I am not persuaded by plaintiff's argument.

Plaintiff's entire standing argument is premised on a speculative chain of possibilities, including future choices made by individuals who have not yet been

identified, indeed who cannot yet be identified because they have not acted, and they might never act. This will not suffice. "[T]he failure to raise a right to relief above the speculative level is the very definition of insufficient pleading." *Phillips v. Board*, 2017 WL 3503273 (N.D. Ind. 2017) at *3 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff's asserted injuries are based on its belief that the Guidance one day will interfere with one of its members' right to direct the upbringing of their child. Therefore, to sustain an injury, a member's child must: (1) develop a belief that they have a gender identity that differs from their biological sex; (2) affirmatively approach a district employee and request gender identity support; (3) request a gender support plan; and (4) make the request without parental consent or knowledge. Also part of this chain of possibilities are: (5) the school must not discuss the gender support plan with the parent and/or (6) the parent must not request to see the student's educational records.

As the Northern District of Iowa recently held in denying a motion for a preliminary injunction seeking to prevent enforcement of a similar gender identity support policy and plan:

> Though the Court does not doubt their genuine fears, the facts currently alleged before the Court do not sufficiently show the parents or their children have been injured or that they face certainly impending injury through enforcement of the Policy. The theory that (1) their child will express a desire for or indicate by mistake a desire for a plan, (2) the child will be given a plan, (3) without parental consent or

> knowledge, (4) and the information will be hidden or denied when parents ask requires too many speculative assumptions without sufficient factual allegations to support a finding of injury.

Parents Defending Educ., 2022 WL 4356109, at *9.

Reliance on such speculative, discretionary acts of others precludes a finding of standing. *Id.*; *see also The Cornucopia Inst. v. United States Dep't of Agric.*, 260 F. Supp. 3d 1061, 1069 (W.D. Wis. 2017) ("Like Clapper, plaintiffs' chain of causation here is further weakened by its reliance on third parties' discretionary acts.").

Nonetheless, plaintiff insists that because of the Guidance: (1) its members will be denied critical information necessary for its members to exercise their constitutional rights; (2) its members must surrender their constitutional right to receive public education for their children; and (3) its members will be denied their right under the PPRA to obtain information and opt out of specified public school activities. Although plaintiff cites a number of additional cases and standing-related doctrines in an attempt to show a possible injury, I am not persuaded its arguments or cited authority for the reasons stated below.

A. Threatened Loss of and Interference With Constitutional Right

Plaintiff argues that courts have recognized that a threatened violation of constitutional rights amounts to irreparable harm and should be actionable. See *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (Regarding challenge to Small Business

Administration's use of racial preferences in awarding funding, court held "when constitutional rights are threatened or impaired, irreparable injury is presumed."); *Democratic Nat'l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 969 (W.D. Wis. 2020) (State-imposed voting restrictions are "threatened loss of constitutional rights [that] constitute[] irreparable harm."). However, unlike in this case, the policies and statutes at issue in *Vitolo* and *Bostelmann* applied directly to the plaintiffs themselves and barred the exercise of their constitutional rights. *See Vitolo*, 999 F.3d at 358-59 ("The injury here is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.") (internal citations omitted). Although plaintiff argues that defendants' Guidance denies its members the information they need to exercise their constitutional decision-making authority regarding their children, the actual application of the Guidance to their children remains fatally speculative for the reasons discussed above.

Plaintiff cites *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007), in which the Court held that parents of children enrolled in a school district had standing to challenge a policy using race to reassign the school students would attend, even though there was no guarantee that the policy would be applied to change the school of any particular child. Even though plaintiff's members' children had not yet been denied their preferred school because of their race, the Court found that harm was not speculative because *every* student enrolled in the school district would be "forced to compete in a race-based system that may prejudice" them. *Id.* at 719. In other words, the school

assignment policy created a systemic process that would affect all students as they matriculated from elementary school to middle school or middle school to high school. Here, in contrast, plaintiff's alleged lack-of-information injury is not systemic: the Guidance will not be applied to all children, or even most children. Only a small fraction of ECASD students ever will make use of the policy, and a fraction of that group will alert their parents. Whether any of plaintiff's members' children will seek assistance under the Guidance without their parents' knowledge or input is completely conjectural.

Plaintiff also cites Jackson v. City and County of San Francisco, 746 F.3d 953 (9th Cir. 2014), (which involved the constitutionality of a city ordinance banning the sale of hollow-point ammunition) for the proposition that a violation of a constitutional right occurs when government action makes the exercise of a constitutional right nearly impossible.[2] Plaintiff notes that the Ninth Circuit recognized that the "Second Amendment … does not explicitly protect ammunition" but held that "[n]evertheless, without bullets, the right to bear arms would be meaningless" and "[t]hus the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them." *Id*. at 967. However, the court of appeals made this finding in the context of determining whether a constitutional claim had been stated, not whether the plaintiff had standing. In addressing standing, the Jackson court applied the injury-in-fact test outlined in *Lujan*: plaintiff must

---

[2] As discussed at-length above, plaintiff mischaracterizes the Guidance as actively hiding a constitutional violation from parents.

show injury in fact that is concrete and particularized and actual or imminent and not conjectural or hypothetical. *Id*. The court of appeals found that plaintiff Jackson satisfied that standard because she was a gun owner who would purchase hollow-point ammunition within San Francisco but-for the challenged ordinance. *Id*. Therefore, Jackson is not on point and does not support plaintiff's contention that it has standing in this case based on a denial of information.[3]

B. Pre-Enforcement Challenge

Plaintiff also asserts that it has standing to bring a pre-enforcement challenge to the district's Guidance under Supreme Court precedent allowing "pre-

---

[3] After briefing was completed, plaintiff filed a notice of supplemental authority, dkt. 19, in which it cites *Deanda v. Becerra*, 2022 WL 17572093 (N.D. Tex. Dec. 8, 2022), without discussion, as support for its standing argument. Defendants did not have the opportunity to address this case, but their input is not necessary because *Deanda* does not does change this court's conclusion. *Deanda* addresses a father's challenge to Title X of the Public Health Service Act, 42 U.S.C. §§ 300, which "mak[es] comprehensive voluntary family planning services readily available to all persons desiring such services." *Id*. at 1. The federal statute expressly instructed grant recipients that they could not require parental consent for their child's access to contraception (although they should "encourage family participation") and it did not allow parents to opt out of family planning services for their children. *Id*. at 3-6. But Texas law confers upon parents the right to consent to their children's medical treatment, along with general standing to file suit for a violation of that right. *Id*. at 6. The court in *Deanda* found that the father's loss of his state-law right to consent to the medical treatment of his minor children constituted an injury in fact, even though an actual medical situation had not yet arisen. *Id*. at 3 and n.1.

enforcement review under circumstances that render the threatened enforcement sufficiently imminent." *Susan B. Anthony List*, 573 U.S. at 159; *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) ("[W]here threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat"). Under this precedent, "a plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Susan B. Anthony List*, 573 U.S. at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)); *see also Brown v. Kemp*, 506 F. Supp. 3d 649, 656 (W.D. Wis. 2020) (citing same).

Although the "plaintiff's fear of prosecution and self-censorship constitute the injury for standing purposes" in such cases, "the mere existence of a statute [or in this case, a policy] adverse to plaintiff's interests is not sufficient to show justiciability." *Deida v. City of Milwaukee*, 192 F. Supp. 2d 899, 905-06 (E.D. Wis. 2002). The Supreme Court has made clear that "persons having no concrete fears that a policy or statute will be applied against them, except for those fears that are imaginary or speculative, are not accepted as appropriate plaintiffs." *Babbitt*, 442 U.S. at 298 (quoting *Younger v. Harris*, 401 U.S. 37, 42 (1971) and *Golden v. Zwickler*, 394 U.S. 103 (1969)). As discussed above, plaintiff has not shown that its members are under any real or credible threat of being subjected to the Guidance. *See Anders v. Fort Wayne Cmty. Sch.*, 124 F. Supp. 2d 618, 628-30 (N.D. Ind. 2000) (citing *Babbitt* and Seventh Circuit cases for

same in case involving policy to search vehicles on school property). Although plaintiff argues that parents may choose to withdraw their children from school or abandon their rights to public education in order to avoid the policy, that scenario also is speculative and is not based on any realistic or impending action by district staff.

C. Unconstitutional Conditions Doctrine

As plaintiff notes, the unconstitutional conditions doctrine prevents the government from awarding or withholding a public benefit for the purpose of coercing the beneficiary to give up a constitutional right or to penalize his or her exercise of a constitutional right. See *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ("For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited."); *Planned Parenthood of Indiana, Inc. v. Comm'r of Indiana State Dep't Health*, 699 F.3d 962, 986 (7th Cir. 2012) ("Understood at its most basic level, the doctrine aims to prevent the government from achieving indirectly what the Constitution prevents it from achieving directly."); *see also Carson v. Makin*, 142 S. Ct. 1987 (2022) (tuition assistance program penalized free exercise of religion by disqualifying private religious schools from generally available benefit for families whose school district did not provide public secondary school).

However, the doctrine does not "give rise to a constitutional claim in its own right; the condition must actually cause a violation of a substantive [constitutional] right." *EklecCo NewCo LLC v. Town of Clarkstown*, 2019 WL 2210798, at *12 (S.D.N.Y.

May 21, 2019) (quoting *U.S. v. Oliveras*, 905 F.2d 623, 628 n.8 (2d Cir. 1990), and citing *Dolan v. City of Tigard*, 512 U.S. 374, 407 n.12 (1994) (noting unconstitutional conditions doctrine "has never been an overarching principle of constitutional law that operates with equal force regardless of the nature of the rights and powers in question")).

Plaintiff invokes the unconditional conditions doctrine in making a cursory argument that defendants' Guidance conditions the right to attend public school on parents surrendering their constitutionally protected right to the care, custody, and control of their children. However, the argument does not provide plaintiff with a path to standing. Plaintiff's citations to *Perry* and *Carson* are not helpful because neither case discusses the unconditional conditions doctrine in terms of standing or addresses the speculative nature of plaintiffs' alleged injuries. In *Perry*, the Supreme Court merely reaffirmed that the government cannot deny someone a government benefit because that person exercised a constitutionally protected right, such as free speech. 408 U.S. at 597. And in *Carson*, the Court emphasized the general rule that the state violates the free exercise clause when it excludes religious observers from otherwise available public benefits. 142 S. Ct. at 1996. In the instant case, none of plaintiff's members have been subject to retaliation or excluded from anything for their opposition to the Guidance. In addition, and as explained above, plaintiff's allegation that the Guidance hinders its members' rights to send their children to public school is too speculative to confer standing.

D. PPRA and Informational Standing

Plaintiff contends that defendants have violated its rights related to student surveys and evaluations under the PPRA, 20 U.S.C. § 1232h, and its implementing regulations, 34 C.F.R. § 98.4(a). Specifically, plaintiff cites §§ 1232h(b)(2), (3), and (5), which provide that "[n]o student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning . . . mental or psychological problems of the student or the student's family, sex behavior or attitudes, or critical appraisals of other individuals with whom respondents have close family relationships" without "the prior written consent of the parent." In addition, plaintiff points to 34 C.F.R. §§ 98.4(a)-(b), which provide in relevant part that no student shall be required to submit without prior parental consent to a psychiatric or psychological examination, testing, or treatment in which the primary purpose is to reveal information concerning sex behaviors and attitudes and other sensitive issues. The regulations define a "psychiatric or psychological examination or test" as a method of obtaining information "that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings." § 98.4(c)(1). According to plaintiff, the above provisions "describe[] exactly what occurs when the District requires students to complete a gender support plan with school staff." Dkt. 15 at 21.

Although the parties debate whether there is a private right of action under PPRA that can be brought under § 1983, it is unnecessary to reach those arguments because plaintiff has failed to show that it has suffered, or is at a substantial risk of suffering, an

injury in fact that would permit it to pursue any such claims. Plaintiff argues that it has informational standing because its members are injured by the district's "promise that it will deny them information about their children that the PPRA requires the District to disclose." Dkt. 15 at 21. However, as explained above, this argument is based on a mischaracterization of the Guidance and Plan documents. Neither document requires students to complete a gender support plan without their parents' consent, and neither document states that information will be withheld from parents. Moreover, plaintiff has not alleged that defendants have required any child to submit to any type of survey, analysis, or evaluation in conjunction with the gender identity support Guidance. Accordingly, plaintiff has failed to show standing on this ground as well.

CONCLUSION

Defendants frame this lawsuit as arising out of "plaintiff's members uncomfortableness with transgender individuals, and their speculative fears about what would happen if their child became gender non-conforming." Def. Reply, dkt. 18, at 2. Plaintiff rejects this characterization, framing its lawsuit as a defense of the parental, religious, and statutory rights of its members to raise their children as they see fit. Pl.'s Resp., dkt. 15, at 51. It's a fraught topic, and both sides are entitled to their views on the issues that underlie ECASD's Gender Identity Policy. At this juncture, however, the issue before this court is narrow and procedural: does plaintiff have standing to bring the instant lawsuit? For the reasons stated above, I have concluded that it does not.

ORDER

IT IS ORDERED that defendants' motion to dismiss, dkt. 11, is GRANTED, and the motion for leave to file an amicus curiae brief, dkt. 10, is DENIED as unnecessary. The case is DISMISSED without prejudice for lack of subject matter jurisdiction.

Entered this 21st day of February, 2023.

BY THE COURT:

/s/

_____

STEPHEN L. CROCKER

Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 22-cv-508

PARENTS PROTECTING OUR CHILDREN, an Unincorporated Association,

Plaintiff,

v.

EAU CLAIRE AREA SCHOOL DISTRICT, WISCONSIN; TIM NORDIN, President, Eau Claire Area Board of Education, in his official capacity; LORI BICA, Vice President, Eau Claire Area Board of Education, in her official capacity; MARQUELL JOHNSON, Clerk/Governance Officer, Eau Claire Area Board of Education, in his official capacity; PHIL LYONS, Treasurer, Eau Claire Area Board of Education, in his official capacity; JOSHUA CLEMENTS, Board Member, Eau Claire Area Board of Education, in his official capacity; STEPHANIE FARRAR, Board Member, Eau Claire Area Board of Education, in her official capacity; ERICA ZERR, Board Member, Eau Claire Area Board of Education, in her official capacity; MICHAEL JOHNSON, in his official capacity as Superintendent of Eau Claire Area School District,

Defendants.

Filed: Sept. 7, 2022

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This suit seeks to vindicate parents' fundamental rights to care for and raise their children, and to religious freedom.

2. The defendants have formulated, approved, adopted, and conducted training on the Eau Claire Area School District's ("ECASD") "Administrative Guidance for Gender Identity Support" (the "Gender Identity Policy"). This Gender Identity Policy applies to all Eau Claire Area School District schools and its employees. Contrary to constitutional rights and federal law, it mandates that schools and teachers hide critical information regarding a child's health from his or her parents and to take action specifically designed to alter the child's mental and physical well-being. Specifically, the Policy allows and requires District staff to treat a child as if he or she is the opposite sex, by changing the child's name, pronouns, and intimate facility use, all without the parents' knowledge or consent. The District's training on its Gender Identity Policy told teachers that "parents are not entitled to know their kids' identities" and that parents must "earn" that knowledge. At least one teacher has posted a flyer reading, "If your parents aren't accepting of your identity, I'm your mom now."

3. ECASD requires a school and its staff to hold secret meetings with children to develop a "Student Gender Support Plan." At the same time, when interacting with the child's parents, the Gender Identity Policy requires school officials, teachers, and administrators to continue using the child's actual name and pronouns so the parents will not be alerted to the changes the school has made.

4. The obvious purpose of such secrecy is to prevent parents from making critical decisions for their own minor children, from interfering with the school's ideologically-driven activities, from caring for their children, or from freely practicing their religion.

5. The insidious invasion of parental rights at issue in this case cannot be tolerated by a free people who value liberty.

PARTIES

6. Parents Protecting Our Children, UA, is a group of parents who have created an unincorporated nonprofit association in accordance with Wis. Stat. § 184.01. Every member of the Association resides in the Eau Claire Area School District and has children that attend ECASD schools.

7. Eau Claire Area School District is a school district organized according to the laws of the State of Wisconsin.

8. Michael Johnson is the district Superintendent. He is a citizen of the State of Wisconsin. At all times Mr. Johnson was responsible for implementing the district's Gender Identity Policy. He is sued in his official capacity.

9. Tim Nordin is the President of the Eau Claire Area Board of Education. He is a citizen of the State of Wisconsin and is sued in his official capacity.

10. Lori Bica is the Vice President of the Eau Claire Area Board of Education. She is a citizen of the State of Wisconsin and is sued in her official capacity.

11. Marquell Johnson is the Clerk/Governance Officer of the Eau Claire Area Board of Education. He

is a citizen of the State of Wisconsin and is sued in his official capacity.

12. Phil Lyons is the Treasurer of the Eau Claire Area Board of Education. He is a citizen of the State of Wisconsin and is sued in his official capacity.

13. Joshua Clements is a Board Member of the Eau Claire Area Board of Education. He is a citizen of the State of Wisconsin and is sued in his official capacity.

14. Stephanie Farrar is a Board Member of the Eau Claire Area Board of Education. She is a citizen of the State of Wisconsin and is sued in her official capacity.

15. Erica Zerr is a Board Member of the Eau Claire Area Board of Education. She is a citizen of the State of Wisconsin and is sued in her official capacity.

JURISDICTION AND VENUE

16. The Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

17. The Court has authority to issue a declaratory judgment, to order injunctive relief, attorneys' fees, and other relief that is necessary and proper under 28 U.S.C. §§ 2201, 2002 and 42 U.S.C. §§ 1983, 1988.

18. Venue is appropriate under 28 U.S.C. § 1391(b)(2).

FACTS

19. The school district adopted a policy entitled: "Administrative Guidance for Gender Identity Support." (Exhibit A.)

20. ECASD has implemented the policy district-wide and has conducted training on how the policy is to be implemented.

21. The policy states that its purpose is to "facilitate compliance with district policy."

22. It encourages students to "contact a staff member at the school to address any concerns, needs, or requests" related to gender nonconformity or identification with a transgender or "non-binary" identity.

23. This contact initiates a process where the school and its staff create a "Student Gender Support Plan" with the student. (Exhibit B.)

24. The Gender Support Plan has blank spaces for District staff to record a new name, pronouns, and gender for a child, which intimate facilities the child will use, and who should be told about the child's newly acquired "gender identity."

25. The Gender Support Plan specifically asks if "parents/guardians" are "aware of their child's gender status" or "aware of [the] student's requests at school" with yes/no check boxes, allowing District staff to make these critical decisions without any parental involvement or awareness.

26. The Gender Support Plan identifies the actions to take if the "yes" box is checked to both questions about parents, but it fails to identify any actions to take if a "no" box is checked.

27. The section of the Plan entitled "Parent/Guardian Involvement" appears as follows:

¶

¶

PARENT/GUARDIAN·INVOLVEMENT¶

Are·parents/guardians·of·this·student·aware·of·their·child's·gender·status?·☐Yes···☐No¶

Are·the·parents/guardians·aware·of·student's·requests·at·school?·☐·Yes···☐No¶

If·yes·to·both·statements·above,·at·parents'·request·ECASD·will·walk·them·through·the·Skyward·name·process·and·Student·ID·card·change.¶

→ -Preferred·name:·Click·or·tap·here·to·enter·text.¶

→ -Pronouns:·Click·or·tap·here·to·enter·text.¶

→ -Restroom:·Choose·an·item.··(Please·note·not·all·schools·are·equipped·with·gender·neutral·restrooms·at·this·time.)¶

→ -Locker·room:·Choose·an·item.¶

→ -School·field·trips·(lodging·for·overnight·trips):·Click·or·tap·here·to·enter·text.↵
→ (Please·see·Administrative·Guidelines·Section·VII·for·more·information.)¶

What·considerations·might·need·to·be·accounted·for?¶

Click·or·tap·here·to·enter·text.¶

28. The Gender Support Plan identifies the facilities the child can use, including restrooms, locker rooms, facilities for class trips, and lodging for overnight trips.

29. For overnight trips, there is no requirement that anyone notify the parents that their children will be staying in overnight opposite-sex lodging facilities. The only requirement is that appropriate accommodations are made with the lodging facility.

30. There are also sections for extracurricular activities, including who needs to be notified regarding the plan for extracurricular activities, what to do if there are siblings, and how to support the siblings.

31. The Gender Support Plan and Gender Identity Policy lack any requirement to notify the student's parents that ECASD is renaming their child or giving

him or her a new gender identity. There is no requirement to notify the parents that their child will be using opposite-sex intimate facilities. There is no requirement to notify the parents that their child will stay in opposite-sex overnight lodging.

32. The Gender Identity Policy requires school personnel to speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian—if the school ever tells the parents—because the student may not be "open" at home.

33. The Gender Identity Policy requires administrators and staff to "respect the right of an individual to be addressed by a name and pronoun that corresponds to their gender identity. *A court-ordered name or gender change is not required, and the student need not change their official records*." (emphasis in original). This means the school will address a child by his or her chosen name and gender pronouns regardless of parental notice or consent.

34. ECASD's Policy does not contain any age limit for this policy, allowing District staff to facilitate a gender identity transition at school, in secret from parents, even for students in grade school.

35. The Policy requires schools to use the "name and gender preferred by the student" on any documents where "the district is not legally required to use a student's legal/birth name and gender." The Policy states that "Student ID Cards are not legal documents, and therefore, may reflect the student's preferred name."

36. Upon information and belief, the ECASD has conducted trainings for its teachers on the Policy. As part of that training, a "Facilitator Guide" for "Session 3: Safe Spaces" was used by the "facilitator" or the person conducting the training. (Exhibit C.) When discussing slide 56, the Facilitator is directed to emphasize for the participants that "parents are not entitled to know their kids' identities," but must "earn" that knowledge:

Slide 56– Talk amongst yourselves!
Facilitators, guide this discussion. Remember, parents are not entitled to know their kids' identities. That knowledge must be earned. Teachers are often straddling this complex situation. In ECASD, our priority is supporting the student.

37. The same training is overtly antagonistic toward religious parents. The Facilitator's notes remind the facilitator that while parents' objections to the "LGBTQIA+" agenda will likely be from religious parents, not all religion is the problem. Instead, it is the "weaponization of religion against queer people" that is the problem. That is, parents whose core religious beliefs conflict with the "LGBTQIA+" agenda are the problem.

38. During the online training session entitled "Safe Spaces Part Two," Christopher Jorgenson states: "We understand and acknowledge that teachers are often put in terrible positions caught between parents and their students. But much like we wouldn't act as stand-ins for abuse in other circumstances, we cannot let parents' rejection of their children guide teachers' reactions and actions and advocacy for our students." He continues reading from the slide which states: "Religion is not the problem. Discrimination is the problem. Bigotry as ideology is the problem. The weaponization of

religious beliefs against marginalized people is the problem."

39. This same training states: "We handle religious objections too often with kid gloves . . ." and that if the parents' have a "faith-based rejection of their student's queer identity" then the school staff "must not act as stand-ins for oppressive ideas/behaviors/attitudes, even and especially if that oppression is coming from parents."

40. This training teaches that parents who are not affirming are abusing their children, are "oppressive," and not supportive of their own children.

41. ECASD sees its role as superior to that of the parent in determining what care is appropriate for a parent's gender-questioning child, and it denies any parent whose view conflicts with ECASD's preferred treatment options from information about their own child.

42. ECASD's policy is not to tell parents if a student identifies as a different sex or gender and uses a different name and pronouns at school.

43. Specifically, ECASD's Gender Identity Policy targets religious parents as having abusive and oppressive ideas/behaviors/attitudes, and takes the position, as official District Policy, that those parents have not "earned the right" to know critical information about their own children.

44. The Gender Identity Policy necessarily interferes with the parent/child relationship by creating a new name and gender identity for the parent's child without notifying the parents or obtaining their consent before treating their child as if he or she is the opposite sex. The Policy also

interferes with the parent/child relationship by allowing the child to use opposite-sex intimate facilities and opposite-sex overnight lodging on overnight field trips without the parents' knowledge or consent. The Policy requires affirming a child's gender transition without parental consent.

45. The Gender Identity Policy shows ECASD's clear and impermissible hostility toward the sincere religious beliefs that motivate religious parents.

46. The Gender Identity Policy interferes with a parent's religious freedom to raise their children according to their religious beliefs by creating a new name and gender for the parent's child. The Gender Identity Policy also interferes with the parent's religious freedom to raise their children according to their religious beliefs by allowing children to use opposite-sex intimate facilities and overnight lodging on overnight field trips.

47. The Gender Identity Policy requires staff and teachers to interfere with the parental relationship.

48. Teachers have taken the Gender Identity Policy as a mandate to interfere with the parent/child relationship, as illustrated by a teacher's flyer posted at North High School in the Eau Claire Area School District, stating that "if your parents aren't accepting of your identity, I'm your mom now.":

49. ECASD's policy runs directly against the recommendations of medical experts with decades of experience treating gender dysphoria and children wrestling with gender identity and their biological sex.

50. Multiple studies have shown that the vast majority of children who struggle with their gender identity or experience gender dysphoria ultimately resolve to comfort with their biological sex, if they do not transition or receive immediate affirmation that their perceptions represent their true identity.

51. In light of that evidence, and for other reasons, many experts recommend *against* "affirmation" and an immediate transition, and instead believe the appropriate first response is to help children dealing with these issues to process and understand what they are feeling and why. *E.g.*, Kenneth J. Zucker, *Gender Dysphoria in Children and Adolescents*, in Principles And Practice Of Sex Therapy 395, 414–15 (6th ed., 2020); Stephen B. Levine, *Reflections on the Clinician's Role with Individuals Who Self-identify as Transgender*, Arch. Sex. Behav. (2021); Laura Edwards-Leeper and Dr. Erica Anderson, *The mental*

health establishment is failing trans kids, Washington Post (Nov. 24, 2021), https://www.washingtonpost.com/outlook/2021/11/24/trans-kids-therapy-psychologist/ (arguing that "comprehensive assessment and gender-exploratory therapy is the most critical part of the transition process."); *Questioning America's approach to transgender health care*, The Economist (Jul. 28, 2022), https://www.economist.com/united-states/2022/07/28/questioning-americas-approach-to-transgender-health-care (noting that medical groups in Sweden and Finland are "moving in the opposite direction" from "the 'affirmative model,'" and instead "now prioritis[ing] therapy."); Jasmine Andersson & Andre Rhoden-Paul, *NHS to close Tavistock child gender identity clinic*, BBC News (July 28, 2022), https://www.bbc.com/news/uk-62335665 (a review found that the clinic was "not a safe or viable option" for children, in part due to its "unquestioning affirmative approach," and instead recommending a more "holistic" approach).

52. Many experts believe that facilitating a transition and treating a child as if he or she is the opposite sex by using a different name and pronouns can do long-term harm to the child by reinforcing a false belief, causing that belief to set in and reducing the likelihood that the child will find comfort with his or her body. E.g., Kenneth J. Zucker, *The Myth of Persistence: Response to "A Critical Commentary on Follow-Up Studies & 'Desistance' Theories about Transgender & Gender Non-Conforming Children" by Temple Newhook et al.*, 19:2 Int'l J. of Transgenderism 231 (2018) ("I would argue that parents who support, implement, or encourage a gender social transition (and clinicians who recommend one) are

implementing a psychosocial treatment that will increase the odds of long-term persistence.").

53. Even the World Professional Association for Transgender Health ("WPATH"), a transgender advocacy organization that strongly endorses transitioning—and which Plaintiffs by no means endorse—acknowledges that "[s]ocial transitions in early childhood" are "a controversial issue" and that "health professionals" have "divergent views" on this issue. World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* at 17 (version 7, 2012).

54. WPATH also recognizes that "[t]he current evidence base is insufficient to predict the long-term outcomes of completing a gender role transition during early childhood." *Id.*

55. And WPATH characterizes social transition as a "therapeutic" "treatment option" for gender dysphoria. *Id.* at 9 (listing "changes in gender expression and role" *first* in its list of "options for psychological and medical treatment of gender dysphoria.").

56. Multiple studies have found that the vast majority of children (roughly 80-90%) who experience gender dysphoria or identify as transgender ultimately "desist," or find comfort with their biological sex and cease experiencing gender dysphoria as they age. *See* WPATH Guidelines at p. 11 (listing studies).

57. Given the lack of evidence and divergent views on this sensitive issue, WPATH recommends that health professionals defer to parents "as they work

through the options and implications," even if they ultimately "do not allow their young child to make a gender-role transition." *Id*. at 17.

58. Parents have no way to know, in advance, if or when their children will begin to wrestle with their gender identity, experience discomfort with their biological sex, or experience gender dysphoria.

59. The first indications that a child may be dealing with gender identity issues or gender dysphoria may arise at school, unbeknownst to parents.

60. Indeed, ECASD's policy and practices make this more likely by openly encouraging students struggling with these issues to come to teachers first—by, for example, displaying posters that say, "if your parents aren't accepting of your identity, I'm your mom now."

61. Thus, if adult staff at ECASD follow their Gender Identity Policy and begin treating a child as if he or she is really the opposite sex at school, without parental notice or consent, ECASD may do long-term damage to the child's psyche and sense of identity before the parents even become aware that the harm has been done.

62. There is no good evidence at this point about the long-term implications of a transition during childhood.

63. Thus, treating children as if they are the opposite sex is effectively a psychosocial experiment on children.

64. Transgender social transition is also a form of psychosocial medical/psychological treatment.

65. ECASD is providing psychosocial medical/psychological care through transgender social transition and is intentionally not obtaining parental consent.

66. Providing psychosocial medical/psychological treatment to children without parental consent lacks the informed consent necessary and violates the substantive due process rights of parents.

67. Gender dysphoria can also be a serious mental-health condition that requires professional help.

68. Children dealing with gender dysphoria or questioning their gender identity often present with other comorbidities, including depression, anxiety, and suicidal thoughts, and may urgently need professional support.

69. A child's desire to socially transition, to change name and pronouns, is a well-recognized indicator that the child may be dealing with gender dysphoria and should be professionally evaluated.

70. Teachers and staff at ECASD have no expertise in diagnosing and treating gender identity issues or gender dysphoria.

71. Teachers and staff at ECASD have no lawful authority to make treatment decisions for minor students in their care during the day.

72. The Gender Identity Policy was not developed with parental input.

73. The Gender Identity Policy is not publicly available and parents in the Eau Claire Area School District do not have access to it.

74. The members of Parents Protecting Our Children have a clearly established fundamental right

to the care, custody, and control of their children, to raise their children according to their religious beliefs, and to raise their children without the State unconstitutionally interfering with their relationship with their child.

75. The members of Parents Protecting Our Children have each been injured by the Policy's violation of their constitutional rights. The secrecy with which schools are to operate pursuant to the Gender Identity Policy necessarily means there is no way for each member parent to determine if their child has been targeted by the school. Further, the Gender Identity Policy itself is not public. As such, the PPOC Members have each suffered an ongoing or threatened concrete injury to their parental and religious rights.

76. The injury for each member is the same, each member would have standing to sue individually, the members are seeking to protect interests germane to the organization's purpose, and neither the claims asserted nor the relief requested requires the participation of individual members.

FIRST CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS (Violation of Fundamental Parental Rights Under Fourteenth Amendment, 42 U.S.C. § 1983)

77. Plaintiff incorporates all of the preceding allegations.

78. The relationships between PPOC members and their children are constitutionally protected through the Due Process Clause and made applicable to the defendants through the 14th Amendment to the United States Constitution.

79. Fit parents are presumed to act in the best interest of their children.

80. PPOC's members have the fundamental Constitutional right to make decisions concerning the care, custody, and control of their children.

81. When the government denies parents that right and takes it for itself, the government violates the parents' fundamental parental rights.

82. Defendants have concealed the Gender Identity Policy from parents, preventing PPOC's members from knowing if the school has already applied this policy to their children, or will apply this policy to their children in the future, which interferes with the parents' ability to direct their children's upbringing.

83. The defendants, by requiring schools and teachers to secretly "support the transition" of a child to a different "gender" by providing psychological or psychiatric counseling or treatment, changing their name and pronouns and their intimate facility usage and overnight accommodations, all without parental notice or consent, directly interferes with the parent/child relationship, the parent's ability to make health-related decisions for their child, and denies PPOC members their fundamental right to make decisions concerning the care, custody, and control of their children.

84. Among other things, the defendants intentionally interfere with parents' ability to seek and provide professional assistance their children may need by hiding from parents that their child is dealing with gender identity issues.

85. An unemancipated minor child cannot grant informed consent for psychosocial

medical/psychological treatment and counseling that the defendants impose.

86. The Policy requires the school to provide psychosocial medical/psychological care to children without parental consent, violating parents' fundamental liberty interest in parenting their children, including selecting a treatment approach that does not involve an immediate gender transition.

87. The Policy is not narrowly tailored to achieve a compelling governmental interest.

88. The Policy fails to satisfy any legitimate governmental interest.

SECOND CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS (Violation of Plaintiff's Religious Freedom Under the First Amendment, 42 U.S.C. § 1983)

89. Plaintiff incorporates all of the preceding allegations.

90. Most PPOC members have sincerely held religious beliefs that there are only two sexes, that their children were born either male or female, and that this characteristic is immutable.

91. PPOC's members believe that the two sexes are a core part of God's intended design for humanity and that the sex each of us is born with is a gift, not an arbitrary imposition. See Genesis 1:27 ("male and female he created them"); Matthew 19:4 ("the Creator made them male and female"); Mark 10:6 ("But at the beginning of creation God 'made them male and female.'")

92. As a direct result of their religious beliefs, if these PPOC members' children ever experience gender identity issues or gender dysphoria, they would not immediately "affirm" whatever beliefs their children might have about their gender, but would instead remind them that they were "fearfully and wonderfully made," see Psalm 139:14, and seek to help them identify and address the underlying causes of their discomfort with their body and learn to accept and embrace their God-given sex.

93. At the same time, PPOC's members will never stop loving their children, or love them any less, no matter what their children might believe about their gender.

94. The First Amendment to the United States Constitution guarantees PPOC's members the right to freely exercise and practice their religion without governmental interference.

95. PPOC members' have a fundamental right under the First Amendment to make decisions concerning the care, custody, and control of their children in accordance with their religious beliefs.

96. The defendants have violated this right by implementing a secret policy to affirm a child's perceived or desired gender identity without parental notice or consent, which interferes with PPOC's members' right to choose a treatment approach that is consistent with their religious beliefs and does not involve a social transition.

97. ECASD's Gender Identity Policy, which requires hiding from parents their child's struggle with gender identity issues, also directly interferes with PPOC's members' right to teach and guide their

children through gender identity issues in accordance with their religious beliefs.

98. ECASD has no compelling governmental interest in keeping secret from parents that their child is dealing with gender identity issues or gender dysphoria or that staff are treating their child as if he or she is really the opposite sex while at school. Even if there were some compelling reasons for secrecy in some rare situation, ECASD's Gender Identity Policy is not narrowly tailored to such a situation.

99. The Gender Identity Policy fails to satisfy any legitimate governmental interest.

THIRD CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS (Violation of Parental Rights Under Article 1 § 1 of the Wisconsin Constitution)

100. Plaintiff incorporates all of the preceding allegations.

101. The Wisconsin Constitution provides "the same equal protection and due process rights afforded by the Fourteenth Amendment to the United States Constitution." *Mayo v. Wisconsin Injured Patients & Families Comp. Fund*, 2018 WI 78, ¶ 35, 383 Wis. 2d 1, 914 N.W.2d 678.

102. Any governmental action that "directly and substantially implicates a fit parent's fundamental liberty interest in the care and upbringing of his or her child" is "subject to strict scrutiny review." *Matter of Visitation of A. A. L.*, 2019 WI 57, ¶ 22, 387 Wis. 2d 1, 927 N.W.2d 486.

103. The Defendants' requirement that the school and its staff hide from a parent that his or her

child is dealing with and/or receiving psychological or psychiatric counseling or treatment for "gender identity" issues, has been assigned a different name and pronouns or authorized to use opposite-sex intimate facilities or opposite sex overnight accommodations violates the PPOC members' fundamental right to make decisions concerning the care, custody, and control of his or her child, for all of same reasons described in Plaintiffs' First Cause of Action.

104. Therefore, the defendants have violated Article 1, Section 1 of the Wisconsin Constitution.

FOURTH CAUSE OF ACTION: VIOLATION OF CIVIL RIGHTS (Violation of Article 1 § 18 of the Wisconsin Constitution)

105. Plaintiff incorporates all of the preceding allegations.

106. The Wisconsin Constitution "provides much broader protections for religious liberty than the First Amendment." *Coulee Cath. Sch. v. Lab. & Indus. Rev. Comm'n, Dep't of Workforce Dev.*, 2009 WI 88, ¶ 66, 320 Wis. 2d 275, 768 N.W.2d 868.

107. Parents have a fundamental right under Article 1, Section 18 of the Wisconsin Constitution to raise their children in accordance with their religious beliefs and without governmental interference.

108. The defendants have denied PPOC's members their fundamental right to make decisions concerning the care, custody, and control of their children in accordance with their religious beliefs.

109. PPOC's members believe that the two sexes are a core part of God's intended design for

humanity and that the sex each of us is born with is a gift, not an arbitrary imposition. See Genesis 1:27 ("male and female he created them"); Matthew 19:4 ("the Creator made them male and female"); Mark 10:6 ("But at the beginning of creation God 'made them male and female.'")

110. As a direct result of their religious beliefs, if these PPOC members' children ever experience gender identity issues or gender dysphoria, they would not immediately "affirm" whatever beliefs their children might have about their gender, but would instead remind them that they were "fearfully and wonderfully made," see Psalm 139:14, and seek to help them identify and address the underlying causes of their discomfort with their body and learn to accept and embrace their God-given sex.

111. At the same time, PPOC's members will never stop loving their children, or love them any less, no matter what they believe about their gender.

112. PPOC members' have a fundamental right under Article 1, § 18 of the Wisconsin Constitution to make decisions concerning the care, custody, and control of their children in accordance with their religious beliefs.

113. The defendants have violated this right by implementing a secret policy to affirm a child's perceived or desired gender identity without parental notice or consent, which interferes with PPOC's members' right to choose a treatment approach that is consistent with their religious beliefs and does not involve a social transition.

114. ECASD's Gender Identity Policy, which requires hiding from parents their child's struggle

with gender identity issues, also directly interferes with PPOC's members' right to teach and guide their children through gender identity issues in accordance with their religious beliefs.

115. ECASD has no compelling governmental interest in keeping secret from parents that their child is dealing with gender identity issues or gender dysphoria or that staff are treating their child as if he or she is really the opposite sex while at school. Even if there were some compelling reasons for secrecy in some rare situation, ECASD's Gender Identity Policy is not narrowly tailored to such a situation.

116. The Policy is not narrowly tailored to achieve a compelling governmental interest.

117. The Policy fails to satisfy any legitimate governmental interest.

FIFTH CAUSE OF ACTION: VIOLATION OF 42 U.S.C. § 1983 (Failure to Notify Parents and Obtain Written Consent)

118. Plaintiff incorporates all of the preceding allegations.

119. Plaintiff seeks redress for the deprivation of rights secured by the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h.

120. ECASD receives federal funds.

121. The Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h, and its implementing regulations, 34 C.F.R. Part 98, apply to ECASD.

122. Congress enacted the Protection of Pupil Rights Amendment to protect PPOC's members' fundamental right to make decisions concerning the

care, custody, and control of their children. It prohibits, *inter alia*, "psychiatric or psychological treatment," meaning the use of methods or techniques that are not directly related to academic instruction and designed to affect behavioral, emotional, or attitudinal characteristics of an individual, without prior written consent of an unemancipated minor's parent or guardian.

123. As a matter of federal law, ECASD's Gender Identity Policy includes psychiatric or psychological testing and treatment because it is designed to affect behavioral, emotional, or attitudinal characteristics of a student identifying as transgender.

124. The Gender Identity Policy and corresponding Gender Support Plan's primary purpose is to reveal information related to gender identity, sexual behavior, and personal attitudes. Therefore, ECASD was on notice that such testing and treatment should not be provided without prior written consent from a parent or guardian.

125. However, with respect to the Gender Identity Policy and certain other matters, the Defendants chose to keep secret psychological and psychiatric testing and treatment from the student's parents. This policy of inaction was deliberate and implemented despite the known or obvious risk of a Constitutional violation arising from a failure to notify parents and obtain their consent prior to such psychological and psychiatric testing and treatment, including *inter alia*, changing a child's name, pronouns, or intimate facilities, and/or providing counseling or other interventions related to "gender" matters.

126. ECASD's policy of secrecy violates federal statutory law and is the functional equivalent of an intentional decision by the defendants to violate the PPOC members' Constitutional rights.

DEMAND FOR RELIEF

Plaintiff respectfully requests that the Court:

a. Enter a permanent injunction that prevents Defendants from interfering with Plaintiff's Members constitutionally protected First and Fourteenth Amendment rights;

b. Enter a permanent injunction that prohibits Defendants from interfering with Plaintiff's Members constitutional rights secured by Article 1, §§ 1 and 18 of the Wisconsin Constitution;

c. Enter a permanent injunction that prohibits Defendants from relying on, using, implementing, or enforcing the Gender Identity Policy in any way;

d. Award costs and attorneys' fees under 42 U.S.C. § 1988; and

e. Award all other relief that the Court deems just, proper, or equitable.

Respectfully Submitted,
AMERICA FIRST LEGAL FOUNDATION

*/s/ Nicholas R. Barry**
Nicholas R. Barry
TN Bar No. 031963
Nicholas.Barry@AFLegal.org

Reed D. Rubinstein*
DC Bar No. 400153
Reed.Rubinstein@AFLegal.org

300 Independence Ave SE
Washington, DC 20003
Telephone: (202) 964-3721
**Pro hac vice motion forthcoming*

WISCONSIN INSTITUTE FOR LAW & LIBERTY

/s/ Luke N. Berg

Luke N. Berg (WI Bar No. 1095644)
Rick Esenberg (WI Bar No. 1005622)
330 East Kilbourn Avenue, Suite 725
Milwaukee, WI 53202
Telephone: (414) 727-9455
Facsimile: (414) 727-6385
Rick@will-law.org
Luke@will-law.org

Attorneys for Parents Protecting Our Children, UA

EAU CLAIRE AREA SCHOOL DISTRICT

Administrative Guidance for Gender Identity Support

Updated 11.2021

I. Purpose:

The purpose of this guidance is: 1) to foster inclusive and welcoming environments that are free from discrimination, harassment, and bullying regardless of sex, sexual orientation, gender identity or gender expression; and 2) to facilitate compliance with district policy.

For the purpose of this guidance, a transgender individual is an individual that asserts a gender identity or gender expression at school or work that is different from the gender assigned at birth. Since individual circumstances, needs, programs, facilities, and resources may differ; administrators and school staff are expected to consider the needs of the individual on a case-by-case basis.

This guidance is intended to be a resource that is compliant with district policies, local, state, and federal laws. They are not intended to anticipate every possible situation that may occur.

II. The Process:

The following guidelines should be used to address the needs of transgender, nonbinary, and/or gender non-conforming students:

a. A transgender, non-binary, and/or gender-nonconforming student is encouraged to contact a staff member at the school to address any concerns, needs, or requests. This staff member will notify and work with the principal/designee. Parents/guardians of transgender, non-binary, and/or gender non-conforming students may also initiate contact with a staff member at school.

b. When appropriate or necessary, the principal or designee will schedule a meeting to discuss the student's needs and to develop a specific Student Gender Support Plan when appropriate to address these needs. Documentation shall include date, time, location, names, and titles of participants, as well as the following information. The plan shall address, as appropriate:

1. The name and pronouns desired by the student (generally speaking, school staff and educators should inquire which terms a student may prefer and avoid terms that make the individual uncomfortable; a good general guideline is to employ those terms which the individual uses to describe themself,

2. Restroom and locker room use

3. Participation in athletics and extracurricular activities

4. Student transition plans, if any. Each individual transitions differently (if they choose to transition at

all), and transition can include social, medical, surgical, and/or legal processes

5. Other needs or requests of the student

6. Determination of a support plan coordinator when appropriate

Some transgender, non-binary, and/or gender-nonconforming students are not "open" at home for reasons that may include safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent/guardian.

At least once each year (or more often as reasonably requested by the student or their parents/guardians), the Support Team should review the student's circumstances to determine whether existing arrangements related to the student's gender identity, gender transition, or transgender status are meeting their educational needs and ensuring that the student has access and opportunity to participate in the District's education programs and activities.

Schools maintain separate restrooms and locker rooms for male and female students (i.e. sex assigned at birth). Access should be allowed based on the *gender identity* (i.e., man, woman, trans, non-binary, etc.) expressed by the student. Any student who is uncomfortable using a shared restroom or locker room regardless of the reason, shall upon request, be provided with an alternative. This may include, for example, addition of a privacy partition or curtain, use of a nearby private restroom or office, or a separate changing schedule. However, *staff should not require a transgender or gender nonconforming student*

/employee to use a separate, nonintegrated space unless requested by the individual student.

Administrators and staff should respect the right of an individual to be addressed by a name and pronoun that corresponds to their gender identity. *A court-ordered name or gender change is not required, and the student need not change their official records*.

c. Note: If the student has an IEP or Section 504 Plan, the provisions in these plans should be taken into consideration in developing a plan for addressing transgender concerns.

d. While medical documentation is not required, the school may request such documentation, if helpful, to develop an appropriate plan for the student.

e. If the parties are uncertain or disagree regarding elements to be included in the plan, the principal/designee shall consult with the District Title IX Compliance Officer (Executive Director of Student Services or Executive Director of Human Resources).

f. A copy of the final plan should be maintained in the student's cumulative file.

III. Media and Communication

When questions are received from the media or community about issues related to gender identity, including District policy procedures/guidelines, school staff shall direct parents and the media to the Executive Director of Student Services.

Protecting the privacy of transgender, non-binary, and/or gender non-conforming students and employees must be a top priority for the spokesperson and all staff. All student and personnel information

shall be kept strictly confidential as required by District policy and local, state, or federal privacy laws.

IV. Official Records

a. Mandatory permanent student records will include the legal/birth name and legal/birth gender. However, to the extent that the district is not legally required to use a student's legal/birth name and gender on other school records or documents, the school will use the name and gender preferred by the student. For example, Student ID cards are not legal documents, and therefore, may reflect the student's preferred name.

b. ECASD will only make name changes in Skyward after the completion of a Gender Support Plan and with parent/guardian permission. While all efforts will be made to update the student's name in Skyward, some district mailings may continue to use the student's legal name as this is a new process/system that needs to be further developed to meet the needs of each student. Please note that following a name change in our Skyward system, the family is responsible for assisting their student as they transition to work or post-secondary education. For example, a student's transcript, FAFSA and other post-secondary forms, or certain workplaces may require the legal name.

c. Families can choose to legally make a name change for their child. To obtain a legal name change in Wisconsin, an applicant must submit a petition to the court. The applicant must publish a Class 3 notice of the hearing's time and place in a newspaper at least 3 times. The publication can be waived for the applicant's safety.

To obtain a legal name change in Wisconsin, an applicant must submit a petition to the court. The applicant must publish a Class 3 notice of the hearing's time and place in a newspaper once for three consecutive weeks. In certain cases, the court may waive the publication requirement for the petitioner's safety (though, said petitioner must complete an alternative petition and may be required to appeal an initial decision).

Wisconsin Driver's License Policy & Procedures: In order to update name and/or gender on a Wisconsin ID, the applicant must first change name with the Social Security Administration, then submit (1) a passport or court order demonstrating the name change and/or (2a) an affidavit or statement from a licensed physician certifying the gender change or (2b) a court order for gender change.

V. Student Intramural and Interscholastic Athletics/Extracurricular Activities

All students will be permitted to participate in any intramural sports/extracurricular activities in a manner consistent with their gender identity consistently expressed at school. Transgender students may be permitted to participate in interscholastic athletics consistent with the requirements and policies of the Wisconsin Interscholastic Athletics Association (WIAA). The Wisconsin Interscholastic Athletic Association determines its own rules for interscholastic competitions.

Pursuant to the WIAA Transgender Participation Policy, in order to initiate a request to participate in a sport or on a team which corresponds with the student's gender identity or gender expression and not

the sex assigned to the student at birth, the student and parent(s) must notify the building administrator or school counselor in writing that the student is transgender and has a consistent gender identity different than the sex assigned to the student at birth listed on the student's birth certificate. The written notification must also list the WIAA sport in which the student would like to participate.

VI. Dress codes

Students shall have the right to dress in accordance with their gender identity within the constraints of the dress codes adopted by the district and respective schools.

VII. Student Trips and Overnight Accommodations

When school sponsored activities require overnight accommodations, transgender students shall not be denied the right to participate. Prior to the trip/activity the staff member responsible for the school sponsored activity shall communicate overnight needs with the staff at the receiving venue to ensure appropriate accommodations are made.

VIII. Training and Professional Development

All staff will be trained and reminded annually of their duty and responsibility to prevent, identify, and respond to bullying, harassment, and discrimination.

Related Eau Claire Area School District Policies

Policy 411 – Equal Educational Opportunities

Policy 411.1 – Sexual Harassment

Policy 411.3 – Bullying

Policy 443.1 – Student Dress

Policy 443.7 – Student Code of Conduct

Federal Laws

FERPA (Family Educational Rights and Privacy Act) – A Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

Other References

Wausau School District

Madison School District

Transgender Law Center (TLC)

Gender Spectrum

National Education Association (NEA)

American Civil Liberties Union (ACLU)

Human Rights Campaign Foundation

EAU CLAIRE AREA SCHOOL DISTRICT

-Confidential-

Gender Support Plan

Updated: 4.2022

The purpose of this document is to create shared understanding about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, family, and the student should work together to complete this document.

If parents are not involved in creating this plan, and student states they do not want parents to know, it shall be made clear to the student that this plan is a student record and will be released to their parents when they request it. This is a not a privileged document between the student and the school district.

School: Choose an item.

Date: Click or tap to enter a date.

Student's Preferred Name: Click or tap here to enter text.

Legal Name: Click or tap here to enter text.

Student's Gender: Choose an item.

Assigned Sex at Birth: Choose an item.

Student's Grade Level: Choose an item.

Date of Birth: Click or tap to enter a date.

Sibling names/Grades: Click or tap here to enter text./Click or tap here to enter text.

Parents/Guardians: Click or tap here to enter text.

Meeting Participants:

☐**Parents/Guardian name(s)**: Click or tap here to enter text.

☐**Student name(s)**: Click or tap here to enter text.

☐**Administrator name(s)**: Click or tap here to enter text.

☐**Teacher name(s)**: Click or tap here to enter text.

☐**Other**: Click or tap here to enter text.

PARENT/GUARDIAN INVOLVEMENT

Are parents/guardians of this student aware of their child's gender status? ☐Yes ☐No

Are the parents/guardians aware of student's requests at school? ☐ Yes ☐No

If yes to both statements above, at parents' request ECASD will walk them through the Skyward name process and Student ID card change.

-**Preferred name**: Click or tap here to enter text.

-**Pronouns**: Click or tap here to enter text.

-**Restroom**: Choose an item. (Please note not all schools are equipped with gender neutral restrooms at this time.)

-**Locker room**: Choose an item.

-**School field trips (lodging for overnight trips)**: Click or tap here to enter text. (Please see Administrative Guidelines Section VII for more information.)

What considerations might need to be accounted for?

Click or tap here to enter text.

CONFIDENTIALITY, PRIVACY, AND DISCLOSURE

How public or private will information about this student's gender be? (Check all that apply)

☐District Staff

-Specify the district staff members: Click or tap here to enter text.

☐Building level staff members (Principal(s), counselor, teachers, nurse, etc…)

-Specify building staff members: Click or tap here to enter text.

☐Others (Friends, classmates, office staff, etc…)

-Describe: Click or tap here to enter text.

NAMES, PRONOUNS, AND STUDENT RECORDS

Name/gender marker entered into the Student Information System:

Click or tap here to enter text.

USE OF FACILITIES

Name of the point person ensuring these adjustments are made and communicated as needed:

Click or tap here to enter text.

What is the plan regarding? Check all that apply:

☐Restrooms at school: Click or tap here to enter text.

☐Locker room use: Click or tap here to enter text.

☐Facilities for any class trips: Click or tap here to enter text.

☐Lodging for overnight trips: Click or tap here to enter text.

EXTRACURRICULAR ACTIVITIES

Does the student participate in after school activities? ☐Yes ☐No

What is the plan to support the student in after school activities?

Click or tap here to enter text.

Who needs to be notified regarding the plan? Click or tap here to enter text.

OTHER CONSIDERATIONS

Does the student have siblings? ☐Yes ☐No

What is the plan, if needed, for supporting the siblings? Click or tap here to enter text.

What trainings will staff need to build capacity for working with gender-expansive students?

SUPPORT PLAN

Who are the student's trusted adults at school?

Click or tap here to enter text.

Does student feel safe at school? ☐Yes ☐No

If no, identify appropriate options for student safety-check all that apply:

☐During class: Click or tap here to enter text.

☐Transition time: Click or tap here to enter text.

☐Other: Click or tap here to enter text.

REVISION AND REVIEW

Who will monitor this plan? Click or tap here to enter text.

Date of next meeting/check in: Click or tap to enter a date.

Time of next meeting/check in: Click or tap here to enter text.

Location: Click or tap here to enter text.

Notes: Click or tap here to enter text.

2021-2022 ECASD EQUITY PD FOR ALL STAFF

FACILITATOR GUIDE – SESSION 3: SAFE SPACES

Supplies needed:

- Access the Canvas Course: 2021-2022 Equity Professional Development for Buildings at: https://ecasd.instructure.com/enroll/XRF6L3
    - Click on Modules and go to Session Three: Safe Spaces
- Half sheet of paper for each participant
- Pen or pencil for each participant
- Print 1 copy per participant of materials linked below (also in Canvas module)
    - Genderbread Person
    - Quiz
- Before the session begins:
    - Facilitators, draw on whiteboard/chalkboard (whatever you have available) large versions of each assessment statement. Number them (e.g., Statement #1, Statement #2, etc.). You will use these at the beginning and end of the training (directions found below).

Slide outline:

Slide 1– Presenters introduce themselves

Slide 2– Space Expectations

Slide 3– Encourage participants to explore the GSRC website. Tons of excellent resourcesthere.

Slide 4– Land acknowledgment statement.

Slides 5-9– A Brief Assessment

Facilitators, follow these steps:

• For each of the four assessment questions, you will ask participants to come up (as a group, not one-by-one) and draw a dot that reflects their current level of knowledge/awareness. This is a Leikert scale, so their dots will fall somewhere between the (1) and (5) spectrum. All you need do is draw the lines and label the lines (Statement #1, Statement #2, etc.). Do this twice, side-by-side, for the beginning and the end of the session. The rest of the info will be on the slides You will revisit this at the end of the training to see if there's been any movement.

Slide 10– What are you looking to learn?

Slide 11– PART ONE

Slide 12– Social Justice Framework

Slides 13-14– Cathartic Discomfort

Facilitators, this is a confidential self-assessment. Just ask participants to think about the 6 examples, as they are discussed in the recording.

Slides 15-16– Critical Self-Reflection

Facilitators, ask participants to write down on 1/2 sheets provided the messages they have and continue to receive about LGBTQIA+ people. Ask them to crumple them up and throw toward facilitators. Pick them up and share a few examples. Pay attention to patterns (most people will share negative messages, and this is important to highlight and unpack).

Slides 17-19– Evolution of Language & Identity

Slide 20– Intersectionality

Slide 21– Play Video,

Slide 22– 5-Min Pair & Share (follow prompt)

Slide 23– Strategize your Power!

Facilitators: The question posed in this slide is rhetorical, but feel free to provide an example of a time you used your own power/privilege in the service of advocacy. For example, as a cisgender person, I never worry about restroom availability or access. So, I use the power and privilege as a cis person and as the director of the GSRC here at UWEC to help ensure restroom availability and access to all people on campus (particularly trans and non-binary people). As a result, we now have 108 all gender restrooms across campus.

Slides 24-39– The LGBTQIA+ Acronym

Slides 40-41– Pop Quiz!

Facilitators, hand out quiz. Be sure to keep time (only 3 minutes!). Quickly go over answers.

Slide 42– PART TWO

Slides 43-55– Queer People & United States Law

Slide 56– Talk amongst yourselves!

Facilitators, guide this discussion. Remember, parents are not entitled to know their kids' identities. That knowledge must be earned. Teachers are often straddling this complex situation. In ECASD, our priority is supporting the student.

Slide 57– Religion

Facilitators: Since Slide 56 will most likely focus on parents' religious objections to LGBTQIA+ people, it's important to take a moment and reaffirm that religion is not the problem (after all, there are millions

of queer people of various faith traditions); rather, it's the weaponization of religion against queer people.

Slide 58–So You Want to Be an Accomplice?

Slide 59– What makes an effective ally? (Raise your hand and share!)

Slide 60– Play Video (performative allyship)

Slide 61– Play Video (accomplice v. ally)

Slide 62– Pronouns

Slide 63– Play Video (Why do pronouns matter?)

Slide 64– mypronouns.org

Slide 65– Integrate pronouns into…

Slide 66– Queer History

Slide 67– Play Video (Billy Porter)

Slide 68– Scenario

Facilitators: Split up participants into groups of four. Read the scenario out loud. Give them 6 minutes to discuss. Come back and discuss as a large group for 4 minutes.

Slide 69– Be Reflective!

Slide 70– Don't Sweat Perfection!

Slide 71– Intent v. Impact

Slide 72– Lingering Questions? (Encourage participants to raise hands and/or talk to you after the session has ended.)

Slides 73-77–A Brief Assessment

Facilitators, follow these steps:

• Just like in the beginning of the session, you will ask participants to come up (as a group, not one-by-one) and draw a dot that reflects their current level of knowledge/awareness. This is a Leikert scale, so their dots will fall somewhere between the (1) and (5) spectrum. Encourage them to compare the assessment statement before and after. It gives them a visual idea of the progress they've made throughout the session.

Things to consider and/or be prepared to address:

• Queerness is often a disenfranchised oppression, in that many people feel entirely justified when their discriminatory thinking is rooted in religion. As public-school employees, participants' religions are none of the facilitators' business. As public-school employees, the job is to advocate for every student, not just those whose identities reflect one's own faith traditions. We handle religious objections too often with kid gloves, instead of seizing opportunities to assert queer students' rights to a safe, inclusive education free from harassment, discrimination, and violence.

• When the conversation turns to navigating parents' faith-based rejection of their student's queer identity, it's critical to remember that we must not act as stand-ins for oppressive ideas/behaviors/attitudes, even and especially if that oppression is coming from parents. Never forget that you may be the only supportive person in that student's sphere. Guard and preserve that responsibility.

• White, cis-gender, heterosexual, middle class, Christian men and women without a disability might find the conversations about identity to be uncomfortable. One way to address this is to explain

that it's sometimes hard to talk about identity when your identities are normalized in such a way that you do not experience marginalization. That discomfort can give participants some insights into the discomfort felt by folx who do experience marginalization on a regular basis. You can share with participants that there is no need to feel bad about having privileged identities. The session is designed to help us think critically about the ways we may experience privilege or oppression depending on our identities…not to make us feel bad about our identities. Again, remind them that it's okay to feel discomfort! This isn't about feeling guilty, it's about understanding how our own identity affects how we see and interact with others.

• Privilege is a hard concept to wrap your head around when you have experienced significant hardship. You may want to watch this video before you facilitate the session so you have some language for responding to any resistance that might come from talking about privilege. The presenter in the video uses language that would be a perfect response to pushback on this issue. We didn't show the video in our presentation, but you may want to show it before folks go into break out groups to head off any resistance. https://youtu.be/qeYpvV3eRhY